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TAXATION — CONSTITUTIONALITY OF STATUTE PERMITTING REBATE ON PAYMENT OF DELINQUENT TAXES — Defendant county demurred to plaintiff's claim for taxes paid under protest, arguing that the statute [1] upon which plaintiff relied, one giving taxpayers the right to pay off delinquent taxes without interest and with a five per cent reduction in principal, was unconstitutional. The demurrer was overruled and defendant appealed. *Held*, that while the court feels that the law is entirely valid, the county is not entitled to raise an objection to it. *Vance Lumber Co. v. King County*, 184 Wash. 402, 51 P. (2d) 623 (1935).

The suggestion of the court that the county cannot object to tax rebates because such legislation does not involve unequal treatment of counties is certainly open to question. The mere fact that all deductions are made charge-

[1] Wash. Laws (1935), c. 166, p. 553.

able to the county current expense fund would seem to qualify the county as a proper party to question the law.[2] And, indeed, the major portion of the opinion is devoted to an attempt to answer the constitutional objections which the county submitted. In deciding that it is constitutional to give rebates of principal to encourage payment of delinquent taxes, the court is squarely in conflict with the only other American case deciding the specific point.[3] Our courts have almost unanimously permitted the rebating of interest,[4] skillfully avoiding the "uniformity" clauses[5] and the prohibitions against special laws remitting fines and penalties[6] found in state constitutions. And various types of legislative "juggling" with the principal amount of delinquent taxes have been sustained,[7] in the face of rather specific constitutional barriers.[8] Surely it is hard to distinguish the outright rebate from some of these other techniques, such as permitting redemption from one buying at the tax sale at the price paid plus interest, even though the price was less than the amount of taxes due. These decisions suggest ways to sustain rebating of part of the principal of delinquent taxes on the condition that they are paid in spite of a provision such as we find in the Washington constitution that "No county, nor the inhabitants thereof, nor the property therein, shall be released or discharged from its proportionate share of taxes to be levied for state purposes, nor shall commutation for such taxes be authorized in any form whatever."[9] But, in view of the requirement that classification for tax purposes be reasonable, should such legislation be upheld? The increase in tax delinquency recently has obviously created such pressing problems that reasonable remedial devices must be sustained.[10] Our question is simply whether or not the technique attempted

[2] See the dissenting opinion in the principal case.

[3] State ex rel. Matteson v. Luecke, 194 Minn. 246, 260 N. W. 206 (1935).

[4] See 33 MICH. L. REV. 1280 (1935); 18 MINN. L. REV. 849 (1934).

[5] The courts say that the interest charge is a penalty and thus not within the language of the "uniformity" clauses. See State ex rel. Crutcher v. Koeln, 332 Mo. 1229, 61 S. W. (2d) 750 (1933); Jones v. Williams, 121 Tex. 94, 45 S. W. (2d) 130 (1931); and 1 COOLEY, TAXATION, 4th ed., § 274 (1924). Until recently Montana courts held contra, but State ex rel. Sparling v. Hitsman, 99 Mont. 521, 44 P. (2d) 747 (1935), has overruled the earlier view expressed in Sanderson v. Bateman, 78 Mont. 235, 253 P. 1100 (1927), and State ex rel. Kain v. Fischl, 94 Mont. 92, 20 P. (2d) 1057 (1933).

[6] It is said that these are not "special laws." See Jones v. Williams, 121 Tex. 94, 45 S. W. (2d) 130 (1931).

[7] See State ex rel. Dowling v. Butts, 111 Fla. 630, 149 So. 746 (1933), allowing a change in the redemption period. See State ex rel. Coates v. Butler, 89 Minn. 220, 94 N. W. 688 (1903), and Woodrough v. Douglas County, 71 Neb. 354, 98 N. W. 1092 (1904), and State ex rel. Dowling v. Butts, supra, allowing redemption after sale for price less than total tax delinquency.

[8] See 13 N. Y. UNIV. L. Q. REV. 600 (1936).

[9] Wash. Const. of 1889, Art. XI, § 9. The court avoided this prohibition by a process of construction similar to that used in interest rebate cases, arguing that the provision only means to protect the interest of the state and that since the county is charged with deductions the rebate leaves the state's position unaffected.

[10] See 33 MICH. L. REV. 1280 (1935); Simpson, "Tax Delinquency," 28 ILL. L. REV. 147 (1933).

in the present situation is reasonable. Much can be said for the position of the Washington court. The complaint of those who paid taxes in full assumes that delinquent taxes would have been paid in the absence of a rebate law. The fact that land is kept on the tax rolls and that tax sales—with their concomitant effect on land values—are decreased indicate an actual benefit to those who paid promptly. On the other hand, the availability of other means of meeting the delinquency problem [11] would make a rebate seem unfair. A general policy of rebating could hardly be reasonable, since it would actually encourage delinquency.[12] Yet it is not likely that by a single law enacted to meet extraordinary conditions the Washington legislature has established a precedent upon which taxpayers generally can rely. And while the desirability of even one such law is open to serious question, it does not seem so unreasonable an effort to meet a grave problem as to justify a court in substituting its own judgment for that of the legislature.[13]

J. I. W.

[11] See Studenski, "Delinquent Taxpayers," 7 STATE GOVERNMENT 170 (1934); Simpson, "Tax Delinquency," 28 ILL. L. REV. 147 (1933).

[12] See 18 MINN. L. REV. 849 (1934).

[13] It has been suggested that a rebate apportioned on the basis of ability to pay and present land values would be more reasonable. 33 MICH. L. REV. 1280 (1935).