TAXATION-VALIDITY OF TAX ON INCOME OF SUPERINTENDENT OF SCHOOL CAFETERIA SYSTEM -SOVEREIGN IMMUNITY

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Recommended Citation
Available at: https://repository.law.umich.edu/mlr/vol35/iss3/22
Taxation — Validity of Tax on Income of Superintendent of School Cafeteria System — Sovereign Immunity — Petitioners, husband and wife, residents of Texas, made returns of community income for the year 1932, listing as exempt the salary of the wife who was superintendent of a non-profit cafeteria system operated by the Ft. Worth public schools for the exclusive patronage and benefit of teachers and students. The Commissioner of Internal Revenue refused the exemption and levied a deficiency tax of $105. On appeal from an affirmance of the commissioner’s decision by the Board of Tax Appeals,¹ held, reversed on the ground that the operation of the cafeteria system was a proper exercise of a governmental function by the school district, and that the salary of the superintendent, as an employee of a political subdivision and engaged in the performance of a governmental function, was immune from federal income taxation. Hoskins v. Commissioner of Internal Revenue, (C. C. A. 5th, 1936) 84 F. (2d) 627.

Inasmuch as the power of taxation is deemed to be an essential attribute of sovereignty, its scope is theoretically unlimited, but from a practical viewpoint it was early hedged about with positive limitations beyond which it might not be exercised.² Although there is no express prohibition in the Federal Constitution restraining federal taxation of state agencies, it was early held that an instrumentality of a state may not be taxed by the Federal Government.³ This

¹ Eugene Hoskins and Bena Hoskins v. Commissioner of Internal Revenue, 32 B. T. A. 682 (1935).
² McCulloch v. Maryland, 4 Wheat. (17 U. S.) 316, 4 L. Ed. 579 (1819).
³ Buffington v. Day, 11 Wall. (78 U. S.) 113, 20 L. Ed. 122 (1871), and
implied prohibition has been held to be unaltered by the Sixteenth Amendment. However, exemption of state agencies or instrumentalities from federal taxation is limited to those of a strictly governmental character and does not extend to those used by the state in carrying on a business of a private character. The difficulty lies in determining whether a given case falls within or without the general rule. Several tests, none of them preeminently satisfactory, have been suggested. It has been stated that the true distinction is between the attempted taxation of those operations of the state essential to the execution of its governmental functions and which only the state itself can do, and those activities which are of a private character. At most, however, this is but a broad generalization and is not entirely satisfactory in determining exactly what activity is "strictly governmental" and thus exempt. Another test for determining what constitutes activity of this character is whether the act done is in discharge of a public duty or in the management of property or rights voluntarily held for profit, though inuring ultimately to the benefit of the public. In a very recent case a test which apparently commended itself to the court, at least by way of dictum, was to grant immunity if the instrumentality involved falls within the class of activities in which the states have traditionally engaged. Applying such

since reaffirmed in such cases as Indian Motorcycle Co. v. United States, 283 U. S. 570, 51 S. Ct. 601 (1931). In accordance with this doctrine, Congress enacted the Revenue Act of 1926, wherein it is provided that "Any taxes imposed by the Revenue Act of 1924 or prior revenue acts upon any individual in respect of amounts received by him as compensation for personal services as an officer or employee of any state or political subdivision thereof (except to the extent that such compensation is paid by the United States Government directly or indirectly) shall, subject to the statutory period of limitations properly applicable thereto, be abated, credited, or refunded." Revenue Act of 1926, § 1211, 44 Stat. L. 130.

4 Watson v. Commissioner of Internal Revenue, (C. C. A. 3d, 1936) 81 F. (2d) 626.

5 South Carolina v. United States, 199 U. S. 437, 26 S. Ct. 110 (1905). As to further limitations on the broad doctrine of Buffington v. Day, 11 Wall. (78 U. S.) 113, 20 L. Ed. 122 (1871), see the following cases in which a federal tax was held valid: Metcalf & Eddy v. Mitchell, 269 U. S. 514, 46 S. Ct. 172 (1926), income tax on compensation for personal services as an officer or employee of any state or political subdivision thereof (except to the extent that such compensation is paid by the United States Government directly or indirectly) shall, subject to the statutory period of limitations properly applicable thereto, be abated, credited, or refunded.

6 For a collection of cases, pro and con, as to federal taxation of state officers, see 11 A. L. R. 532 at 535 (1921) and 82 A. L. R. at 989, 990 (1933).


8 United States v. California, 297 U. S. 175, 56 S. Ct. 421 (1936).
a test to the principal case, the decision would seem improper, for certainly the operation of school cafeterias may be said to be a modern innovation rather than a traditional public function. By some, such a criterion might be thought likely to foreclose the development of state agencies. On the other hand, in view of modern government-in-business attitudes and practices, it may be suggested that loose definitions or classifications as to tax-immune activities of state governments may lead to serious curtailment of federal revenues,\(^10\) and that thus for very practical reasons the more restrictive test referred to in the case last cited is to be commended.\(^11\) It has, therefore, been suggested that inasmuch as the power to tax is the very life-blood of a government and is not the power to destroy while the Supreme Court sits,\(^12\) the validity of each tax, independent of the subject matter, should depend entirely on whether or not it is a burden upon, or in fact impairs, the state's exercise of a sovereign function.\(^13\) Such a standard appears particularly fair and advantageous under present existing conditions. Tested by such a criterion, the tax in the instant case should be held valid as creating no real burden in fact upon the state.

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\(^{10}\) In addition, may not such broad exemptions tend to place an extremely heavy burden on the average taxpayer, while relieving another, equally able to pay, of his just contribution to governmental support?

\(^{11}\) The post-Eighteenth-Amendment advent of state-operated liquor dispensaries pertinently indicates the extent to which states might go in depleting federal revenues if the category of tax-immune activities is not closely scrutinized and limited. See Ohio v. Helvering, 292 U. S. 360, 54 S. Ct. 725 (1934). Query, what rule would be applied if the states attempt to tax federal excursions into the commercial field, such as the Tennessee Valley Authority?


\(^{13}\) See an interesting and novel comment on the "Revaluation of States' Immunity from Federal Taxation," 81 Univ. Pa. L. Rev. 194 at 198 (1933), and Metropolitan Bldg. Co. v. United States, (Ct. of Cl. 1935) 12 F. Supp. 537.