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## MUNICIPAL CORPORATIONS - CONSTITUTIONAL LIMITATION ON INDEBTEDNESS - DELINQUENT TAXES AS DEDUCTIBLE ASSET

Emma Rae Mann  
*University of Michigan Law School*

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MUNICIPAL CORPORATIONS — CONSTITUTIONAL LIMITATION ON INDEBTEDNESS — DELINQUENT TAXES AS DEDUCTIBLE ASSET — Plaintiff taxpayer sued to enjoin defendant city from borrowing \$500,000 for general public improvements, alleging that if the city so obligated itself it would be indebted beyond the limit fixed by the constitution at two per cent of the assessed valuation of taxable property. Defendant showed that such limit would not be exceeded if two-thirds of the outstanding delinquent taxes were regarded as deductible. The court denied the injunction and *held* that since collection of at least two-thirds of such outstanding delinquent taxes was certain this item was properly deductible. *Ward v. Pittsburgh*, 321 Pa. 414, 184 A. 240 (1936).

Such a constitutional provision limiting the debt a municipality is per-

mitted to incur to a fixed percentage of the value of local property is not at all uncommon.<sup>1</sup> In computing the municipal debt with reference to such a provision, it is customary to permit deduction of general cash assets of the municipality<sup>2</sup> and of cash and securities held in a sinking fund and allocated to payment of a particular obligation.<sup>3</sup> Deduction of uncollected taxes is less common. The Iowa court seems to allow deduction of taxes only up to the date of the annual tax sale and thereafter the burden of showing that uncollected taxes have any value is on the city.<sup>4</sup> The Kentucky court seems to include collectible delinquent taxes of previous years in its definition of current revenue, which revenue sets the limit of permissible indebtedness for Kentucky municipalities.<sup>5</sup> The Washington court has gone very far in permitting deduction of delinquent taxes. A long line of cases in that state holds that such taxes are deductible in full in computing whether a municipality has exceeded the debt limit fixed by the constitution, on the theory that inasmuch as such taxes are a lien on property their collection is assured.<sup>6</sup> It seems that the Washington court has found it necessary to limit this very liberal view by a presumption that taxes not paid for six years will not be paid.<sup>7</sup> The ruling of the principal case has been followed in a later Pennsylvania case which allowed deduction of three-fourths of the delinquent municipal taxes.<sup>8</sup> Some such allowance seems a desirable means of lending flexibility to rigid limitations on municipal indebtedness, and it seems a particularly valuable device in times of depression when cities are apt to need funds and taxes are apt to be in arrears.

*Emma Rae Mann*

<sup>1</sup> Scholz, "Municipal Borrowing and Legal Debt Limits," 24 NAT. MUN. REV. 323 (1935).

<sup>2</sup> Balch v. Beach, 119 Wis. 77, 95 N. W. 132 (1903); Miller v. City of Glenwood, 188 Iowa 514, 176 N. W. 373 (1920); State v. Kountz, 129 Ohio St. 272, 194 N. E. 869 (1935), funds collected from special assessments and publicly owned utility deducted.

<sup>3</sup> Williamson v. Aldrich, 21 S. D. 13, 108 N. W. 1063 (1906); First Nat. Bank of Jackson v. Jackson, 199 Ky. 94, 250 S. W. 795 (1923); Kirk v. School District, 108 Okla. 81, 234 P. 596 (1925).

<sup>4</sup> French v. City of Burlington, 42 Iowa 614 (1876).

<sup>5</sup> Overall v. Madisonville, 125 Ky. 684, 102 S. W. 278 (1907); Premier Construction Co. v. Kimmell, 230 Ky. 439, 20 S. W. (2d) 77 (1929). In the latter case the court expressly avoided the question, saying, "we need not inquire into the extent the city might rely upon back taxes in arrears. . . ."

<sup>6</sup> State v. Hopkins, 14 Wash. 59, 44 P. 134 (1896); Mullen v. Sackett, 14 Wash. 100, 44 P. 136 (1896); Graham v. City of Spokane, 19 Wash. 447, 53 P. 714 (1898); Tabb v. Funk, 170 Wash. 545, 17 P. (2d) 18 (1932).

<sup>7</sup> Seymour v. City of Ellensburg, 81 Wash. 365, 142 P. 875 (1914).

<sup>8</sup> Pennsylvania Power & Light Co. v. City of Bethlehem, (Pa. 1936) 185 A. 710.