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TAXATION - STATE INCOME TAX ON INTERSTATE RAILWAY - CONSTITUTIONALITY

TAXATION — STATE INCOME TAX ON INTERSTATE RAILWAY — CONSTITUTIONALITY — The plaintiff railway, doing local and interstate business, brought suit to recover payment made under a state net income tax measured by the difference between gross operating revenues for the whole business pro-

portioned by the ratio of track mileage within and outside the state and operating expenses similarly proportioned. *Held*, such a formula for taxing the local income of a concern doing both intrastate and interstate business was not on its face invalid and the mere showing that the plaintiff's local costs were higher than the system average without also showing that intrastate revenues were not correspondingly greater did not sustain the plaintiff's burden of proving the tax unreasonable. *Norfolk & W. Ry. v. State of North Carolina ex rel. Maxwell*, (U. S. 1936) 56 S. Ct. 625.

For a state to allocate to its taxing jurisdiction a proportional part of the net income of a corporation doing local and interstate business, that business must be of a unitary and organically single nature; [1] but a railroad is of this character,[2] and for it such a formula is therefore not void on its face. Calculation of intrastate and interstate business on the basis of track-mileage has been upheld.[3] But consideration must be given to the possible inadequacy of track-mileage as an exclusive test; [4] and because of peculiar localization of valuable facilities, other capital, or construction outlay track-mileage may be an entirely inappropriate formula, inasmuch as it would be inequitable under such circumstances to distribute the going value of the business equally over the whole system.[5] But track mileage in the case of a net income tax is on the whole a fairly just scheme of apportionment, because where peculiar valuation increases local operating expenses, there is generally a corresponding increase in rate to produce a uniform net return.[6] And it is unnecessary to achieve absolute mathematical perfection.[7] However, merely because a formula is not on its face arbitrary does not mean that its operation in a particular instance may not be

[1] Bass, Ratcliff & Gretton v. State Tax Comm., 266 U. S. 271 at 282, 45 S. Ct. 82 (1924); the dissenting opinion in Adams Express Co. v. Ohio State Auditor, 165 U. S. 194 at 250, 17 S. Ct. 305 (1897). Isaacs, "The Unit Rule," 35 YALE L. J. 838 at 842 (1926); 41 HARV. L. REV. 227 at 228 (1928).

[2] State Railroad Tax Cases, 92 U. S. 575 at 608, 23 L. Ed. 663 (1876); Pittsburgh, C. C. & St. L. Ry. v. Backus, 154 U. S. 421 at 430, 14 S. Ct. 1114 (1894).

[3] Cudahy Packing Co. v. Minnesota, 246 U. S. 450, 38 S. Ct. 373 (1918); Pittsburgh, C. C. & St. L. Ry. v. Backus, 154 U. S. 421, 14 S. Ct. 1114 (1894); Pullman's Palace Car Co. v. Pennsylvania, 141 U. S. 18, 11 S. Ct. 876 (1891); State Railroad Tax Cases, 92 U. S. 575, 23 L. Ed. 663 (1876). See also mileage use in telegraph cases. Western Union Tel Co. v. Taggart, 163 U. S. 1, 16 S. Ct. 1054 (1896); Western Union Tel Co. v. Attorney General, 125 U. S. 530, 8 S. Ct. 961 (1888).

[4] Rowley v. Chicago & N. W. Ry., 293 U. S. 102, 55 S. Ct. 55 (1934).

[5] Union Tank Line Co. v. Wright, 249 U. S. 275, 39 S. Ct. 276 (1919); Wallace v. Hines, 253 U. S. 66, 40 S. Ct. 435 (1920); Davis v. Wallace, 257 U. S. 478, 42 S. Ct. 164 (1922); Meyer v. Wells Fargo Co., 223 U. S. 298, 32 S. Ct. 218 (1912). And see Fargo v. Hart, 193 U. S. 490, 24 S. Ct. 498 (1904).

[6] This method also has the advantage of simplicity, see HUANG, STATE TAXATION OF RAILWAYS IN THE UNITED STATES 97 at 98, 100, 188, 189 (1928).

[7] Rowley v. Chicago & N. W. Ry., 293 U. S. 102 at 109, 55 S. Ct. 55 (1934); Union Tank Line Co. v. Wright, 249 U. S. 275 at 282, 39 S. Ct. 276 (1919). As to the matter of arriving at railroad valuation, see Minnesota Rate Cases, 230 U. S. 352 at 434, 39 S. Ct. 729 (1918).

unfair and invalid; [8] and although the rationing between local and interstate business may be valid, the tax measured by income may be invalid as a property tax on going value if not in lieu of other taxes directly upon the component subjects of the going value.[9] But the burden of demonstrating such unfairness is upon the taxpayer who must show that the statutory scheme imposes an undue hardship upon him.[10] In the principal case, the railroad introduced evidence to show that the cost of operations within North Carolina was higher than the mean operating expenses for the system but failed to show that revenues were not correspondingly greater, whereas the state went ahead to demonstrate that there was such a correspondence.

G.M.W.

[8] Hans Rees' Sons v. North Carolina ex rel. Maxwell, 283 U. S. 123, 51 S. Ct. 385 (1931); Southern Ry. v. Kentucky, 274 U. S. 76, 47 S. Ct. 542 (1927).

[9] Cudahy Packing Co. v. Minnesota, 246 U. S. 450, 38 S. Ct. 373 (1918); Pullman Co. v. Richardson, 261 U. S. 330, 43 S. Ct. 366 (1923).

[10] Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113, 41 S. Ct. 45 (1920); Bass, Ratcliff & Gretton v. State Tax Commission, 266 U. S. 271, 45 S. Ct. 82 (1924); Atlantic Lumber Co. v. Comm. of Corporations and Taxation, (Mass. 1935) 197 N. E. 525. And see 23 ILL. L. REV. 402 at 403 (1929).