Michigan Law Review

Volume 33 | Issue 6

1935

# TAXATION - CONSTITUTIONALITY OF CHAIN STORE TAXATION

Follow this and additional works at: https://repository.law.umich.edu/mlr

Part of the Constitutional Law Commons, Fourteenth Amendment Commons, and the Taxation-State and Local Commons

Recommended Citation
*TAXATION - CONSTITUTIONALITY OF CHAIN STORE TAXATION*, 33 MICH. L. REV. 970 (1935).
Available at: https://repository.law.umich.edu/mlr/vol33/iss6/18

This Recent Important Decisions is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

TAXATION — CONSTITUTIONALITY OF CHAIN STORE TAXATION — The plaintiff corporation filed a bill asking a permanent injunction against the enforcement of the Michigan chain store tax, which imposes a graduated levy, the amounts increasing from ten dollars per year per store for two stores owned, to two hundred fifty dollars per year per store for stores in "chains" of twenty-six or more.[1] The plaintiff contended that the statute was unconstitutional under the "uniformity" clause of the state constitution and the equal protection of the

[1] Mich. Pub. Acts (1933), Act No. 265.

laws clause of the federal Constitution. *Held*, the act is constitutional. *C. F. Smith Co. v. Fitzgerald*, 270 Mich. 659, 259 N. W. 352 (1935).

The decision in the instant case is in accord with the overwhelming weight of authority sustaining the validity of chain store taxation.[2] The typical chain store tax is a license or privilege tax upon persons or associations owning and operating more than one store under a unified management. It is administered by imposing a certain fee for each store operated, such fee increasing in amount per store with the number of stores owned.[3] Since the statutes impose license taxes, the "equality and uniformity" provisions of the state constitutions have no further application than to require that same uniformity of operation within the class as is necessary under the equal protection of the laws clause of the Fourteenth Amendment to the federal Constitution.[4] Generally, it has been held that the discrimination between chain and independent stores is reasonably based upon the greater advantages enjoyed in unified management and ownership.[5]

[2] Fox v. Standard Oil Co. of New Jersey, (U. S. 1935) 55 Sup. Ct. 333, 79 L. ed. 339; State Board of Tax Com'rs of Indiana v. Jackson, 283 U. S. 527, 51 Sup. Ct. 540, 73 A. L. R. 1464 (1931) and note, 73 A. L. R. 1481; Great Atlantic & Pacific Tea Co. v. Maxwell, 199 N. C. 433, 154 S. E. 838 (1930), aff'd 284 U. S. 575, 52 Sup. Ct. 26 (1931); Louis K. Liggett Co. v. Lee, 288 U. S. 517, 53 Sup. Ct. 481, 85 A. L. R. 699 (1933), and note, 85 A. L. R. 736; Penny Stores v. Mitchell, (D. C. S. D. Miss. 1932) 59 F. (2d) 789, dismissed, Penny Stores v. Rice, 287 U. S. 672, 53 Sup. Ct. 122 (1932); Great Atlantic & Pacific Tea Co. v. Morrissett, (D. C. E. D. Va. 1931) 58 F. (2d) 991, aff'd in 284 U. S. 584, 52 Sup. Ct. 127 (1932); Southern Grocery Stores v. South Carolina Tax Comm., (D. C. E. D. S. C. 1932) 55 F. (2d) 931; Commonwealth v. Bibee Grocery Co., 153 Va. 935, 151 S. E. 293 (1930); J. C. Penny Co. v. Diefendorf, (Idaho 1934) 32 Pac. (2d) 784. *Contra*: Woolworth Co. v. Harrison, 172 Ga. 179, 156 S. E. 904 (1931); Great Atlantic & Pacific Tea Co. v. Doughton, 196 N. C. 145, 144 S. E. 701 (1928); Kroger Grocery & Baking Co. v. City of St. Louis, (C. C. Mo. 1934) published in C. C. H. Corp. Tax Service for Colorado 7535. Compare City of Danville v. Quaker Maid, 211 Ky. 677, 278 S. W. 98 (1925).

[3] See, for example, Fla. Comp. Gen. Laws (1934 Supp.), secs. 4151 (82)-4151 (95); Idaho Laws (1933), c. 113, p. 179; Ky. Acts (Spec. Sess. 1934), c. 26, p. 227; Minn. Laws (1933), c. 213, secs. 1-18, p. 265; Mont. Laws (1933), c. 155, p. 306; N. C. Pub. Laws (1933), c. 445, sec. 162, p. 720.

[4] C. F. Smith Co. v. Fitzgerald, 270 Mich. 659, 259 N. W. 352 (1935); Great Atlantic & Pacific Tea Co. v. Maxwell, 284 U. S. 575, 52 Sup. Ct. 26 (1931).

[5] These advantages include, among others, rapid turnover, availability of greater capital, and standardization of sales policy, advertising and type of business transacted. The chain store sells but one general type of goods with centralized distributing houses, thus having advantages over the large department store which sells goods of various sorts. C. F. Smith Co. v. Fitzgerald, 270 Mich. 659, 259 N. W. 352 (1935); Liggett Co. v. Lee, 288 U. S. 517, 53 Sup. Ct. 481, 85 A. L. R. 699 (1933); State Board of Tax Com'rs of Indiana v. Jackson, 283 U. S. 527, 51 Sup. Ct. 540, 73 A. L. R. 1464 (1931); Fox v. Standard Oil Co. of New Jersey, (U. S. 1935) 55 Sup. Ct. 333, 79 L. ed. 339. It has been held, however, that a license tax imposed upon the owners of six or more stores is an unreasonable discrimination in favor of the owners of five or less stores. Woolworth Co. v. Harrison, 172 Ga. 179, 156 S. E. 904 (1931); Great Atlantic & Pacific Tea Co. v. Doughton, 196 N. C. 145, 144 S. E. 701 (1928).

These advantages increase proportionally with the number of stores operated, and accordingly the more stores a taxpayer operates the greater tax for each store it is reasonable for him to pay.[6] The courts, aided by the presumption of constitutionality of legislation, have generally followed the liberal rule of construction that discrimination is valid unless no rational basis can be found to support it.[7] Although the chain store tax may be imposed upon gasoline filling stations,[8] yet the common exemption of them from the operation of the tax is justified by their being subjected to state and federal gasoline taxes.[9] Double taxation does not offer any obstacle to the use of a general sales tax in conjunction with a chain store tax, since the latter is a license tax upon the privilege of operating more than one store under a unified management, while the former is a tax on the privilege of selling personal property at retail.[10] It is no valid objection that the tax is so harsh or oppressive as to preclude profit, since it is within the discretion of the legislature to determine the amount of a tax which it has the power to impose.[11] Apparently, constitutional limitations will not be available, at least except in extreme cases, to check either the amount of the license fee or the rate of increase thereof as the size of the "chain" increases.[12] The principal

*Contra,* Penny Stores v. Mitchell, (D. C. S. D. Miss. 1932) 59 F. (2d) 789; dismissed, Penny Stores v. Rice, 287 U. S. 672, 53 Sup. Ct. 122 (1932). But there is no reasonable basis for a higher rate upon owners whose stores are in several counties than upon those whose stores are within one county. Louis K. Liggett Co. v. Lee, 288 U. S. 517, 53 Sup. Ct. 481, 85 A. L. R. 699 (1933).

[6] Fox v. Standard Oil Co. of New Jersey, (U. S. 1935) 55 Sup. Ct. 333, 79 L. ed. 339.

[7] "That there are differences and advantages in favor of the chain store is shown by the number of such chains established and by their astonishing growth." State Board of Tax Com'rs of Indiana v. Jackson, 283 U. S. 527 at 541, 51 Sup. Ct. 540, 73 A. L. R. 1464 (1930); Louis K. Liggett Co. v. Lee, 288 U. S. 517, 53 Sup. Ct. 481, 85 A. L. R. 699 (1933); Southern Grocery Stores v. South Carolina Tax Comm., (D. C. E. D. S. C. 1932) 55 F. (2d) 931; Penny Stores v. Mitchell, (D. C. S. D. Miss. 1932) 59 F. (2d) 789.

[8] Fox v. Standard Oil Co. of New Jersey, (U. S. 1935) 55 Sup. Ct. 333, 79 L. ed. 339; Midwestern Petroleum Corp. v. State Board of Tax Com'rs, (Ind. 1933) 187 N. E. 882.

[9] C. F. Smith Co. v. Fitzgerald, 270 Mich. 659, 259 N. W. 352 (1935); J. C. Penny Co. v. Diefendorf, (Idaho 1934) 32 Pac. (2d) 784; Louis K. Liggett Co. v. Lee, 288 U. S. 517, 53 Sup. Ct. 481, 85 A. L. R. 699 (1933); Southern Grocery Stores v. South Carolina Tax Comm., (D. C. E. D. S. C. 1932) 55 F. (2d) 931.

[10] C F. Smith Co. v. Fitzgerald, 270 Mich. 659, 259 N. W. 352 (1935).

[11] C. F. Smith Co. v. Fitzgerald, 270 Mich. 659, 259 N. W. 352 (1935); J. C. Penny Co. v. Diefendorf, (Idaho 1934) 32 Pac. (2d) 784; Fox v. Standard Oil Co. of New Jersey, (U. S. 1935) 55 Sup. Ct. 333, 79 L. ed. 339. *Cf.* Kroger Grocery & Baking Co. v. City of St. Louis, (Mo. Circuit Court, 1934) C. C. H. Corp. Tax Service for Colorado 7535.

[12] In the case of State Board of Tax Com'rs of Indiana v. Jackson, 283 U. S. 527, 51 Sup. Ct. 540, 73 A. L. R. 1464 (1931), the tax upheld ranged from a fee of three dollars for the first store, up to a fee of twenty-five dollars per store for each store in excess of twenty. In the case of Louis K. Liggett Company v. Lee, 288 U. S. 517, 53

case is especially interesting in its emphasis of the sound rule that the courts will not consider the wisdom or propriety of tax legislation nor inquire into the motives dictating its passage.

C. P. H.

Sup. Ct. 481, 85 A. L. R. 699 (1933), the tax upheld was one ranging from a fee of five dollars for the first store, to a fee of fifty dollars per store for each store in excess of seventy-five, plus a levy of three dollars for each one thousand dollars of value of stock carried in each store. The court in the instant case does not compare the Michigan statute with the statutes in these two cases, but it seems very probable that the greater burden imposed by the Michigan statute is the occasion of the court's lengthy consideration of the immunity from judicial review of the legislative policy. Compare Kroger Grocery & Baking Co. v. City of St. Louis, (Mo. Circuit Court, 1934) C. C. H. Corp. Tax Service for Colorado 7535. But a tax which is "so arbitrary as to constrain to the conclusion that it was not the exertion of taxation but a confiscation of property" is invalid. Brushaber v. Union Pacific R. R., 240 U. S. 1 at 24, 36 Sup. Ct. 236 (1916).