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TAXATION—TAX ON ROLLING STOCK—SITUS OF PERSONAL PROPERTY EMPLOYED IN INTERSTATE COMMERCE—An Illinois corporation owned a fleet of tank cars which were used to carry oil from the corporation's Oklahoma refinery to other States. The State of Oklahoma sought to impose a tax upon the entire fleet, although the cars were outside of Oklahoma at least twenty days each month. *Held*, Oklahoma had only the jurisdiction to tax the average number of tank cars habitually employed within the State. *Johnson Oil Refining Co. v. Oklahoma*, 290 U. S. 158, 54 Sup. Ct. 152 (1933).

It is now elemental that property employed in interstate commerce may be taxed by a State within which it has a situs,¹ although the absence of such a situs will cause an attempted state tax to be invalid for lack of jurisdiction and violation of the due process clause.² With the jurisdiction of the States to tax rolling stock thus dependent upon situs, and the growing endeavors of the States to reach all possible sources of revenue, it has become increasingly important accurately to define the situs concept. The rolling stock of a railroad is customarily given a situs at the domicil of the owner,³ although the courts make an exception when it acquires an actual situs elsewhere.⁴ When the

¹ *Marye v. Baltimore & O. R. R.*, 127 U. S. 117, 8 Sup. Ct. 1037 (1888); *Pullman's Palace Car Co. v. Pennsylvania*, 141 U. S. 18, 11 Sup. Ct. 876 (1891); *American Refrigerator Co. v. Hall*, 174 U. S. 70, 19 Sup. Ct. 599 (1899); *Union Refrigerator Co. v. Lynch*, 177 U. S. 149, 20 Sup. Ct. 631 (1900); *Union Tank Line Co. v. Wright*, 249 U. S. 275, 39 Sup. Ct. 276 (1918); and 1 COOLEY, TAXATION, 4th ed., sec. 385 (1924).

² *Delaware, L. & W. R. R. v. Pennsylvania*, 198 U. S. 341, 25 Sup. Ct. 669 (1905); *Louisville & J. Ferry Co. v. Kentucky*, 188 U. S. 385, 23 Sup. Ct. 463 (1903); *Union Refrigerator Co. v. Kentucky*, 199 U. S. 194, 26 Sup. Ct. 36 (1905); and Rottschaeffer, "State Jurisdiction to Impose Taxes," 42 YALE L. J. 305 (1933).

³ *New York ex rel. N. Y. C. & H. R. R. v. Miller*, 202 U. S. 584, 26 Sup. Ct. 714 (1906); and *Southern Pac. Co. v. Kentucky*, 222 U. S. 63, 32 Sup. Ct. 13 (1911), which carried the notion of domicil to the extent of defining situs in the domiciliary State although the property never had been there.

⁴ *Union Refrigerator Co. v. Kentucky*, 199 U. S. 194, 26 Sup. Ct. 36 (1905); *Western Union Tel. Co. v. Kansas*, 216 U. S. 1, 30 Sup. Ct. 190 (1909); *Frick v. Pennsylvania*, 268 U. S. 473, 45 Sup. Ct. 603 (1925).

stock is habitually employed in several States, the States are held to have situs as to the average amount of property constantly present within their respective boundaries.⁵ Following such conventional guideposts, the United States Supreme Court in the principal case held the corporation's roving fleet of tank cars proportionately taxable by the States of habitual employment, instead of allowing the State of domicile or the State from which the cars operated as a base to lay a full tax. Such treatment is fair on its face, but experience has shown that it is practically unworkable due to the difficulties in devising any mode of allocation whereby each State would be allowed to tax its exact proportion.⁶ There would be no such difficulties if each of the States in which the property is employed was allowed to tax the entire fleet, but the current move away from multiple taxation⁷ is clearly such as to preclude such a possibility. Because of the obstacles inhering in either a proportionate or full tax by the States in which the cars are employed, it might be desirable to give an exclusive tax situs to the State of domicile where an actual situs could not be attributed to some one other State, somewhat analogous to the treatment of vessels engaged in interstate commerce.⁸

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⁵ *American Refrigerator Co. v. Hall*, 174 U. S. 70, 19 Sup. Ct. 599 (1899); *Marye v. Baltimore & O. R. R.*, 127 U. S. 117, 8 Sup. Ct. 1037 (1888); *Union Refrigerator Co. v. Lynch*, 177 U. S. 149, 20 Sup. Ct. 631 (1900); *Union Refrigerator Co. v. Kentucky*, 199 U. S. 194, 26 Sup. Ct. 36 (1906); *Pullman's Palace Car Co. v. Pennsylvania*, 141 U. S. 18, 11 Sup. Ct. 876 (1891); 1 COOLEY, TAXATION, 4th ed., sec. 385 (1924); 2 COOLEY, TAXATION, 4th ed., sec. 454 (1924); and Powell, "Taxation of Things in Transit," 7 VA. L. REV. 167, 245, 429, 497 (1920-21).

⁶ There has been much litigation concerning whether or not the mode adopted by a particular State was such as to make the tax excessive, and the cases are illustrative of the inherent difficulties in any accurate measurements of a State's proportional share. In 28 YALE L. J. 802 at 805 (1919), speaking of the various modes, it is stated, "While in the course of time, then, less and less unscientific modes of assessment have been devised, still the validity of the taxes is even today in many cases haphazard, and dependent upon the chance results obtained." The more accurate modes often involve much computation and proof, which entail considerable expense and thereby raise another objection. Kauper, "State Taxation of Interstate Motor Carriers," 32 MICH. L. REV. 1 at 9 (1933), considers the varied alternatives and makes analytical criticisms thereof. See also 3 MINN. L. REV. 421 (1919); 19 COL. L. REV. 334 (1919); and Powell, "Taxation of Things in Transit," 7 VA. L. REV. 245 at 260 (1921).

⁷ 32 COL. L. REV. 548 (1932); 30 MICH. L. REV. 630 (1932); 16 MINN. L. REV. 327 (1932); 80 UNIV. PA. L. REV. 605 (1932); 41 YALE L. J. 643 (1932); Lowindes, "The Passing of Situs—Jurisdiction to Tax Shares of Corporate Stock," 45 HARV. L. REV. 777 (1932); Rottschaeffer, "State Jurisdiction to Impose Taxes," 42 YALE L. J. 305 (1933); and 25 Proc. Nat. Tax Ass'n 242 (1932).

⁸ *Southern Pac. Co. v. Kentucky*, 222 U. S. 63, 32 Sup. Ct. 13 (1911); *Ayer & Lord Tie Co. v. Kentucky*, 202 U. S. 409, 26 Sup. Ct. 679 (1905); *Old Dominion S. S. Co. v. Virginia*, 198 U. S. 299, 25 Sup. Ct. 686 (1904); *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196, 5 Sup. Ct. 826; and 2 COOLEY, TAXATION, 4th ed., sec. 453 *et seq.* (1924).