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CONSTITUTIONAL LAW-RELATION BETWEEN STATE AND FEDERAL GOVERNMENTS

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CONSTITUTIONAL LAW—RELATION BETWEEN STATE AND FEDERAL GOVERNMENTS—Plaintiffs, employees of a United States Naval Ordnance Plant located in an area of exclusive federal jurisdiction within the State of Kentucky, sued in a state court for a declaratory judgment that a license tax on the privilege of working in the City of Louisville, measured by a percentage of all salaries, wages and commissions earned within the city, was not applicable to them. Defendants' demurrer was overruled, and the collection of the tax enjoined. The Kentucky Court of Appeals reversed,¹ and judgment was entered for the defendants. The court of appeals affirmed.² On appeal to the United States Supreme Court, *held*, affirmed, two Justices dissenting. The tax was an income

¹ 248 S.W. (2d) 340 (1952).

² 249 S.W. (2d) 816 (1952).

tax within the meaning of the Buck Act,³ which gives state and local taxing authorities the right to levy and collect an income tax in a federal area. *Howard v. Commissioners of the Sinking Fund of the City of Louisville*, (U.S. 1953) 73 S.Ct. 465.

Article I, section 8, clause 17 of the United States Constitution gives to Congress the power to exercise exclusive legislation over land purchased by the federal government with the consent of the state wherein the land lies, if purchased for the erection of forts, magazines, arsenals, dock-yards, and "other needful buildings."⁴ Since exclusive legislation is equivalent to exclusive jurisdiction,⁵ land acquired under this clause is under the exclusive jurisdiction of the federal government.⁶ In the principal case, the area in which the ordnance plant is located had been acquired under the clause by condemnation with the unconditional legislative consent of the state,⁷ and thus was under the exclusive jurisdiction of the federal government. In the absence of a recession by the federal government to the state of the power to tax in the area, the state or any local taxing authority would not have the power to tax real or personal property in, residents of, or activities occurring within a federal area.⁸ In 1940, the Congress enacted the Buck Act,⁹ which in effect was a recession¹⁰ to the states of the power to levy and collect income taxes on residents of, or income derived from transactions occurring on, or services performed in a federal area, "to the same extent and with the same effect as though such area was not a federal area."¹¹ "Income tax," for the purpose of this act, is defined to mean, "any tax levied on, with respect to or measured by net income, gross income, or gross receipts."¹² It was the plaintiffs' contention in the principal case that the tax imposed by the city of Louisville¹³ was not an "income tax" within the meaning

³ 61 Stat. L. 641 (1947), 4 U.S.C. (Supp. V, 1952) §§105-110. Sec. 106 reads as follows: "§106. Same; income tax. (a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area."

⁴ The term "other needful buildings" has been interpreted to embrace whatever structures are found to be necessary in the performance of the functions of the federal government. *James v. Dravo Contracting Co.*, 302 U.S. 134, 58 S.Ct. 208 (1937).

⁵ *Surplus Trading Co. v. Cook*, 281 U.S. 647, 50 S.Ct. 455 (1930); *James v. Dravo Contracting Co.*, note 4 *supra*.

⁶ *Surplus Trading Co. v. Cook*, note 5 *supra*.

⁷ The state may reserve some jurisdictional powers when giving its consent. *Fort Leavenworth v. Lowe*, 114 U.S. 525, 5 S.Ct. 995 (1885); *United States v. Unzeuta*, 281 U.S. 138, 50 S.Ct. 284 (1930). For general discussions of federal areas, see 17 *TENN. L. REV.* 328 (1942); 18 *GEO. WASH. L. REV.* 500 (1950).

⁸ *Surplus Trading Co. v. Cook*, note 5 *supra*; *Fort Leavenworth v. Lowe*, note 7 *supra*.

⁹ See note 3 *supra*.

¹⁰ *Davis v. Howard*, 306 Ky. 149, 206 S.W. (2d) 467 (1947).

¹¹ See note 3 *supra*.

¹² 61 Stat. L. 641, §110 (1942), 4 U.S.C. (Supp. V, 1952) §110.

¹³ Ordinance 83, Series 1950, City of Louisville, §1.

of the Buck Act.¹⁴ In *City of Louisville v. Sebree*,¹⁵ the Kentucky Court of Appeals held that this tax is not an income tax under the law of Kentucky. However, in the principal case, the Court points out that the question is whether the tax falls within the federal act, regardless of state law. The Court held the tax to be an income tax within the Buck Act, on the ground that the act defined "income tax" to be *any tax* measured by net income, gross income, or gross receipts. Justice Douglas, dissenting, argued that the Louisville tax was not within this definition, since it was measured by a percentage of earned income only, rather than by a percentage of net income, gross income, or gross receipts. The majority's liberal construction seems the better view in light of the apparent purpose of Congress. The purpose of the Buck Act, it may be argued, is to rectify an inequality arising under the Public Salaries Act.¹⁶ This act removed the immunity of federal employees from state and local taxation. However, a state was still unable to tax a federal employee residing within a federal area of exclusive jurisdiction. Thus, the income of a federal employee residing in a federal area was not taxable by the state, while the income of his fellow employee residing elsewhere was taxable. The Buck Act, by removing the immunity of the resident of a federal area, removed this inequality. To construe the Buck Act strictly would be to frustrate the intent of Congress in those states where a municipal income tax is prohibited by the state constitution. On the other hand, to construe it as encompassing all local taxes which approximate an income tax is to give effect to the intent of Congress.

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¹⁴ The plaintiffs also contended that a previous annexation of the area by the city was non-operative. The court held that a state could conform its municipal structures to its own plan without interfering with the federal jurisdiction. See *Wichita Falls v. Bowen*, 143 Tex. 45, 182 S.W. (2d) 695 (1944); *County of Norfolk v. Portsmouth*, 186 Va. 1032, 45 S.E. (2d) 136 (1947).

¹⁵ 308 Ky. 420, 214 S.W. (2d) 248 (1948).

¹⁶ 53 Stat. L. 575, §4 (1939), 5 U.S.C. (1946) §84a.