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## RENEGOTIATION OF WAR CONTRACTS-EXHAUSTION OF ADMINISTRATIVE REMEDIES

Rosemary Scott S.Ed.  
*University of Michigan Law School*

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RENEGOTIATION OF WAR CONTRACTS—EXHAUSTION OF ADMINISTRATIVE REMEDIES—JURISDICTION OF THE TAX COURT—Plaintiff sought to enjoin the Chairman of the United States Maritime Commission from enforcing the War Contracts Renegotiation Act against its contracts with the British Ministry of War on the ground that they were outside the scope of the act, and attempted to obtain a declaratory judgment to this effect. Prior to this proceeding the plaintiff had been given notice and had been requested to attend a conference. He filed an objection to the authority of the Maritime Commission which, in turn, contended that the United States was responsible for payment under the contract and that the administrative remedies had not been exhausted. On these grounds the district court dismissed the complaint. The circuit court of appeals reversed the lower court.<sup>1</sup> *Held*, reversed. The federal court was without jurisdiction to enjoin and determine the rights of the parties since the statutory remedy had not been exhausted. *Macauley v. Waterman Steamship Co.*, (U.S. 1946) 66 S.Ct. 712.

In this situation two doctrines compete with each other for supremacy. On one hand, the Renegotiation Act<sup>2</sup> and its amendments<sup>3</sup> prescribe detailed steps before administrative agencies<sup>4</sup> and the Tax Court<sup>5</sup> to contest rights to profits

<sup>1</sup> (App. D.C. 1945) 151 F. (2d) 292.

<sup>2</sup> 56 Stat. L. 245, 50 U.S.C. (Supp. V, 1946) Appx. §1191.

<sup>3</sup> 57 Stat. L. 347, 564, 58 Stat. L. 21, 50 U.S.C. (Supp. V, 1946) Appx. §1191.

<sup>4</sup> First, a conference is called after notice has been given to the contractor. An agreement is sought at this conference as to the amount of profits due the contractor. The agreement is binding if reached. If no agreement is reached the board makes an ex parte determination and mails the statement to the contractor. It may then collect the amount of the excess profits due by reducing accounts payable to the contractor, directing other contractors to withhold payments, or by recovering the amount by suit.

<sup>5</sup> The contractor may appeal to the Tax Court for a trial ninety days after the order for redetermination has been issued. There is no direct review of the determina-

arising from contracts subject to its provisions. On the other hand, there is the fundamental rule that an administrative agency cannot make a conclusive determination of its own power when it is charged that the agency is acting beyond the power so delegated to it. The former principle prevails in the instant case. Several reasons may be advanced to support this position. First, the Renegotiation Act stipulates that a contractor must attend a conference where the basis of profits under his wartime contract will be settled. He is then entitled to a trial de novo before the Tax Court on all the issues including the facts which led to the finding by the administrative agency or officer representing the government under the contract. By statute the Tax Court is given exclusive jurisdiction of such war contracts, no doubt because of its technical competency in matters of profit accounting and its specialized background and experience. The contractor up to this point is confronted with a strong statutory policy. In the instant case he was at a special disadvantage because he could show no compliance with this policy inasmuch as he had refused to follow the statutory procedure in view of his contention that there was no power to enforce compliance to an inapplicable statute. His position was a strong one if needless action were to be avoided. However, precedents in other areas of administrative law require compliance though it may be found later that the statute was not applicable.<sup>6</sup> This view is sustained on the ground that the petitioner may obtain the relief he desires from the administrative agent or agency and that, in case he does not, a clear record will be presented to the reviewing court. The Court in the principal case justified the rejection of the second principle which would allow injunctive and/or declaratory judgment relief by pointing to *Myers v. Bethlehem Ship Building Corp.*<sup>7</sup> There, too, in the absence of express statutory treatment of the jurisdictional fact issue, the administrative body was allowed to determine the scope of the statute under which it functioned. In reality, this issue bears a closer analogy to a contest of the constitutional power of the administrative agency because without the requisite jurisdictional or constitutional authority the proceedings are void. It is of interest to note that when constitutionality is assailed under the Renegotiation Act this attack is treated in much the same fashion as the contest here. No relief is given in either case where the administrative process has not reached its final stage or where there is only threatened injury.<sup>8</sup> In the principal case the Court refused to consider as a basis for injunctive relief that the petitioner would be subjected (a) to penalties unless he submitted

tion of the Tax Court. It has been suggested that he may also bring suit in the Court of Claims. See Steadman, "Renegotiation of War Contracts: II," 43 MICH. L. REV. 235 at 259-274 (1944).

<sup>6</sup> *Prentice v. Atlantic Coastline Co.*, 211 U.S. 210, 29 S.Ct. 67 (1908); *P. F. Petersen Baking Co. v. Bryan*, 290 U.S. 570, 54 S.Ct. 277 (1934).

<sup>7</sup> 303 U.S. 41, 58 S.Ct. 459 (1938).

<sup>8</sup> *Dobson v. Commissioner*, 320 U.S. 489, 64 S.Ct. 239 (1943), rehearing denied, 321 U.S. 231, 64 S.Ct. 495 (1944). *Trust under Will of Bingham v. Commissioner*, 325 U.S. 365, 65 S.Ct. 1232 (1945).

<sup>9</sup> *Rolls-Royce, Inc. v. Stimson*, (D.C. D.C. 1944) 56 F. Supp. 22; 153 A.L.R. 1455 (1944); *Lincoln Electric Co. v. Knox*, (D.C. D.C. 1945) 56 F. Supp. 308; *Mine Safety Appliance Co. v. Forrestal*, 326 U.S. 371, 66 S.Ct. 219 (1945); 44 MICH. L. REV. 861 (1946).

information and (b) to the task of collecting funds by multifarious suits in case he was overruled by the Maritime Commission. There is this difference, however. Here the contractor in denying the liability of the United States to pay, rather than trying to assert it, was not in the same position as a contractor bringing a suit against the United States to test the constitutionality of the statute. This case indicates that the court will carry the idea of exhaustion of administrative remedies to its logical extreme in denying judicial relief to a party asserting a jurisdictional immunity to administrative authority. Presumably, a suit for injunctive or declaratory judgment relief is proper procedure once the administrative agency and the Tax Court have completed their functions.

*Rosemary Scott, S.Ed.*