Michigan Law Review

Volume 40 | Issue 2

1941

CONSTITUTIONAL LAW - FEDERAL IMMUNITY FROM STATE TAX

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Recommended Citation
David N. Mills, *CONSTITUTIONAL LAW - FEDERAL IMMUNITY FROM STATE TAX*, 40 MICH. L. REV. 290 (1941).
Available at: https://repository.law.umich.edu/mlr/vol40/iss2/10

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CONSTITUTIONAL LAW — FEDERAL IMMUNITY FROM STATE TAX — An Alabama statute [1] imposed an inchoate lien on all property in the state as of October 1st of each year, such lien to continue until taxes for the ensuing year were paid. The United States acquired title to certain lands after October 1, 1936, but before the final 1937 assessment was made and the rate for county taxes set. None of the 1937 taxes were due. The United States did not pay the taxes, and on their becoming delinquent, sued to quiet title. *Held*, by a unanimous court, that although Alabama could not foreclose the lien without obtaining the consent of the federal government to be sued, the United States could not have the state's lien declared invalid. *United States v. Alabama*, 313 U. S. 274, 61 S. Ct. 1011 (1941).

It is well settled that lands owned by the United States cannot be taxed by a state.[2] The federal government's argument for invalidating the lien in the principal case was that the amount of the taxes, rates and assessment values not having been fixed, the taxes had not been "imposed" [3] when the United States

[1] Ala. Gen. Acts (1935), No. 194, § 372, p. 566; Ala. Code (1940), tit. 51, § 884.

[2] Van Brocklin v. Tennessee, 117 U. S. 151, 6 S. Ct. 670 (1886).

[3] A tax cannot be said to be "imposed" before assessment. Re H. D. McKenzie Co., [1928] 1 Dom. L. R. 336.

acquired title, for the statute did not "impose taxes" but merely "secured their payment." [4] Where property acquired by the United States is subject to an inchoate tax lien, the federal courts have held that the lien is void if the tax is not "imposed" until after government acquisition.[5] Thus the principal case seems to be an exception to the rule that there can be no lien where there is no obligation to pay [6] or when the assessment has not yet been made.[7] The traditional theory behind an inchoate lien is that although the lien does not spring into existence until the tax is due as an enforceable debt, the lien then relates back to the date fixed by the statute.[8] On this theory, since the tax in the principal case had never become a debt enforceable against the United States, no complete or subsisting lien ever attached,[9] so none could relate back.[10] Alabama had attempted to create a lien as of the tax day.[11] Since this lien, if valid at all, could be effective only as against subsequent purchasers [12] from the government, there is in a sense a taxation of federal property, since the amount of the 1937 taxes,

[4] Since the statute has no effect unless taxes are imposed, the lien does not become "fixed and final until the completion of levy and assessment."

[5] United States v. Pierce County, (D. C. Wash. 1912) 193 F. 529.

[6] Hill v. Smithville Independent School District, (Tex. Civ. App. 1922) 239 S. W. 987, affd. (Tex. Comm. App. 1923) 251 S. W. 209; State v. Snohomish County, 71 Wash. 320, 128 P. 667 (1912).

[7] Heine v. Levee Commissioners, 19 Wall. (86 U. S.) 655 (1873); Bannon v. Burnes, (C. C. Mo. 1889) 39 F. 892; BLACK, TAX TITLES, 2d ed., § 189 (1893).

[8] Gillmor v. Dale, 27 Utah 372, 75 P. 932 (1904); Territory v. Perrin, 9 Ariz. 316, 83 P. 361 (1905).

[9] But the question may be academic, for when the United States sells the land, the tax will become an enforceable debt and the lien will then immediately attach and relate back to the tax day.

[10] Thus in a case very similar to the principal case, the Washington Supreme Court held that the state, which had acquired property while the county's tax lien was inchoate, could have the lien invalidated. State v. Snohomish County, 71 Wash. 320, 128 P. 667 (1912). Also, in United States v. Pierce County, (D. C. Wash. 1912) 193 F. 529, a county tax lien on federal land arising under the same Washington statute was invalidated. Although the statute in these cases provided that the lien was to attach at a later date as between grantor and grantee, this provision was not the basis of either decision.

[11] The tax day is the day when returns are to be made and values fixed. Though statutes providing for an inchoate tax lien before taxes are assessed are common, the time when the lien attaches varies considerably from state to state. For the common law and statutory rule in each jurisdiction, see 61 C. J. 922-924 (1933).

[12] Driggers v. Cassaday, 71 Ala. 529 (1883); State v. Alabama Educational Foundation, 231 Ala. 11, 163 So. 527 (1934). The Supreme Court has previously recognized the validity of such inchoate liens as binding on subsequent purchasers with the liability relating back to an earlier date when the amount of the tax is ascertained. Osterberg v. Union Trust Co., 93 U. S. 424 (1876); People of New York v. Tax Commissioners, 104 U. S. 466 (1881). The Court in the principal case relies strongly on New York v. Maclay, 288 U. S. 290, 53 S. Ct. 323 (1933), in which there is dictum pointing out that such a lien is effective for *some* purposes though its amount be undetermined. The case is weak authority, however, since the actual decision subordinated the state's lien to a federal claim, pointing out that the lien is not "perfect and specific" but serves "merely as a caveat of a more perfect lien to come."

secured by a lien, would be reflected in the price the government could command for the property.[13] Moreover, if a state, unhampered by the Federal Constitution, may acquire a lien on the tax day, there would appear to be no reason why it could not acquire it much earlier.[14] The state contended that the proper remedy of the United States is to plead immunity from suit when the state attempts to foreclose the lien. It would seem, however, that the objective of the United States is to sell the land free from the lien rather than merely to protect itself against foreclosure.[15] It is questionable whether this case indicates that the Court has retreated from its traditional position that land owned by the United States is immune from state taxation. While there is no recent case in point, it is conceivable that the Court has recently departed so far from the doctrine of *Collector v. Day*[16] in restricting intergovernmental immunities[17] that it is now ready to permit a state to tax federal lands.[18] If such a direct form of tax is valid, there would seem to be little left of the rule of intergovernmental immunities except as against discriminatory and prohibitively high taxes.[19]

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[13] If the Court had invalidated this lien, there would no danger of the United States getting an unearned profit by buying property burdened with liens and later selling it at a higher price free from such liens. In order to escape the lien burden, it would have to buy the land before the tax was assessed or due, i.e., before there were any real burdens on it which would reduce its value.

[14] Thus its legislature may, for example, enact that as of the day of the statute, the state imposes a lien for all future taxes on all land in the state, and thereby in effect neutralize the tax-exemption as to all property thereafter acquired by the United States.

[15] If immunity from suit were an effective remedy, it would never be necessary to plead the tax immunity of federal lands.

[16] 11 Wall. (78 U. S.) 113 (1871).

[17] As in Helvering v. Gehrhardt, 304 U. S. 405, 58 S. Ct. 969 (1937), and Graves v. People of State of New York ex rel. O'Keefe, 306 U. S. 466, 59 S. Ct. 595 (1938).

[18] But the immunity is not entirely judge-made law, for all states entering the Union after Louisiana were admitted on the condition that they would not tax land owned by the United States. Similarly state constitutions and statutes commonly provide for such immunity. See 26 R. C. L. 96 (1920). Thus by upholding the indirect method of an inchoate lien, the Court goes even farther than would be the case had it said that this was a permissible tax on federal property, for the method here employed also circumvents any statutory immunity.

[19] The Court may now take the position that since a state may so easily circumvent the immunity by the device of an inchoate tax lien, it might just as well be allowed to tax federal property directly. But a more logical intermediate step is indicated, however, when the Court declares, "we perceive no reason why the United States . . . should stand, so far as the existence of liens is concerned, in any different position from that of other purchasers. . . ." Principal case, 313 U. S. 274 at 282. The Court thus suggests that perhaps it might allow a state to acquire a tax lien against the United States in the first instance, rather than merely to hold the United States as a subsequent purchaser with notice of an existing lien. In effect this would altogether wipe out the tax immunity of lands owned by the United States; for governmental immunity from suit without its consent already protects the federal government from foreclosure.