Michigan Law Review

Volume 40 | Issue 3

1942

TAXATION - POWER OF MUNICIPALITY TO TAX INCOME OF STATE OFFICIALS

Michigan Law Review

TAXATION — POWER OF MUNICIPALITY TO TAX INCOME OF STATE OFFICIALS — A Pennsylvania statute empowered the city of Philadelphia to levy taxes on "persons, transactions, occupations, privileges, subjects and personal property" within Philadelphia.[1] Pursuant to such authority the city enacted an ordinance imposing a tax of one and one-half per cent annually on salaries, wages, commissions, and other compensation earned by nonresidents for work performed in Philadelphia. Plaintiff, employed by an agency of Pennsylvania engaged in performance of governmental functions, brought suit to restrain the collection of the tax. *Held*, the statute grants the power to tax salaries of state officials and is not invalidated by any doctrine of governmental tax immunity. *Marson v. City of Philadelphia*, 342 Pa. 369, 21 A. (2d) 228 (1941).

The doctrine of intergovernmental tax immunity is invoked only between state and federal governments,[2] and there was no competing claim between a state and the nation in the principal case.[3] However, there does exist between municipal and state governments a theory of immunity from taxation. This immunity is strictly intergovernmental, for only property and instrumentalities

[1] 53 Pa. Stat. Ann. (Purdon, Supp. 1940), § 4613.

[2] The doctrine had its origin in 1819 in the decision of McCulloch v. Maryland, 4 Wheat. (17 U. S.) 316 (1819). It is based on the theory that under our constitutional system of government such an immunity is necessary for the protection of national and state governments. The doctrine has been greatly restricted by recent decisions. For an evaluation of the present status of the doctrine, see 37 MICH. L. REV. 88 (1938); id., 1079 (1939).

[3] Principal case, 342 Pa. 369 at 371.

of the state are exempt from taxation. Since the power of a state legislature in the field of state taxation is plenary,[4] it may tax a municipality as it desires,[5] although in most instances the intention to tax must be express.[6] It is in the municipal taxation field that the immunity theory applies. There the general rule is that a municipality may not tax state property or instrumentalities unless the state legislature has expressly authorized such taxation.[7] Courts differ in their reasons for the rule in regard to municipal taxation,[8] but the basic reasons seems to be one of power,[9] for municipalities are generally not considered to be entities separate from the state but rather are branches of the state.[10] In interpreting the powers given by a state statute, the state courts presume that the legislature intends state property and instrumentalities to be free from taxation.[11] The principal case holds that the legislature did grant to the city the power to tax state officials,[12] but the wording of the statute clearly indicates that the grant is not

[4] 6 MCQUILLIN, MUNICIPAL CORPORATIONS, rev. 2d ed., § 2523 (1937); Stoddard v. Corbin, 94 Conn. 543, 109 A. 813 (1920); Re Taft's Estate, 110 Vt. 266, 4 A. (2d) 634 (1939); Wilson v. Philadelphia School District, 328 Pa. 225, 195 A. 90 (1937).

[5] Subject to limitations imposed by state and federal constitutions.

[6] Jersey City v. Blum, 101 N. J. L. 93, 127 A. 214 (1925); Foster v. City of Duluth, 120 Minn. 484, 140 N. W. 129 (1913); Smith v. City of Santa Monica, 162 Cal. 221, 121 P. 920 (1912); Egan Consol. School District v. Minnehaha County, 65 S. D. 32, 270 N. W. 527 (1936); Corporation of San Felipe De Austin v. State, 111 Tex. 108, 229 S. W. 845 (1921); 39 A. L. R. 1232 (1925).

[7] Augusta v. Dunbar, 50 Ga. 387 (1873); In re Melrose Ave., 234 N. Y. 48, 136 N. E. 235 (1922); Newton v. Atlanta, 189 Ga. 441, 6 S. E. (2d) 61 (1939); Mayor of Nashville v. Bank of Tennessee, 1 Swan (31 Tenn.) 269 (1851); Commonwealth v. Dauphin County, 335 Pa. 177, 6 A. (2d) 870 (1939).

[8] (1) "This immunity . . . rests upon the most fundamental principles of government, being necessary in order that the functions of government be not unduly impeded. . . ." Penick v. Foster, 129 Ga. 217 at 224-225, 58 S. E. 773 (1907), quoted in Newton v. Atlanta, 189 Ga. 441 at 444, 6 S. E. (2d) 61 (1939).

(2) ". . . taxes so laid would require other taxation for the purpose of raising money for their payment." New Jersey Interstate Bridge & Tunnel Commission v. Jersey City, 93 N. J. Eq. 550 at 554, 118 A. 264 (1922).

(3) ". . . sale of [public] property to enforce collection of taxes against it would destroy its character as public property, to the public injury." Foster v. Duluth, 120 Minn. 484 at 486, 140 N. W. 129 (1913).

[9] "The power to levy taxes is not inherent in municipal corporations." 1 COOLEY, TAXATION, 4th ed., § 122 (1924). "Unlike the sovereign state, counties and other municipal subdivisions possess no inherent power of taxation." Weyerhaeuser Timber Co. v. Ruessler, 2 Wash. (2d) 304 at 307, 97 P. (2d) 1070 (1940).

[10] 1 MCQUILLIN, MUNICIPAL CORPORATIONS, rev. 2d. ed., § 90 (1940).

[11] The reasons courts given for their decisions (supra, note 8) are perhaps really reasons for the presumption as to legislative intent, but courts generally do not speak in these terms.

[12] "In the instant case, it is conceded that the legislature has delegated certain of its taxing power to the City of Philadelphia." Principal case, 342 Pa. 369 at 375. This language might not seem to indicate that the court thought the grant to tax state officials' salaries was an express grant if it were not for the fact that the court distinguishes the principal case from an earlier Pennsylvania case [Commonwealth v.

an express one.[13] Thus the decision seems to be contrary to the weight of American authority[14] as well as previous Pennsylvania precedent; [15] yet it may be distinguished because of the subject matter taxed. The cases that compose the American authority have involved taxation of state properties or state agencies; [16] taxation of the salary of a state official[17] seems to be a step further removed from direct taxation of the state government itself.[18] It may be said to be an indirect tax imposing no unreasonable burden upon the state. When a state legislature makes a broad grant of taxing power, it would seem to be well

Dauphin County, 335 Pa. 177, 6 A. (2d) 870 (1939)] on the ground that the grant in the Dauphin case was not express. See infra, note 13.

[13] The city of Philadelphia was empowered to "levy . . . such taxes . . . within the limits of such city . . . as it shall determine, except . . . any tax on a privilege, transaction, subject, or occupation or on personal property which is now or may hereafter become subject to a State tax. . . ." 53 Pa. Ann. Stat. (Purdon, Supp. 1940), § 4613. In Commonwealth v. Dauphin County, 335 Pa. 177, 6 A. (2d) 870 (1939), the court held that a city could not tax state realty under a statute empowering a municipality to tax "all real estate" [72 Pa. Ann. Stat. (Purdon, Supp. 1940), § 5020-201]. Thus the express grants of the two statutes seem indistinguishable.

[14] See cases cited in note 7, supra.

[15] Federal St. & P. V. P. R. R. v. Pittsburgh, 226 Pa. 419, 75 A. 662 (1909); Commonwealth v. Dauphin County, 335 Pa. 177, 6 A. (2d) 870 (1939).

[16] Commonwealth v. Dauphin County, 335 Pa. 177, 6 A. (2d) 870 (1939) (state-owned real estate); Mayor of Nashville v. Bank of Tennessee, 1 Swan (31 Tenn.) 269 (1851) (state bank); Dallas v. Texas Employers' Ins. Assn., (Tex. Civ. App. 1922) 245 S. W. 946 (state funds); Augusta v. Dunbar, 50 Ga. 387 (1873) (state bonds).

[17] For a criticism of taxation of salaries of governmental officials in general, see 14 UNIV. CIN. L. REV. 183 (1940).

[18] Only one other case in the United States has been found involving the question of the power of a municipality to tax the salary of a state official. New Orleans v. Lea, 14 La. Ann. 197 (1859). The city of New Orleans attempted to levy a tax on the salary of a justice of the supreme court of the state. The court held the tax invalid, basing its opinion upon McCulloch v. Maryland, 4 Wheat. (17 U. S.) 316 (1819), and upon a provision in the state constitution providing that judges were not to have their salaries diminished while in office. This latter provision would prevent even the state legislature itself from levying such a tax, making the case distinguishable from the principal case.

The recent case of Newton v. Atlanta, 189 Ga. 441, 6 S. E. (2d) 61 (1939), involved a municipal occupation tax levied on wholesale dealers whose business was conducted entirely in a state farmers' market, an instrumentality of the state. The court held that a petition seeking to enjoin the collection of such tax was not subject to demurrer. The facts that there were other grounds upon which the decision was based, that the decision was merely upon the pleadings, and that an occupation tax is different from an income tax may be said to distinguish the Georgia decision from the principal case. However, it is submitted that the tax upon these dealers was sufficiently indirect and nonburdensome as far as the state is concerned so that it could be upheld in the absence of any other evidence as to legislative intent.

The Canadian courts seem to be in agreement with the principal case. See Abbott v. City of St. John, 40 Can. Sup. Ct. 597 (1908); Toronto v. Morson, 38 Dom. L. R. 224 (1917).

within the legislative intent to allow an indirect tax that places no unreasonable burden upon the state itself.[19] The principal case does not use this reasoning. However, the case is important because it involves a question that may soon arise in other states.[20] The demand for new fields of municipal taxation due to the financial plight of many American cities [21] may cause other municipalities to follow Philadelphia's lead in imposing a municipal income tax.

[19] The United States Supreme Court has held that a federal income tax on an employee of a state agency exercising governmental functions is valid, for it is indirect and places no unreasonable burden upon the state. Helvering v. Gerhardt, 304 U. S. 405, 58 S. Ct. 969 (1938), commented on in 37 MICH. L. REV. 88 (1938). Although the question in the federal-state field of taxation immunity relates to the constitutionality of the tax, the question is one of Congressional intent rather than constitutionality. See 38 MICH. L. REV. 738 (1940). There seems to be no reason for saying that the same type of tax is direct or burdensome in the municipality-state immunity field.

[20] Philadelphia, as far as the author has been able to discover, is the only city having a municipal income tax, although New Orleans had one many years ago, St. Louis has been considering one, and New York had one recently but repealed it before any taxes were collected under it. See 24 WASH. UNIV. L. Q. 217 (1939).

[21] For a discussion of the financial situation of municipalities in general, see 5 MCQUILLIN, MUNICIPAL CORPORATIONS, 2d ed., § 2314 et seq. (1928).