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STUDENT NOTE

Taxation—Constitutional Aspects of Tangible Property Assessments

In 1961 the West Virginia Legislature moved the assessment date for real and personal property taxes from December 31 back to the first day of July.¹ Since that time uncertainty has existed as to the effect of this change on the tax year.² Some attorneys felt that this assessment date change put the West Virginia tax year on a fiscal year basis while others believed that the tax year was unchanged and remained on a calendar year basis.³ The issue apparently has been settled by the recent decision of the West Virginia Supreme Court in the case of George F. Hazelwood Co. v. Pitsenbarger.⁴ After discussing the point in some detail, the court concluded that the tax year is still the calendar year.⁵ This conclusion, however, may be dictum because the question

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³ ibid.
⁵ Id. at 317.
was not directly submitted to the court. The plaintiff-taxpayer, for purposes of his claim, had conceded that the tax year was still the calendar year.⁶

A second and more significant problem considered by the court in the Hazelwood case concerned the propriety of taxing property in accordance with the changed assessment date but which was not located within the state at any time during the tax period. P, a foreign corporation, moved heavy equipment into West Virginia in 1960 for the purpose of doing business in the state. This equipment remained in the state until some time in December, 1961. Pursuant to the December 31, 1960 assessment and levy thereon, P paid personal property taxes on its equipment for 1961. In accordance with the 1961 assessment date change, P’s property was assessed for 1962 and taxes levied thereon for that year because it was located in the state on July 1, 1961. Because P’s property had been taxed by Maryland for 1962 and because none of P’s property was in West Virginia during that year, P filed a petition in the County Court of Pendleton County to obtain a refund for the first half of the 1962 taxes paid by it and for an exoneration from the payment of taxes for the second half of the year 1962. The County Court’s order denying the relief prayed for in the petition was reversed by the Circuit Court of Pendleton County, and P appealed to the Supreme Court of Appeals of West Virginia. Held, reversed. The court said that the property had acquired a “tax situs” in the state on the date fixed by the legislature for the assessment of property taxes. The tax is determined by the assessment date even though the property has been removed from the state before the tax is due or before it actually has been levied.⁷

It is the purpose of this note to examine the constitutional aspects of taxing property which was located within the taxing jurisdiction at the time of the assessment date, but which was not located within the taxing jurisdiction at any time during the tax period. Decisions of other jurisdictions which assess taxes prior to the tax period will be compared in an attempt to arrive at the constitutional basis for this method of taxation.

Assessment Prior to Tax Period

Although not a prevalent practice, the assessment of property taxes prior to the tax period is not unusual. Five jurisdictions, in

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⁶ Ibid.
addition to West Virginia, have been found to assess property in this manner.\textsuperscript{8}

Oklahoma has a long history of assessing real and personal property six months prior to the tax period.\textsuperscript{9} It has been held on many occasions that the assessment date in that jurisdiction is January 1 for the ensuing fiscal and tax year beginning the following July 1.\textsuperscript{10} If property is subject to taxation on January 1, a voluntary change in the ownership of that property between the assessment date and the date of levy for the Oklahoma tax year does not change the tax status of that property.\textsuperscript{11} Even where property has become exempt from taxation after the assessment date but prior to the tax period, it has been held that such property is taxable nevertheless for the tax period next ensuing the assessment date.\textsuperscript{12} Taxability is thus determined as of the date fixed by law for such purposes, \textit{i.e.}, the assessment date.\textsuperscript{13}

Although the Oklahoma tax assessment scheme has been attacked as "absurd,"\textsuperscript{14} the Oklahoma court has said this contention is without merit.\textsuperscript{15} The court indicated that it might consider as "absurd" a situation where property assessed on January 1 ceased

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\textsuperscript{8} California, Kentucky, New Jersey, Oklahoma, Puerto Rico. As far as municipal taxes are concerned, it has been held specifically that property is assessed in Philadelphia, Pennsylvania prior to the tax period. \textit{Providence Trust Co. v. Judicial Bldg. & Loan Ass'n}, 112 Pa. Super. 352, 171 Atl. 287 (1934).

\textsuperscript{9} \textit{In re Assessment of Champlin Ref. Co.}, 186 Okla. 625, 99 P.2d 880 (1940).


\textsuperscript{11} \textit{Board of Comm'r's v. Central Baptist Church}, 136 Okla. 99, 102, 276 Pac. 728, 729 (1929).

\textsuperscript{12} Muskogee County, Okla. v. United States, 133 F.2d 61 (10th Cir. 1943), \textit{cert. denied}, 319 U.S. 745 (1943); \textit{Board of County Comm'r's v. Serber}, 318 U.S. 705 (1942), \textit{affirming}, 130 F.2d 663 (10th Cir. 1942). The Serber case dealt with property tax exemptions for certain Indian lands in Oklahoma. An exemption act, 25 U.S.C. § 412a, passed on June 20, 1938, exempted Indians under the guardianship of the United States from paying state real property taxes. The taxpayer was not exempted from paying property taxes for the fiscal year 1936-37. "Under Oklahoma law, the taxable status of property in Oklahoma is fixed as of the assessment date, January 1, in each year, although taxes are levied as of July 1. [Citations omitted]. For purposes of this case, we assume without deciding that the status of the property on the assessment date is determinative." \textit{Id.} at 709 n.5.


\textsuperscript{14} \textit{In re Assessment of Champlin Ref. Co.}, \textit{supra} note 9.

\textsuperscript{15} \textit{Id.} at 628, 99 P.2d at 881-882.
to exist before the tax was levied. However, without discussing any constitutional issues, the court upheld the assessment scheme saying that, "Whatever absurdities do or might result . . . must be held to be dispelled or overcome by the necessity for a fixed assessment date."16

New Jersey is another jurisdiction which assesses ad valorem taxes prior to the tax period. Taxes on real property are assessed on October 1 for the tax year beginning the following January 1.17 Where a nontax-exempt property owner conveyed his property to a tax-exempt entity after October 1 but prior to January 1, the grantor was held liable for the taxes.18 Conversely, property exempt from taxation on October 1 was not taxable for the ensuing calendar year even though subsequently conveyed to a taxable entity.19 Thus, the status of the property at the assessment date determines liability for taxes rather than its status as of the tax period.20

In California, taxes are assessed on the first Monday in March21 for the fiscal year beginning the next July 1.22 Where property was condemned for eminent domain purposes after the first Monday in March but prior to the beginning of the tax period, a California court held that it was proper to deduct from the eminent domain award the property taxes for the ensuing fiscal year.23 As taxes in California become a lien on the property at the time of assessment,24 the courts have reasoned that such lien may be

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16 Ibid.
20 But see Mayor & Aldermen of Jersey City v. Monteville, 84 N.J.L. 43, 85 Atl. 838 (1913), aff'd, 85 N.J.L. 372, 91 Atl. 1069 (1913).
21 CAL. REV. & TAX CODE § 405 (Deering 1963).
23 State v. Clyne, 175 Cal. App. 2d 204, 345 P.2d 474 (1959); See also City of Long Beach v. Aistrup, supra note 22.
enforced irrespective of subsequent events. 25

The Political Code of Puerto Rico provided that taxes were to be assessed on January 1526 for the fiscal year beginning the next July 1.27 In the leading case of Teachers' Ass'n v. Bonet28 the Puerto Rican court held that the assessment date determined liability for taxation and changes in circumstances between that date and the tax period would not change that liability.29 The validity of the Puerto Rico assessment was discussed to a limited extent in Puerto Rico v. Palo Seco Fruit Co.30 In that case the Government of Puerto Rico was seeking to recover taxes for the fiscal year 1941-42 out of a condemnation award made to the defendant for property condemned in October, 1941, by the United States Government. The lower court allowed only half of the property taxes to be recovered by Puerto Rico. Although not basing its decision on this ground, the lower court said that it would be inequitable to require a taxpayer to pay a tax on property he did not own at the tax period. The appellate court, however, disagreed by way of a dictum, saying that because the Puerto Rico tax statute made the owner of property on January 1 personally liable for the payment of the tax31 and because that statute created a lien on the property at that date,32 it would not be inequitable to enforce such a tax.

25 The theory used by the California courts in upholding the assessment prior to the tax period is based on the enforceability of a mortgage covering future advancements. "A mortgage covering future advancements, as against subsequent encumbrances becomes a lien upon the whole sum advanced from the time of its execution although the right to enforce its collection thereof can only arise upon each advancement made. The analogy lies in this, that a lien declared by a positive statute is not dependent for its existence upon subsequent acts requisite to its enforcement." Tapia v. Demartini, 77 Cal. 383, 386-387, 19 Pac. 641, 643 (1888).

This analogy would not apply in West Virginia, however, because the lien does not attach until after the tax year. Brown, supra note 2, at 277. This theory would not apply in New Jersey either as taxes assessed on October 1 for the ensuing calendar year do not become a lien until the next January 1. Milmar v. Borough of Fort Lee, 36 N.J. Super. 241, 115 A.2d 592 (1955).

26 P. R. Pol. Code § 297 (1911).
27 Puerto Rico v. United States, 131 F.2d 151 (1st Cir. 1942); Buscoglia v. Tax Court, 68 P.R.R. 94 (1943); Buscoglia v. Tax Court, 63 P.R.R. 37 (1944); Roig v. Bonet, 54 P.R.R. 617 (1939); Teachers' Ass'n v. Bonet, 54 P.R.R. 511 (1939).
28 Supra note 27.
29 Id. at 315.
30 136 F.2d 886 (1st Cir. 1943).
31 See note 27, supra.
32 Puerto Rico v. United States, supra note 27, held that the Puerto Rican lien for taxes attaches prior to the tax period as in California. The
Kentucky has provided that certain classes of cities may assess property prior to the tax period. Once a city adopts an assessment plan pursuant to the statute, however, it cannot subsequently deviate from that plan. It has been held that an assessment made at the beginning of the tax period is invalid if the city has departed from its adopted assessment plan.

In summary it appears that the assessment date determines the tax liability of property located within the taxing jurisdiction at that date, and changes in the ownership or value of property after that date will have no effect on the liability to pay the tax. The date fixed by statute controls the power to tax particular property. The date fixed may work some inequities, but the practical aspects of tax administration require that tax liability be determined at a particular time.

In none of the cases above cited was the constitutionality of the assessment prior to the tax period challenged or discussed by the courts. It has been held uniformly that the fixing of the assessment date and the period to which it is to relate is a purely legislative function. The practical aspects of tax administration have been of prime consideration in the decisions of these cases.

**Constitutional Basis of Property Taxation**

The constitutional justification for upholding the property tax rests on the idea that the taxpayer has derived benefits and protection from the laws of the taxing state for the period to which the tax relates. In the leading case advancing this view, the state of Kentucky attempted to assess taxes on railroad cars owned by the court, however, did not use the analogy of a mortgage covering future advancements to justify such an assessment scheme. It stated that it was in the legislative province to fix liability for property taxes. Again these cases may be distinguished from the situation in West Virginia where the lien does not attach until after the tax period. Brown, supra note 25.

34 City of St. Matthews v. Truehart, 274 S.W.2d 52 (Ky. 1954).
36 As discussed previously, supra notes 25 & 32, some jurisdictions resolve their assessment schemes on the basis of a lien attaching prior to the tax period. However, as other jurisdictions uphold an assessment prior to the tax period without the benefit of such lien, it would appear that the "lien theory" is not the only and perhaps not the best line of reasoning to follow in explaining such an assessment procedure.

38 Union Refrigerator Transit Co. v. Kentucky, 199 U.S. 194 (1905).
taxpayer which never had been located in the taxing jurisdiction during the tax period. In striking down the assessment the Supreme Court said, "The power of taxation . . . is exercised upon the assumption of an equivalent rendered to the taxpayer in the protection of his person and property." Subsequent cases have adhered to this doctrine and have further refined the rule. "[T]he only question is whether the tax in practical operation has relation to opportunity, benefits or protection conferred or awarded by the taxing state." If the taxing jurisdiction cannot give to the property taxed the benefits and protection of its laws, taxation would amount to confiscation of property without due process of law. In each of the cases which espoused this rule, however, it appeared that the assessment date occurred at the beginning of or during the tax period. Therefore, the property sought to be taxed was not in the taxing jurisdiction at the time fixed for assessment.

If the property is located within the taxing jurisdiction at the time fixed for assessment, but not within the taxing jurisdiction during the tax year or period, does the taxpayer receive sufficient benefits and protection from the laws of the taxing jurisdiction to sustain the tax? No authorities have been found, other than the Hazelwood case, which have considered this question.

The court in the Hazelwood case, while upholding the state's power to assess, also stated that as P's property had not been assessed or taxed for 1960, the assessment and taxation for 1962 tended to compensate for the period which P had not paid taxes, i.e., 1960. Therefore, in appraising the situation equitably, P was not unjustly burdened. However, it is probable, that even if P had paid West Virginia taxes for 1960, the court would have reached the same result. That is, it appears that the court did follow the rule that a state must give to the taxpayer, in return

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35 Id. at 202.
39 44 Iowa L. Rev. 413 (1959).
41 Supra note 4.
42 For purposes of this discussion it will be assumed that no question of interstate commerce is involved.
43 George F. Hazelwood Company v. Pitsenbarger, supra note 4, at 319.
for his taxes, the benefits and protection of its laws. To explain this, the term "tax year" or "tax period" becomes significant.

In the cases construing the tax period as the time to which the benefits and protection of the laws of the taxing jurisdiction must relate, the assessment period, or the point which determines tax liability, apparently was fixed at the beginning or during the tax period.\(^4^7\) Thus, the benefits and protection of the laws of the taxing jurisdiction in those cases also related to the assessment period.

The distinction between the tax period and the assessment date becomes much clearer when the assessment date precedes the tax period as in West Virginia.\(^4^8\) The term "tax year" begins to lose its importance in relation to the time to which the benefits and protection of the laws of the taxing jurisdiction must relate, while the term "assessment date" assumes greater significance in this respect. That is, if the benefits and protection of the laws of the taxing jurisdiction are afforded to the taxed property at the assessment date, the benefits and protection required for tax-action would be satisfied. The taxpayer would have received a sufficient quid pro quo in return for his tax dollar, and the tax imposed upon property not located within the taxing jurisdiction during the "tax period" would appear to be valid.\(^4^9\) While this line of reasoning was not spelled out specifically in the Hazelwood case, it appears that the West Virginia court did reach its conclusion on the basis of this reasoning. While it is conceded that no case has been found which directly supports this proposition, it is a reasonable reconciliation of two rules of law, i.e., (1) that the legislative body may fix the time for assessment and levy of property taxes and (2) that the taxed property must have the benefits and protection of the laws of the taxing jurisdiction. If this hypothesis is not followed, however, the taxes assessed and levied prior to the tax period are unconstitutional.

In the Hazelwood case, \(P\) had paid for the benefits and protection of the laws when it subsequently was assessed again, apparently for those same benefits and protections. On December 31, 1960,

\(^{4^7}\) Supra note 43.

\(^{4^8}\) George F. Hazelwood Co. v. Pitsenbarger, supra note 4.

\(^{4^9}\) While the term "tax year" loses its significance as the time to which the benefits and protection of the law must relate, it still retains its practical significance as a convenient period in measuring the apportionment of taxes, especially in real estate transactions.
P was assessed and taxes levied thereon, ostensibly for the year 1961. In reality, however, P paid only for the benefits and protection of the laws it enjoyed at that particular assessment date. When P was assessed for taxes on July 1, 1961, it was being assessed, not for the benefits and protection of the laws for 1962, but for the benefits and protection it received at that moment. Even though the language of the court stated that the taxes assessed on July 1, 1961 were for 1962, it did not state that the benefits and protections of the laws of the state were to relate to that period. The distinction is subtle, but it is immaterial as to what particular period the tax is to relate so long as the property taxed is assessed on a date it receives the benefits and protection of the laws of the taxing jurisdiction.\[50\] If the legislature had seen fit, it could have assessed a tax in this manner every day of the year, as long as the property assessed was located in the taxing jurisdiction on the assessment date.\[51\] Thus, it appears that the theory which allows a state to assess a property tax continuously prior to the “tax period” also operates to allow a state to tax property during the transition from one type of assessment procedure to another.\[52\] If this theory is not followed, the tax is unconstitutional.

By fixing a date for assessment on July 1, the legislature merely fixed another date on which the taxpayer is to pay for the benefits and protection of the state’s laws. No illegal “double taxation” results from this view as the assessment does not impose a discriminatory tax. “Double taxation” is prohibited only where one taxpayer contributes twice to the same burden while others contribute only once.\[53\] Assuming, arguendo, that the West Virginia tax in the Hazelwood case was assessed on July 1, 1961 for the benefits and protection of the laws for 1962, the tax assessed by Maryland for that same period would not make the West Virginia tax void. It is not unconstitutional for two states to tax identical

\[50\] See George F. Hazelwood Company, supra note 4, at 319.

\[51\] Ibid. The court said that this could not be done because of the wording of the West Virginia Code. W. Va. Code ch. 11, art. 3, § 1 (Michie 1961). Absent such a statute, however, the court did not disapprove of such a scheme.

\[52\] This theory is equally applicable to the reverse situation. If the assessment date were moved back to December 31, the benefits and protection enjoyed must relate to that date. The total amount of taxes imposed during the transition period in this case, however, would not be as great as the taxes imposed during the transition period in the Hazelwood case. See discussion infra.

property if it falls within each one's jurisdiction at the same time.\textsuperscript{54} Double taxation in a legal sense does not exist unless the double tax is imposed on the same property within the same jurisdiction.\textsuperscript{55} Assuming West Virginia still followed its old assessment procedure, if property were assessed in West Virginia on December 31 and moved to Maryland on January 1 (Maryland's assessment date), it would be difficult to argue that both jurisdictions could not tax the property.

Taxation is only forbidden if discriminatory.\textsuperscript{56} As taxpayers in West Virginia in 1961 paid taxes in the same manner as \textit{P} in the \textit{Hazelwood} case, there was no prejudice.\textsuperscript{57} Each taxpayer paid equally for the benefits and protection of the laws he received on July 1; events subsequent to the assessment date are not determinative.\textsuperscript{58} To be sure, \textit{P} paid a double amount of taxes during the transition period beginning December 31, 1960 and ending December 31, 1961, but this is because it moved its property after the assessment date. This subsequent removal, however, did not invalidate the West Virginia tax,\textsuperscript{59} as \textit{P} was paying for the benefits and protection of the laws it received at the assessment date and not thereafter.

Assuming that \textit{P} in the \textit{Hazelwood} case had been required to pay on July 1, 1961 for the same benefits and protection it paid for on December 31, 1960, such a tax would not be invalid if not discriminatory.\textsuperscript{60} The fourteenth amendment no more forbids non-discriminatory double taxation within the state than it forbids doubling the tax.\textsuperscript{61}

\textbf{Conclusion}

It is within the legislative province to fix an assessment date for property taxes. This is the determinative date for imposing tax.

\textsuperscript{55} Ohio Tax Cases, 232 U.S. 576 (1914).
\textsuperscript{56} State v. Allen, 65 W. Va. 335, 64 S.E. 140 (1909).
\textsuperscript{58} Supra notes 11, 12, 18, 19, 25, 30.
\textsuperscript{59} Ibid.
\textsuperscript{60} Supra note 53.
\textsuperscript{61} Illinois Cent. R.R. Co. v. Minnesota, supra note 57; Fort Smith Lumber Co. v. Arkansas, 251 U.S. 532 (1920). But see Harris v. MacCorkle, 146 W. Va. 946, 123 S.E.2d 888 (1962) (Double taxation should be imposed only by the specific direction of the legislature).
liability, and subsequent events will not change that liability. The test in determining whether a state has the power to impose a property tax is whether in return for this tax, the state gives to the property the benefits and protection of its laws. If a state gives such benefits and protection on the assessment date, the tax has been properly imposed.

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