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EXTENT OF JUDICIAL REVIEW OF ADMINISTRATIVE TAX DETERMINATIONS IN WEST VIRGINIA.—The West Virginia Code in providing for appeals of tax determinations from the circuit courts to the supreme court of appeals employs the following language:

"The state or the aggrieved taxpayer may appeal a question of valuation to the supreme court of appeals, if the assessed value of the property is fifty thousand dollars or more, and either party may appeal a question of classification or taxability."\(^1\)

A broad question thereupon arises as to the principles to be applied to such appeals by the supreme court and the finality to be accorded circuit court decisions. The circuit courts have an ambiguous role in the review of tax determinations. Under the code section quoted, they occupy the position of administrative tribunals. The exceptional situation of a primarily judicial body occupying the position and fulfilling the functions of an administrative body has perplexed the courts of this state for a considerable time.\(^2\)

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\(^1\) W. Va. Code (Michie, 1943) c. 11, art. 3, §25.

\(^2\) See In re Union Mines, 39 W. Va. 179, 182, 19 S. E. 398, 399 (1894); Hannis Distilling Co. v. County Court, 69 W. Va. 426, 428, 71 S. E. 576, 577 (1911).
Much of the inconsistency apparent in the efforts of the West Virginia courts to define the extent of judicial review of administrative tax determinations arises from the confusing position in which the circuit courts have been placed. For many years the courts struggled to distinguish the cases that came before them on a theory arising out of the doctrine of separation of powers under article V of the state constitution. The foundation of the theory was that certain functions of the circuit courts in their tax review capacity were strictly legislative in character, and therefore, under the doctrine of separation of powers, not capable of court review, while other functions of the circuit courts in reviewing tax orders were regarded as judicial in nature and reviewable. Under this theory as to a matter deemed to be legislative in character, the very existence of jurisdiction was denied so no question of the extent of review could arise. The decisions of the circuit court were thus accorded absolute finality.

The obvious stumbling block in the path of this effort to define the extent of judicial review according to a separation of powers theory has been the extreme difficulty in consistently classifying the acts of the circuit court as either legislative or judicial in character. The contradictory and inconsistent history of the supreme court's efforts to fit the action of the circuit courts into either a legislative or judicial classification exhibits the difficulties encountered in any attempt to follow the theory.

In Pittsburgh, Cincinnati & St. Louis Ry. v. Board and Mackin v. County Court, circuit court decisions on assessment matters were involved and in both cases the court held that it had no jurisdiction because the circuit court had acted in a legislative character. In the former case the circuit court's assessment determinations were described as "plainly ministerial and not judicial:"

\[38\text{ W. Va. 338, 346, 18 S. E. 632, 634 (1893)}. \]

\[\text{"... the decisions establish beyond the propriety of a difference of opinion, that the decision of a designated officer or board is judicial, is no more judicial than was the original assessment by the assessor; and such decision, even though it be by a court or other tribunal of record, is not judicial and can not be reviewed by a supreme court or appellate powers only."}\]

\[\text{\textit{Accord:} Pittsburgh, Cincinnati & St. Louis Ry. v. Board, 28 W. Va. 264 (1886).}\]

\[\text{28 W. Va. 264 (1886).}\]

\[38\text{ W. Va. 338, 18 S. E. 632 (1893).}\]

\[\text{28 W. Va. at 267.}\]

\[38\text{ W. Va. 338, 340, 18 S. E. 632. "It is a plain proposition, that the constitution of this state confines the jurisdiction of this court exclusively to judicial matters. It possesses both original and appellate jurisdiction but by the very terms of the constitution all of its powers, whether of the one class or the other, are}\]
On the other hand in Charleston & Southside Bridge Co. v. County Court, three years after the Mackin case, a property owner complaining of overassessment of property sought to have it entered in the land books instead of personal property books. The circuit court granted the relief and reduced the assessment. On writ of error to the supreme court, jurisdiction was accepted and the circuit court finding was reversed. In accepting jurisdiction the court said:

"We must... regard this judgment of the court in fixing the valuation of this bridge property upon testimony introduced in the cause as a judicial act."

After these conflicting decisions, the court attempted a general classification to the effect that all assessment matters reviewed by the circuit courts involved exercise of legislative functions and were not subject to review by the supreme court; but that all decisions concerning taxability or the right of taxation were necessarily judicial in character and subject to review. This formula was stated by Judge Dent, concurring, in State v. South Penn Oil Co., in which he said:

"... I have reached the conclusion that the circuit court, in hearing appeals in tax assessment cases, necessarily acts in a dual capacity, to wit: (1) As a mere assessor representative of the legislative branch of the state government, in the ascertaining of assessable valuations for the purpose of taxation; (2) As a court representative of the judicial branch of the state government in the determination of the constitutional and statutory right of taxation. In cases coming under the first division solely, this court is without jurisdiction; but as to cases coming under the second division, this court has appellate jurisdiction by means of a writ of error."

However once this particularization of the distinction between "legislative" and "judicial" matters had been announced, the courts were no more successful in sticking to it than they had been to the general distinction itself. In direct disregard of Judge Dent's distinction, the court in Liberty Coal Co. v. Bassett reviewed the circuit court's ruling although the complaint was of overvaluation of certain coal lands and the matter was wholly and exclusively judicial, and the legislature has no authority to confer upon it jurisdiction of any other or different character. Pittsburgh, Cincinnati & St. Louis Ry. v. Board, 28 W. Va. 264, 270. Accord: Hodges v. Public Service Comm., 110 W. Va. 649, 139 S. E. 834 (1931); Dravo Construction Co. v. James, 114 F. (2d) 242 (C. C. A. 4th, 1940).

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10 42 W. Va. 80, 24 S. E. 688 (1896).
11 Id. at 107, 24 S. E. at 698; cf. State v. McDowell Lodge, 96 W. Va. 611, 123 S. E. (2d) 561 (1924).
12 108 W. Va. 293, 150 S. E. 745 (1929).
folk & Western Ry. v. Board\textsuperscript{13} and Western Maryland Ry. v. Board\textsuperscript{14} the questions were of assessment only but the court took jurisdiction, in both cases affirming determinations of the circuit court. This history indicates the great difficulty in attempting to determine the scope of judicial review by fitting the cases into separate categories depending upon whether the matters involved are legislative or judicial in character.\textsuperscript{18} The impossibility of a strict classification of acts as legislative or judicial in character was apparent to some members of the court even in the days when the general effort was still directed to making the cases fit under one label or the other. This is testified to by the words of Judge Dent, concurring, in the Charleston & South Side Bridge case:

"As a court, strictly speaking, it is a branch of the judicial department of the state engaged in determining legal controversies, and, as an appellate assessment tribunal, engaged in settling the values of property for taxation; in other words discharging the duties of an assessor, judicial in their nature, and yet not appertaining or belonging to the judicial department. By reason of its double jurisdiction, its duties have become so intermingled that it is sometimes impossible for it to discharge its duties as an assessment tribunal without at the same time performing duties which belong to it strictly as a judicial tribunal."\textsuperscript{19}

Judge Dent's early insight into the impossibility of isolating legislative and judicial matters for purposes of the separation of powers theory is generally recognized in the recent decisions. For example, in the Western Maryland case the court said:

"... bringing to a judicial tribunal the action of an administrative body for review comes dangerously near to being confusion of the functions of the executive and the judicial branches of our government. The holding of this court, at different periods, has not been uniform as to whether on such appeals in tax cases, the reviewing court acts judicially or administratively. At present, we view the

\textsuperscript{13} 124 W. Va. 562, 21 S. E. (2d) 142 (1942).
\textsuperscript{14} 124 W. Va. 539, 21 S. E. (2d) 683 (1942).
\textsuperscript{15} One writer has commented on these confusing opinions as follows: "Each opinion, considered alone, has its convincing qualities, but an attempt to correlate the opinions, so far as the theory of separation of powers is concerned, reveals little more than a delirious jumble. This does not imply that the confusion is attributable to judicial shortcoming in determining what is judicial and nonjudicial. The truth is that the court has undertaken a task which is probably impossible to perform." Davis, \textit{Judicial Review of Administrative Action in West Virginia} (1938) 44 W. Va. L. Q. 270, 281.
\textsuperscript{16} 41 W. Va. at 675, 24 S. E. at 1008 (1896). In the same opinion appears the following language: "The ascertainment of values for assessment purposes is a judicial function, strictly belonging to the legislative or administrative branch of the state government ..." \textit{Id.} at 681, 24 S. E. at 1011 (1896). This quotation, in itself, is scarcely in harmony with any cut-and-dried conception of the separation of powers doctrine.
function of the reviewing court as partly judicial and partly admin-
istrative."

However this may be, it is now clear that whether the matter before
the circuit court be legislative, judicial, or a mixture of both, the matter
is reviewable by the supreme court, provided the normal requisites are
present. This is illustrated by Crouch v. County Court where a ques-
tion of assessment alone was involved but the matter was reviewed and
the circuit court's decision reversed, the court holding that where an
assessment appears to have been made without substantial evidence to
sustain the assessed valuation, the appellate court will reverse the circuit
court's order of affirmation and will remand the case for further pro-
ceedings.19

Although the West Virginia courts have apparently abandoned
their early doctrine of distinguishing between nonreviewable "legisla-
tive" tax matters, and reviewable "judicial" tax matters, where appeals
to the supreme court of appeals are concerned, they have by no means
abandoned the basic classification between judicial and legislative mat-
ters, nor the familiar labels themselves. For example in the Norfolk &
Western case we find the following:

"We wish to note and correct in passing a statement made in the
opinion in the case of Wheeling Bridge & Terminal Ry. Co. v. Paull
to the effect that the ascertainment of the value of property is strictly
a judicial function. For the purpose of taxation it is primarily an ex-
ecutive or administrative function with which the courts will not in-
terfere unless shown plainly to have been abused."20

Although this classification between judicial matters and legislative
matters is no longer relied upon to determine whether the circuit court's
decisions will be reviewed at all, it still has a powerful and fundamental
effect on the determination of the extent of judicial review. This effect is
manifested in the general rule that, where the question decided by the
circuit court is legislative or ministerial, the decision of the circuit court
will not be interfered with if supported by evidence, whereas, if the ques-
tion be judicial in nature, the court will not hesitate to substitute its own
judgment for that of the administrative body even though the adminis-

17 124 W. Va. at 542, 21 S. E. (2d) at 685 (1942).
19 To the effect that legislative and judicial matters are now both reviewable,
see Western Maryland Ry. v. Board, supra note 18.
20 124 W. Va. at 567, 21 S. E. (2d) at 146. Although still limiting the extent
of judicial review according to the familiar labels "legislative" and "judicial," the
court here apparently admits that the classifications are prone to overlap. There-
fore the word "primarily" is inserted in front of the old labels. It seems beyond
the realm of proper doubt that it would prove as difficult to decide whether the
matters before the court are "primarily legislative" or "primarily judicial" as to
decide whether they were "legislative" or "judicial."
trative decision have some support in the evidence. The application of this general rule is illustrated by the Norfolk & Western case in which the court held that the function of assessment was primarily an executive or ministerial one and declared that in such cases "courts," as distinguished from administrative bodies, cannot properly consider the evidence of value, except in instances where it is plainly shown to have been arbitrarily and unjustifiably ignored, when the finding will be nullified. Likewise in Liberty Coal Co. v. Bassett and in Cochran Coal Co. v. Board it was held that, where a question of assessment is concerned, such question being ministerial in nature, the determination of the circuit court could not be overcome unless plainly wrong. These decisions reveal that the distinction of the West Virginia courts between "judicial" and "legislative" questions is equivalent to that ordinarily stated in the field of administrative law in terms of the distinction between law and fact. Under the general doctrine, the decisions of administrative agencies on questions of fact, where they have some reasonable support in the evidence, are final and binding on the court but, on questions of law, administrative decisions are not final even where they have some support in the evidence; and the valuation of property for tax purposes is ordinarily deemed one of fact not subject to review. This distinction between questions of law and of fact was discussed in the Report of the Attorney General's Committee on Administrative Procedure in the following terms:

"In the language of judicial review sharp differentiation is made between questions of law and questions of fact. The former, it is uniformly said, are subject to full review, but the latter, in the absence of statutory direction to the contrary, are not, except to the

21 108 W. Va. 293, 150 S. E. 745 (1929).
22 110 W. Va. 556, 158 S. E. 906 (1931).
25 Determination of fact for ordinary administrative purposes are not subject to review. Botchford v. Comm't, 81 F. (2d) 914 (C. C. A. 9th, 1936); Oak Lawn Cemetery v. Baltimore County, 174 Md. 280, 198 Atl. 600, 115 A. L. R. 1478 (1938) (courts without jurisdiction to review findings of state tax commission upon any question of fact): accord: Hart v. Smith, 159 Ind. 182, 64 N. E. 661, 58 L. R. A. 949 (1902). But even where the question is one of fact there is authority to the effect that the decision is not binding, although sustained by sufficient evidence, if it relates to a "jurisdictional" fact. State v. Leuch, 156 Wis. 631, 146 N. W. 790 (1914) (residence of taxpayer).
extent of ascertaining whether the administrative finding is supported by substantial evidence.27

The West Virginia cases quite uniformly support the doctrine that on "issues of fact" (or "legislative matters") the determinations of the administrative body are entitled to greater finality than administrative determinations where "judicial matters" (or "questions of law") are concerned. Thus in the Liberty Coal Co. case, where the question was whether the correct assessment had been placed upon certain undeveloped coal lands, the court characterized the question of value as one of fact and affirmed the circuit court, saying:

"In this proceeding it is not of consequence that another court could fairly arrive at a different conclusion from the one herein, or that the weight of evidence is against the finding. It is our duty to uphold the lower tribunal if there is substantial evidence for the foundation of its judgment, unless it is plainly wrong."28

So, in Cochran Coal Co. v. Board where a question of the value of coal lands was again presented coupled with a collateral question whether an agreement affecting the land was a sale or a lease, the court treated it as a legislative, or factual, question and affirmed the circuit court, saying:

27 Rep. Att’y Gen. Comm. Ad. Proc. 88 (1941). For an application of this doctrine, see Helvering v. Tex-Penn Oil Co., 300 U. S. 491, 57 S. Ct. 569, 81 L. ed. 755 (1937) in which the tax court had made a finding that the consideration for a transfer effected by the taxpayer included cash, and that the transaction was accordingly not tax free. The circuit court of appeals had reversed the tax court and the Supreme Court approved the reversal, holding that the conclusion was one of law or "at least a determination of a mixed question of law and fact." These final words bring us to an apparent conflict in the decisions as to what principle is to be applied where there is a mixed question of law and fact. In the Tex-Penn case, the court held that mixed questions of law and fact are to be regarded with the same rule applied to pure questions of law. "It is to be distinguished from the findings of primary, evidentiary or circumstantial facts. It is subject to judicial review and, on such review, the court may substitute its judgment for that of the board." The Tex-Penn case apparently represents the present trend; accord: Bogardus v. Comm’r, 302 U. S. 34, 58 S. Ct. 61, 82 L. ed. 32 (1937); Helvering v. Rankin, 295 U. S. 123, 55 S. Ct. 739, 79 L. ed. 1343 (1934); but see Interstate Commerce Comm. v. Union Pacific R. R., 222 U. S. 541 at 547, 32 S. Ct. 108 at 111, 56 L. ed. 308 at 311 (1911), where the Court said: "In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the commission acted within its power. It will not consider the expediency or wisdom of the order, or whether on like testimony it would have made a similar ruling. Its (the commission’s) conclusion, of course is subject to review, but when supported by evidence is accepted as final.”

28 108 W. Va. at 295, 150 S. E. at 745 (1929); see Hannis Distilling Co. v. County Court, 69 W. Va. 426, 427, 71 S. E. 576, 577 (1911) (“A distinction between controversies involving only questions of valuation of admittedly taxable property, and controversies involving the taxability of property or taxation thereof in the name of a particular person, supposedly made by the statute, has often been adverted to and it has been generally conceded that the right of review stops in the circuit court, in the former class, but extends to this court in the latter.”)
The order of the circuit court is supported by substantial evidence and the evidence for protestants does not demonstrate that the order is clearly wrong.\textsuperscript{29}

In \textit{West Penn Power Co. v. Board}, alleged overassessment of property was involved, the board of equalization and review having added to the material values testified to by the company's witnesses, a sum representing intangible value to the extent of three million dollars. The supreme court upheld the assessment, dealing with it as a question of fact and stating that "matters of this sort are administrative" and that "in no event would we assume to disturb such finding when supported by substantial evidence unless plainly wrong."\textsuperscript{30}

On the other hand, in \textit{Humphreys v. County Court}\textsuperscript{31} where plaintiff sought exoneration of property from taxation, claiming to have distributed the property under a power of attorney, and the state contended that the distribution was invalid, the efficacy of the attempted distribution was held a judicial question and the court did not hesitate to substitute its judgment for that of the administrative tribunal, overruling the decision that the property was taxable to plaintiff. In the \textit{Norfolk & Western} case, the railroad contended that the assessed valuation of its property was too high and that improper means of measuring the value had been used by the board of public works, including "four quite palpable errors," thus presenting the complication additional to the general rule that question of assessment, being regarded as questions of fact, or legislative in nature, will not be overturned if supported by evidence, as to the propriety of including or excluding certain evidence or determining factors in making the assessment. When the administrative body in approving an assessment, considers some factor which the court deems improper, or excludes something which the court believes should have been included, it has been held that a question of law or a judicial matter is raised and the judgment of the reviewing court may be substituted for

\textsuperscript{29}110 W. Va. at 559, 158 S. E. at 907 (1931); \textit{accord}: United Fuel Gas Co. v. Public Service Comm., 73 W. Va. 571, 80 S. E. 931 (1914).

\textsuperscript{30}112 W. Va. at 446, 164 S. E. at 863 (1932). \textit{Cf.} S. S. Kresge Co. v. Detroit, 276 Mich. 565, 268 N. W. 740, 107 A. L. R. 1259 (1936), in which, on the question whether action of assessing officers in fixing the value of certain stock could be upheld, the court said: "The mere fact that the court might disagree with the conclusions of the assessing officers, or might determine that the figure adopted by them is different from the figure that would be adopted upon the same evidence by the court is not sufficient to warrant the court in interfering with their determination," and further, "Where there is a discretion which has been exercised in a manner that falls short of action that is fraudulent in the eyes of the law, that discretion will not be disturbed." \textit{Rowley v. Chicago & Northwestern Ry.}, 293 U. S. 102, 55 S. Ct. 55, 79 L. ed. 222 (1934).

\textsuperscript{31}90 W. Va. 315, 110 S. E. 701 (1922).
that of the administrative body. In the Norfolk & Western case, the board's reliance upon assertedly improper elements in estimating value might have presented a question of law; but the railroad did not sustain its burden of proving that the alleged improper elements were actually incorporated in the estimate of value, failing which the question of assessment was deemed "primarily ministerial" in nature and not to be disturbed unless unsupported by evidence or clearly wrong.

Clearly doctrines of the extent of judicial review of administrative determinations have been grounded in West Virginia, as elsewhere, upon a distinction between cases involving questions of "fact" and those involving questions of "law," or in our court's somewhat different language between "questions of legislative character" and "questions of judicial character." There remains the need to inquire further into the content of this distinction between law and fact. Despite its wide use, this distinction has proven extremely elusive of definition and has produced a quantity of disagreement among the most eminent of judges.

Smith v. Hitchcock raised the question whether a publication was a book or a magazine, within the terms of a statute, the Court reasoning that, while its status as book or magazine is an uncontroversible question of fact when determined by the ordinary use of language, which of the two terms in the statute applied to that particular publication was almost equally clearly a question of statutory construction, i.e., a question of law. However, Heath v. Wallace held that whether certain lands were "swamp and overflowed" within the meaning of a statute was a question of fact.

Judicial disagreement as to what questions are of "law" and what are of "fact" and the resulting difficulty of deriving any workable definition of the distinction has led many students to much skepticism concerning the matter. Thus one authority says:

"In truth the distinction between 'questions of law' and 'questions of fact' really gives little help in determining how far the courts will review; and for the good reason that there is no fixed distinction. They are not two mutually exclusive kinds of questions, based upon a difference of subject matter. Matters of law grow downward into roots of fact, and matters of fact reach upward without a break, into matters of law."

33 124 W. Va. at 570, 21 S. E. (2d) at 147 (1942).
And further:

"It would seem that when the courts are unwilling to review, they are tempted to explain by the easy device of calling the question one of fact; and when otherwise disposed, they say that it is a question of law."\(^{38}\)

There is reason for believing, however, that there is more to the differentiation between law and fact than a mere excuse. Efforts to distinguish on a basis of fact and law, or, as West Virginia prefers to express it, "legislative matters" and "judicial matters," reflect a basis of real difference.\(^{39}\) Where there is no reason for the court to differ with the administrative decision, except such as arises from matters peculiar to the case, the decision is said to be on a "legislative matter" and the court will not reverse unless it is unsupported by the evidence or plainly wrong,\(^{40}\) while if there are reasons for the court to differ with the administrative body not arising out of matters peculiar to the case in question but concerning which a general proposition applicable to other similar cases can be framed, the court will apply the general proposition of law according to its own discretion. Dickinson instances by analogy an example from the law of negligence, pointing out that,

"although a court believes from the evidence that the way in which the plaintiff crossed a railroad track was negligent, still if the jury find that it was not, and if that finding is within the bounds of reasonable inference from the evidence, the court may not substitute its own inference for the jury's unless it can point out as the ground for its different conclusions some general proposition equally applic-

\(^{38}\) Ibid.

\(^{39}\) Questions of law have been defined as those which are concerned with "... the inquiry whether there be such rule or standard, the determination of the exact meaning and scope of it, the definition of its terms, and the settlement of incidental questions, such as the conformity of it, in the mode of enactment, with the requirements of a written constitution." THAYER, A PRELIMINARY TREATISE ON EVIDENCE (1898) 193. On the other hand, questions of fact have been defined as those which may be determined without reference to law. Brown, supra note 24, at 901.

\(^{40}\) DICKINSON, op. cit. supra note 37, at 168. Dickinson cites the language of Lord Chelmsford in Lister v. Perryman, L. R. 4 H. L. 521 at 535 (1870), that the question of reasonable cause in actions of false imprisonment, though for the decision of the court, is not properly a "question of law" because "no definite rule can be laid down for the exercise of the judge's judgment."

\(^{41}\) "When a court, in reviewing administrative decisions, sees in the impingement of the statutory norm upon the facts of the case the desirability of making a decision that will govern not only the immediate case but also a considerable body of future cases, it will assume jurisdiction of the question and resolve it by interpreting or defining the statute so as to meet the particular facts presented. If, however the legal norm is incapable of further clarification, or if the facts of the individual case are so unique as to be incapable of a generalized application, then the court perforce has no question of law available for its consideration and the determination of the matter must be left to the fact finding agency." Brown, supra note 24 at 905.
able to all similar cases of alleged negligence—as for instance that
the plaintiff neglected to stop, look, and listen.\textsuperscript{42}

Correspondingly, although the court may believe that the assessed
valuation of property is unreasonable, still if the administrative body
found it reasonable, and if that finding is within the bounds of reasonable
inference from the evidence, the court may not substitute its judgment
for that of the administrative body; but where the court can point out
some general proposition equally applicable to all similar cases of assess-
ment, as in the \textit{West Penn} case, where plaintiff was assessed at one hun-
dred per cent and others at only eighty per cent of true value, it will not
hesitate to apply that general proposition and substitute its own judg-
ment for that of the administrative body. Again, in the \textit{McDowell Lodge}
case,\textsuperscript{43} where property belonging to a charity and rented out was admin-
istratively held tax exempt because the income was devoted exclusively
to charitable purposes, the supreme court thought the question not
merely whether the circumstances of the particular case met the general
statutory standard, and therefore one of fact for the fact finding body
but that it necessitated clarification of the governing statute and was
therefore a problem of interpreting or defining the law.

"The crux of the distinction is whether the decision to be made
can stand as a rule or standard generally applicable in the future, or
whether the given case is so unique that from its determination no
such general rule or standard can be evolved."\textsuperscript{44}

Where no general proposition or standard applicable to similar
future cases can be applied the courts have said in effect that they will
review the finding of the administrative body only to see whether the
body's conclusion could have been reached by reasonable men.\textsuperscript{45} Where,
on the other hand, the decision to be made can stand as a rule or stand-
ard generally applicable in the future the courts have expressed their
willingness to examine the finding \textit{de novo} and overrule the administra-
tive order.\textsuperscript{46}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{42} \textit{Dickinson, op. cit. supra} note 37 at 169-170.
\item \textsuperscript{43} \textit{96 W. Va.} 611, 123 S. E. 561, 38 A. L. R. 31 (1924).
\item \textsuperscript{44} \textit{Brown, supra} note 24 at 911.
\item \textsuperscript{45} In the application of this theory however, the courts, in determining whether
a case is "unique" or not, may be involved in the difficult determination of how
frequently a similar situation is likely to arise in the future.
\item \textsuperscript{46} Cf. \textit{Dobson v. Commissioner, 320 U. S.} 489, 64 S. Ct. 239, 88 L. ed. 248
(1943). The Dobson case apparently hints at a new principle to the effect that
if the administrative body makes a determination of law on its own, its interpret-
tation is entitled to respect unless clearly wrong, regardless of whether the appel-
late court would have reached the same conclusion independently. But the court
rejects this rather extreme degree of finality in \textit{Security Flour Mills Co. v. Com-
missioner, 321 U. S.} 281, 64 S. Ct. 596, 88 L. ed. 725 (1944); \textit{and Equitable Life
Assurance Society v. Commissioner, 321 U. S.} 560, 64 S. Ct. 722, 88 L. ed. 927
(1944), both of which reveal a tendency to return to the general principle above.
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In the light of this general principle that an administrative determination will not be overruled except where the ground of difference between the court and the administrative body can be isolated and expressed as a general proposition applicable beyond the particular case to all similar cases, \(^\text{47}\) inquiry is pertinent as to the forces behind this tendency to favor administrative finality. In no area has there been greater willingness to give finality to administrative decisions than in connection with the collection of public revenue. \(^\text{48}\) There are a number of reasons for this. Collection of revenue is vital to the maintenance of government. Confusion and uncertainty in the law governing taxation is a great handicap and threat to the government as well as the taxpayers. \(^\text{49}\) Another reason for affording finality to administrative action, which applies not only to taxation but to the whole field of administrative law, is embodied in the proposition that commissions and administrative bodies are better qualified than courts to find the facts in their particular field of expertise. The reverse is true, where a rule of law is to be interpreted. As Dean Landis has said:

"Our desire to have courts determine questions of law is related to a belief in their possession of expertise with regard to such questions. It is from that desire that the nature of questions of law

\(^{47}\) It may be well to point out here that some doubt has been cast upon the general rule to be applied in cases where a "legislative" matter is involved, by some of the West Virginia cases. There is a suggestion that instead of merely requiring that the administrative finding on a question of fact be supported by evidence, a requirement may be interposed in some cases that the finding of fact be supported by "substantial evidence" or even by a "preponderance of the evidence." In Crouch v. Wyoming Court, 116 W. Va. 476, 181 S. E. 819 (1935), the court declared in the syllabus: "Where an assessment... appears to have been made without proper regard to requisite elements and to have been approved by the circuit court without substantial evidence to sustain the assessed valuation, the appellate court will reverse the circuit court's order and will remand the case for further proceedings," and in Western Maryland Ry. v. Board, 124 W. Va. 439, 21 S. B. (2d) 683 (1942), the court declared in the syllabus: "This court will not reverse the order of a circuit court by which the valuation for taxation purposes of a public utility's property was reduced on its appeal, except on error of law, or where the court's action was clearly not supported by a preponderance of the evidence." If, as indicated by the language of these cases, the administrative decision on questions of fact must be supported by "substantial evidence" or by a "preponderance of the evidence" it would seem that even though the question be one of fact, the courts would be empowered to exercise their independent judgment as to the weight of the evidence and the extent of review would be the same as accorded to questions of law.

\(^{48}\) DICKINSON, op. cit. supra note 37 at 58. Especially in proceedings for tax collection, remedies are upheld by the courts even though of a summary character that would be of doubtful legality elsewhere. See King v. Mullins, 171 U. S. 404, 18 S. Ct. 925, 43 L. ed. 214 (1897).

\(^{49}\) The amount of litigation necessary to settle questions of tax administration and the increasing uncertainty in the field of federal tax administration has provoked the courts to such decisions favoring an increase in the finality afforded to administrative tax orders as Dobson v. Commissioner, 320 U. S. 499, 64 S. Ct. 239, 88 L. ed. 248 (1943).
emerge. For in the last analysis, they seem to me to be those questions that lawyers are equipped to decide.\textsuperscript{50}

The administrative expertness argument for finality on findings of fact largely breaks down when applied to the West Virginia system of review of tax determinations. It presumes that the administrative body making the findings is "expert" in the field, whereas in West Virginia the role of the supposedly "expert" administrative tax body is played by the circuit court, a primarily judicial body no more expert than the supreme court of appeals, to which their decisions are appealable. Of course, the other considerations favoring administrative finality still prevail.

After attempting for many years a distinction between the "legislative" and "judicial" functions of the circuit court in its tax administrative capacity, and, under the separation of powers doctrine, to refuse all jurisdiction of "legislative" questions, the supreme court of appeals has now abandoned the doctrine of denying all review to "legislative" questions and will review tax matters whether they be "legislative," "judicial" or, as is usually the case, a mixture of both. However the classification between "legislative" and "judicial" matters is very much with us yet, representing a basis of distinction found throughout the field of administrative law, but more generally labeled the distinction between "questions of law" and "questions of fact." Under the established application of this doctrine the court will not interfere with a decision which the court declares to be one of a question of fact, unless unsupported by evidence. But the court will freely re-examine a decision on what the court declares to be a question of law, even to the extent of substituting its own judgment for that of the administrative tribunal. The heart of this distinction is the reluctance of the courts to substitute their judgment for that of an administrative body, at least equally, and probably better, qualified to make a finding of fact and draw the proper conclusion therefrom, unless the court can ascertains from the matter at hand some general proposition or rule applicable to all future similar cases.

D. D. J., Jr.

\textsuperscript{50} Landis, \textit{The Administrative Process} (1938) 152.