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Taxation--Property Tax--Chattels Real Not Taxable as Personalty Within Class I

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cision in the instant case may possibly herald a new era in state taxation, the state being permitted to burden interstate commerce more freely in satisfaction of its economic needs.¹²

K. W., JR.

TAXATION—PROPERTY TAX—CHATTELS REAL NOT TAXABLE AS PERSONALTY WITHIN CLASS I.—An assessor listed for property tax a leasehold of real estate within a municipality under Class IV of the statute.¹ The lessee claimed that the circuit court's ruling upholding the assessor was erroneous. *Held*, that less than freehold leaseholds of realty within municipalities are intangible personal property under Class IV rather than Class I and will be taxed accordingly. *Greene Line Terminal Co. v. Martin, Assessor*.²

Whether "chattels real" should be assessed under Class I or Class IV depends upon the interpretation of the statute and the tax limitation amendment³ upon which it is based. Class I, under the statute, consists, *inter alia*, of "all money and all notes, bonds,

commission owing to the ruling in the instant decision that penalties and interest be deducted.

¹² This sentiment is voiced clearly in the dissents of Mr. Justice Black in *J. D. Adams Mfg. Co. v. Storen*, and *Gwin, White & Prince, Inc. v. Henneford*, both *supra* n. 5.

¹ W. VA. CODE (Michie, 1937) c. 11, art. 8, § 5:

"For the purpose of levies, . . . property shall be classified as follows:

"Class I. All tangible personal property employed exclusively in agriculture, including horticulture and grazing;

"All products of agriculture (including livestock) while owned by the producer;

"All money and all notes, bonds, bills and accounts receivable, stocks and any other intangible personal property;

"Class II. All property owned, used and occupied by the owner exclusively for residential purposes;

"All farms, including land used for horticulture and grazing, occupied and cultivated by their owners or bona fide tenants;

"Class III. All real and personal property situated outside of municipalities, exclusive of classes I and II.

"Class IV. All real and personal property situated inside of municipalities, exclusive of classes I and II."

² 10 S. E. (2d) 901 (W. Va. 1940).

³ W. VA. CONST. art. X, § 1, as amended in 1932. The part of the section applicable to this comment is as follows: "No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value; except that the aggregate of taxes assessed in any one year upon personal property employed exclusively in agriculture, including horticulture and grazing, products of agriculture as above defined, including live stock, while owned by the producer, and money, notes, bonds, bills and accounts receivable, stocks and other similar intangible personal property shall not exceed fifty cents on each one hundred dollars of value thereon and upon all property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants one dollar; and upon all other property situated outside of municipal-

bills and accounts receivable, stocks, and *any other intangible personal property.*"⁴ If read alone, these italicized words would seem to conclusively indicate that leaseholds should fall in Class I; but the interpretation of any statute should be as a whole.⁵ Class IV, in the latter part of the same statute, includes all personal property situated inside of municipalities⁶ exclusive of that in Classes I and II,⁷ and, as another section⁸ of the chapter expressly includes chattels real in the definition of the term "personal property", our conclusion necessarily is that Class IV, as well as Class I, could embrace chattels real.

However, by invoking the rule of *ejusdem generis*,⁹ the court held that the phrase, "any other intangible personal property", as used in Class I, was limited to other evidences of debt similar to those named, reasoning that the legislative intent was to follow the tax limitation amendment upon which the statute was based and that the limiting word "similar" as contained in the amendment was inadvertently omitted.

The purpose behind classification of personal property is here important.¹⁰ Intangibles, such as evidences of debt, must be assessed and taxed at a low rate to prevent the taxation from becoming confiscatory of the small income usually realized from the ownership. Moreover, if the tax is too high, many owners will succumb to the temptation of concealing such valuables. Chattels real, however, are not so elusive as chattels personal of an intangible nature, as their existence can be readily ascertained, for these must necessarily remain connected with the land; also, a higher rate of taxation would hardly be confiscatory, as the owner is not usually limited to a certain small return on his investment. Furthermore,

ities, one dollar and fifty cents; and upon all other such property situated within municipalities, two dollars;"

⁴ Italics supplied.

⁵ *State v. Harden*, 62 W. Va. 313, 321, 58 S. E. 715 (1907); *Coal & Coke R. R. v. Conley and Avis*, 67 W. Va. 129, 178, 67 S. E. 613 (1910).

⁶ Classes III and IV are identical except that the former consists of property outside of municipalities while the latter deals with property inside of municipalities.

⁷ The leasehold in this case could not fall under Class II for this class is composed of farms and property owned and used for residential purposes.

⁸ W. VA. CODE (Michie, 1937) c. 11, art. 5, § 3.

⁹ "The 'ejusdem generis' rule is that, where the general words follow an enumeration of persons or things by words of a particular and specific meaning such words are not to be construed in their widest extent, but are held as applying only to persons and things of the same general kind or class as those specifically mentioned." BLACK'S LAW DICTIONARY (1933) 645.

¹⁰ The cause which moved the legislature in the enactment of the statute should always be considered in the construction of it. *Altmeyer v. Caulfield*, 37 W. Va. 847, 850, 17 S. E. 409 (1893). It follows that this same principle should be applicable in the interpretation of constitutional provisions.

in some parts of the state, the reversion (where the land is subject to a lease) is of little value, and the tax burden, light as some may think it to be, is the cause of forfeiture to the state for the nonentry or nonpayment of taxes. Since the *Black Band* case,¹¹ the state takes merely the forfeited owner's interest if the leasehold has been assessed and the taxes paid by the lessee, leaving the outstanding lease as the only interest of real value. The state might thus gradually become the owner of much nonsalable land from which the value was being consumed; and the lessee would not bear his proportional share of the tax burden if his lease were assessed as personalty under Class I. Hence, with an ever-increasing need for more revenue for governmental operation,¹² the situation as to leaseholds might have become embarrassing. The decision in this case may have been actuated by the pressure of actual exigency.¹³

In its implication that mineral leases, as well as ordinary leases, will not be placed under Class I, the present case rivals the *Black Band* case in importance. A much needed source of greater revenue is obtained by judicial interpretation¹⁴ eliminating the need of legislation (or even constitutional amendment) giving the same result. However, the decision does bring to the foreground an obvious necessity for the establishment of adequate means whereby leaseholds may be fairly evaluated¹⁵ and assessed.¹⁶

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¹¹ *State v. Black Band Coal Co.*, 113 W. Va. 872, 169 S. E. 614 (1933).

¹² "The rapid growth of both state and local expenditures, not only in West Virginia, but in every state in the union, is a matter of common knowledge." *BLAKEY, REPORT ON TAXATION IN WEST VIRGINIA* (1930) 50.

¹³ "The doctrine of a case is a general proposition of law from which, taken with the circumstances of the case, the decision logically follows and upon which, whether expressed in the opinion or not, the court bases its decision." *WAMBAUGH, STUDY OF CASES* (1894) 29.

¹⁴ "The legislature must impose the tax, fix the rate and subject of taxation, the mode of assessment and collection. This it must do by general laws, but, in a proper case, it is as much the duty and as much within the judicial power of the courts to expound and apply these general laws as it is within the legislative power to make them." *State v. South Penn Oil Co.*, 42 W. Va. 80, 96, 24 S. E. 688 (1896).

¹⁵ The only lessee's interest in various counties in West Virginia upon which there is placed a tax is that of the oil and gas lessee, who is assessed according to production. Assessors have asserted as the reason for not taxing other lessees the fact that there is no efficient method by which the value of the leaseholds may be determined.

¹⁶ Permanent records showing that the lessee's interest has been assessed and the taxes paid should be available so that the lessee can easily establish these facts and thus protect his interest under the doctrine of the *Black Band* case—if the reversion be forfeited to the state for the nonentry or nonpayment of taxes. Under the present setup, the fact of payment is sometimes difficult to prove, because personal property tax returns are not always made a matter of permanent record.