

June 1941

Taxation--Income Tax--Deductions

W. J. C.

West Virginia University College of Law

J. S. M.

West Virginia University College of Law

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Tax Law Commons](#)

Recommended Citation

W. J. C. & J. S. M., *Taxation--Income Tax--Deductions*, 47 W. Va. L. Rev. (1941).

Available at: <https://researchrepository.wvu.edu/wvlr/vol47/iss4/15>

This Recent Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact researchrepository@mail.wvu.edu.

established doctrine that it takes a clear case before the courts will upset the findings of the taxing authorities, in reality the administrative body's findings are being given virtual finality.

E. E. T., Jr.

L. E. T., II.

TAXATION — INCOME TAX — DEDUCTIONS. — In making his state income tax return for 1937, *T*, a member of two mining partnerships, deducted from his gross income his proportionate share of the amounts paid that year by the partnerships to the Federal Government on account of (1) old age benefits and unemployment compensation under the Social Security Act, and (2) the Bituminous Coal Act of 1937; and to the state of West Virginia on account of (1) unemployment insurance, and (2) gross sales tax. Among the deductions allowed by the income tax statute of 1937¹ were: "1. Ordinary and necessary expenses . . . if paid for or incurred during the tax year in . . . carrying on a trade or business"; and "3. Income taxes payable to the United States upon income earned in West Virginia; property taxes upon real and personal property situated in this state . . ." *Held*, that the taxpayer was not entitled to deductions respecting any of these four items. *Christopher v. James*.²

Due to the fact that the statute expressly made income and property taxes deductible, the court applied the rule of *expressio unius exclusio alterius* to preclude the deduction of any other kind of tax. In order to allow any of the four exactions as permissible deductions it would therefore have been necessary to find that they were not taxes within the meaning of the statute, but deductible as

critically examines the cases concerning the right of judicial review upon the question of valuation. As disclosed in the article, the cases have been vacillating back and forth as to whether valuation is properly a legislative or judicial function. In the first case on the question, the action of the circuit court was held to be "plainly ministerial and not judicial". Eighteen years later the court declared that "the ascertainment of the values of property is strictly judicial". Then just before the turn of the century the court held the question of valuation to be of a legislative nature, but since 1929 the cases have held that the question of valuation is again judicial and there will be review by the courts.

¹ W. VA. CODE (Michie, 1937) c. 11, art. 13B, § 25, (1), (3). This section has been changed and now allows the deductions of the items under consideration. See W. VA. CODE (Michie; Supp. 1939) c. 11, art. 13B, § 25.

² 12 S. E. (2d) 813 (W. Va. 1940).

"ordinary and necessary expenses" of business.³ In ascertaining whether an exaction is a true tax, the substance of the statute controls, rather than the nomenclature given to it by the legislature.⁴ A tax in the general understanding of the term signifies an exaction "for the support of the government"⁵ and for a general public purpose.⁶

It would seem that the gross sales tax levied by the state of West Virginia is a pure tax as the money collected goes into the state treasury and is distributed for general governmental purposes, not being primarily in furtherance of any social legislation or business regulation.⁷ Likewise, the exaction of one percent per ton imposed on the sale of coal under the Federal Bituminous Coal Act is a tax, as it is not set aside for any particular fund, but is paid into the general treasury and used for general governmental expenditures.⁸

One of the primary purposes of the Federal Social Security Act, which imposes an exaction on employers and employees, is to establish a system of old age benefits.⁹ Although the collections are paid into the general treasury, there is created an "old-age reserve account," from which fund benefits are paid to eligible employees.¹⁰ The act also enables the Federal Government to assist the several states to make more adequate provisions for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of the unemployment compensation laws. While there is no special fund earmarked for this purpose, collections are deposited in the federal treasury to the credit of congressional appropriations under the title of the act.¹¹ Closely allied with this act is the West Virginia

³ There was no other applicable section by which these items could have been deducted.

⁴ *Portland v. Portland Ry., Light & Power Co.*, 80 Ore. 271, 156 Pac. 1058 (1916).

⁵ *United States v. Butler*, 297 U. S. 1, 56 S. Ct. 312, 80 L. Ed. 477 (1935).

⁶ 1 COOLEY, *TAXATION* (4th ed. 1924) § 6. Brown, *When Is a Tax Not a Tax* (1936) 11 *IND. L. J.* 399.

⁷ W. VA. CODE (Michie, 1937) c. 11, art. 13, § 11.

⁸ 15 U. S. C. A. § 830 (a). In the present case the only part of the act involved was the 1% exaction. The act also imposes an additional exaction of 19½% per ton on sales made by non-code members. See § 830 (b). This latter exaction has been held to be primarily for regulatory purposes and not for general government revenue. *Sunshine Anthracite Coal Co. v. Adkins, Collector*, 310 U. S. 381, 60 S. Ct. 907, 84 L. Ed. 1263 (1940).

⁹ (1935) 49 *STAT.* 620.

¹⁰ *Id.* at 622.

¹¹ *Id.* at 620. For a discussion as to whether these exactions are taxes or contributions and as to the reason why they are denoted "taxes" in the Social Security Act see GROVES, *FINANCING GOVERNMENT* (1939) 375.

"unemployment and compensation law," the purpose of which is to promote social and economic security by reducing as far as possible the hazards of unemployment. Here the exactions are termed "payments" and not "taxes" and are placed in the unemployment compensation fund to be used for the payment of unemployment benefits.¹²

The social security and unemployment exactions apparently are in furtherance of social legislation and are not exactions for general revenue and support of the government; therefore they are not taxes in the true sense. There would seem to be little difference between the exactions in these two instances and the charges imposed under workmen's compensation acts, which charges have been held not to be taxes.¹³

In interpreting the 1935 income tax act in the case of *Dickinson v. James*,¹⁴ the court held that only "actual gain, profit, or income realized during the tax year" could be made the basis of the income tax, reasoning that when one pays a tax on his actual income, he has made his just contribution to the government, and if required to pay on a base greater than this, injustice results, the principle of equality and uniformity in taxation being violated.

In the instant case the court also realized the inequitable result in requiring the taxpayer to pay taxes on sums of money already paid out as governmental exactions, but merely said that it was one of the inevitable results arising from taxation and that "absolute equity in taxation is yet to be attained." It would seem that this was a proper case in which to make at least a step in the direction of the yet unattained "absolute equity in taxation," by holding that federal social security and the West Virginia unemployment exactions were not taxes within the meaning of the income tax statute and were properly deductible as "ordinary and necessary expenses" of business, which result has the support of legal logic.

W. J. C.
J. S. M.

¹² W. VA. CODE (Michie, 1937) c. 21 A, art. 1, § 1.

¹³ *State v. Postal Telegraph Cable Co.*, 101 Wash. 630, 172 Pac. 902 (1918).

¹⁴ 120 W. Va. 222, 197 S. E. 735 (1938).