June 1952

Taxation of Interstate Commerce

L. A. S.

West Virginia University College of Law

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

Part of the Constitutional Law Commons, and the Taxation-Federal Commons

Recommended Citation

Available at: https://researchrepository.wvu.edu/wvlr/vol54/iss3/14

This 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.
It is for the one purchasing lands after a public improvement has been completed to inquire whether it has been paid for, and the same rules as to the enforcement of the assessment applicable to the former owner are applicable to such purchaser. A man cannot get rid of his liability to an assessment by buying without notice. He is charged with notice. City of Seattle v. Kellher, 195 U.S. 351 (1904); Booth v. Uvalde Rock Asphalt Co., supra.

Now taking into consideration that the defendant was charged with knowledge of the existence of the improvement and the unpaid claim of Beckley, and that the lots he purchased had actually derived special benefit from the paving of the streets on which they were situated, no injustice is done him. The defendant is only being required to pay for the improvements which presumably benefited and added value to the lots he purchased.

S. F. B.

**Taxation of Interstate Commerce.**—*P*, a foreign corporation engaged in interstate commerce, sought a declaratory judgment against the imposition of an annual privilege tax under W. Va. Code c. 11, art. 12A, § 3 (Michie, 1949), on the gross income of its transportation business. The tax was apportioned on a basis determined by a ton-mile ratio and was to take the place of all other taxes. The lower court sustained a demurrer to the petition and certified questions to the appellate court. *Held*, that the statute is valid in so far as it applies to transportation between points wholly within the state but that is contravenes the commerce clause as applied to receipts from traffic having either or both extrastate origin or designation. American Barge Lines v. Koontz, 68 S.E. 2d 56 (W. Va. 1951).

The decision appears to conform to the current position of the United States Supreme Court, but it again raises the vexed question of the relative importance of substance or form in connection with state taxation of interstate commerce. Unconstitutionality now rests on the choice of words used to describe the tax. Taxes on gross receipts are upheld when they substitute for property taxes. Most cases upholding such taxes have dealt with taxes on interstate transportation where the activity taxed can be readily apportioned so as to avoid the danger of multiple taxation. See Powell, *More Ado about Gross Receipt Taxes*, 60 HARV. L. REV.
501, 503 (1947). The West Virginia tax, like those upheld, was to take the place of all other taxes and was prima facie fairly apportioned. In substance it resembled taxes sustained in Pullman Co. v. Richardson, 261 U.S. 330 (1923), and Ott v. Mississippi Valley Barge Line Co., 336 U.S. 169 (1949). There the taxes were designated as a property tax computed by an apportioned percentage of the gross receipts. Here it was "explicitly designated a privilege tax" and so the doctrine of Spector Motor Services v. O'Connor, 240 U.S. 602 (1951), was deemed controlling. That case declared unconstitutional a franchise tax imposed on a foreign corporation for the privilege of doing business within the state where the business done was wholly an interstate commerce business. In Standard Oil Co. v. Peck, 72 S. Ct. 309 (U.S. 1951), barges in interstate commerce were held not subject to an ad valorem personal property tax at their full value by the domiciliary state inasmuch as they were used mostly in other states and there subject to be taxed. This case shows that activities identical with those in the principal case continue to be regarded by the Supreme Court as subject to tax by the state where they are engaged in interstate business provided the tax is acceptably labeled.

The traditional test devised for determining validity of state taxation is the "subject and measure" rule. See Powell, Indirect Encroachment on Federal Authority by the Taxing Powers of the States, 32 Harv. L. Rev. 902 (1919). Its consequence has been to make fortuitous formalism determine constitutionality. Cf. McLeod v. Dilworth, 322 U.S. 327 (1944), with General Trading Co. v. Iowa State Tax Comm'n, 322 U.S. 335 (1944), and International Harvester Co. v. Dep't of Treasury, 322 U.S. 340 (1944). Mr. Justice Rutledge utilized his separate opinion for those three companion cases to suggest substitution of a different test than the subject and measure rule. See Abel, The Commerce Power: An Instrument of Federalism, 35 Iowa L. Rev. 625 (1950). The test was first articulated by Mr. Justice Stone in Western Live Stock v. Bureau of Revenue, 303 U.S. 250 (1938), where a tax on the gross receipts of a newspaper embracing receipts from extrastate advertising was sustained. Later it entered into the decision in McGoldrick v. Berwind-White Coal Mining Co., 309 U.S. 33 (1940), which upheld a consumers sales tax on an interstate sale of coal where sufficient local activity (delivery and sale) to sustain the tax was found. Mr. Justice Rutledge writing for the court in Interstate
Pipe Line Co. v. Stone, 337 U.S. 662 (1949) (5-4 decision), which involved a gross receipts tax on the interstate shipment of oil by pipeline, rejected the subject and measure rule and grounded the opinion on the proposition that interstate commerce may properly be subjected to state taxation though such taxes may not burden unfairly or discriminate against interstate commerce. The test throws off the "tyranny of labels" and views the facts of a case to see if in actual economic effect the tax would violate the purpose of the commerce clause. If the hazard of multiple taxation because of multistate elements in the enterprise is guarded against because the subject is so unique as not to be available to other states for taxation or because the tax is fairly apportioned, the tax is valid. However, the concurrence of Mr. Justice Burton was necessary to the majority in the Interstate Pipe Line case and was expressly based on the finding of a local incident, so the case did not achieve the status of a holding rejecting older reasoning. Such rejection would have amounted to adoption of Mr. Justice Holmes' view that "regulation and commerce among the states both are practical rather than technical conceptions, and, naturally, their limits must be fixed by practical lines." Galveston, H. & S.A. Ry. v. Texas, 210 U.S. 217 (1908).

Pending such adoption, the validity of state tax legislation is a function of its formal wording and the West Virginia court seems to have reached the only result open to it.

L. A. S.

Workmen's Compensation—Notice of Time for Objection to the Initial Findings of the Commissioner.—In a letter from the workmen's compensation commissioner transmitting notice of an affirmance of an earlier ruling by the commissioner, the claimant and employer were advised that either party could appeal from the order "within the statutory time limit." The commissioner's order was ruled final by the workmen's compensation appeal board for want of timely objection. Held, on appeal, that the commissioner's letter transmitting the order should have notified the claimant and employer of the time allowed for filing an objection to such finding. Reversed and remanded for hearing by the commissioner. Miles v. State Compensation Comm'r, 67 S.E.2d 34 (W. Va. 1951).