Volume 40 | Issue 3 Article 18

April 1934

Taxation--Warrants Drawn on Overdrawn Count Funds as Legal Tender for the Payment of Taxes

Paul D. Farr
West Virginia University College of Law

effect of these limitations has been to drive legislative bodies, in their search for revenue, to various indirect tax devices; and seemingly, since governmental expenses have not decreased proportionately, the public monies must perforce come largely from indirect taxes. Whether a legislative limitation can or will be worked out is doubtful; yet such is possible, provided sufficient public sentiment be aroused. Apparently, then, there are thus to be three restrictions upon limits of taxation, whether direct or indirect: (1) economic limitations, — indirect taxation, if too great, will drive businesses from the state, while direct taxes will, to a certain extent, be governed by defaults and delinquencies; (2) legislative limitations, — always possible in respect of indirect taxes, and now provided for in many states as to direct taxes; and finally, (3) judicial limitations, — already recognized in the field of indirect taxation: the principal case is seemingly one of the first to attempt to apply the contention to a direct tax. One may confidently anticipate more such attempts in the future.

—CHARLES W. CALDWELL.

TAXATION — WARRANTS DRAWN ON OVERDRAWN COUNTY FUNDS AS LEGAL TENDER FOR THE PAYMENT OF TAXES. — The plaintiff, claiming under the statute making county orders legal tender for the payment of taxes,[1] applied to the Supreme Court of Appeals for a writ of mandamus to compel the defendant, as sheriff, to receive certain county orders, payable out of the then overdrawn general county fund, in full discharge of the plaintiff's taxes. In deciding the case, the court held that the statute was to be construed together with a more recent statute providing that funds raised by taxes shall be expended only for the purposes for which levied,[2] and that the

absolute safeguard in cutting off governmental expenditures, inasmuch as several indirect tax devices have been substituted. It is suggested, however, that as a general sales tax touches the pocket-book of the whole public, there will be a greater public interest, which will demand controlled expenditures.

[1] W. VA. REV. CODE (1931) c. 7, art. 5, § 10, "Every officer charged with the collection of taxes and officers' fees shall receive in payment therefor, at par, any county or school order or draft, drawn on him pursuant to law, which is then due and payable, if the person offering the same in payment be the person entitled thereto at the time it is so offered."

[2] W. VA. REV. CODE (1931) c. 11, art. 8, § 12, "Any funds derived from levying of taxes under and pursuant to the provisions of this article shall be expended for the purposes for which levied and no other."

orders tendered by the plaintiff could be received in payment of only so much of his taxes as are properly allocated to the general fund. Otherwise the statute would be indirectly defeated by depriving the other funds of the several sums they would receive if the taxes were paid in cash. *White v. Morton.*[3]

The general rule is that taxes are to be paid in cash, and that warrants drawn on county funds cannot be received as payment in the absence of statutory authority.[4] West Virginia and a number of other states have enacted statutes making unpaid county orders legal tender for the payment of taxes.[5] These statutes vary in breadth, some limiting the use of such warrants to payment of taxes which are allocated to the fund on which the order is drawn,[6] while others place little or no limit on such use.[7]

The decision in the principal case is contrary, at least in spirit, to *State ex rel. Trust Company v. Melton*[8] and *State ex rel. v. Davis*[9] which held that county warrants issued in prior years must be accepted in payment of present taxes.[10] In the former case, decided in 1907, the court noted that the statute extended to the payment of all taxes in county warrants,[11] and in the latter, decided in 1914, held that it was sufficient that the sheriff constructively have in his hands funds to meet the unpaid warrants.[12] The principal case is the first decision on the question since the enactment, in 1919, of the statute limiting the use of tax funds

---

[3] 171 S. E. 762 (W. Va. 1933).

[4] City of Enterprise v. Rawls, 204 Ala. 528, 86 So. 374, 11 A. L. R. 1175 (1920); COOLEY, LAW OF TAXATION (4th ed. 1924) § 1252; see also Note 11 A. L. R. 1177 (1921).

[5] ARK. DIG. STAT. (Crawford & Moses, 1921) §§ 1988, 1993, 10045; FLA. COMP. LAWS (1927) § 946; ILL. REV. STAT. (Smith-Hurd, 1929) c. 120, § 142, amended by Laws of Illinois, Revenue Act, § 154 (1932); IOWA CODE (1907) § 1401; KAN. REV. STAT. ANN. (1923) c. 79, art. 20, § 3; MISS. CODE ANN. (1930) § 3232; NEB. COMP. STAT. (1922) § 5997; N. D. COMP. LAWS ANN. (1913) § 3356; OKLA. COMP. STAT. ANN. (Bunn, 1921) § 70; TENN. ANN. CODE (Shannon, 1917) § 871; TEX. REV. CIV. CODE (Vernon, 1928) art. 7049; UTAH COMP. LAWS (1917) § 6012; VA. TAX CODE ANN. (Michie, 1930) § 356; W. VA. REV. CODE (1931) c. 7, art. 5, § 10, *supra* n. 1; WIS. STAT. (1929) § 70.04.

[6] See, *e. g.*, NEB. COMP. STAT. (1922) § 5997.

[7] See, *e. g.*, ARK. DIG. STAT. (Crawford & Moses, 1921) §§ 1988, 1993, 10045; English v. Oliver, 28 Ark. 317 (1873) (County taxes held to be payable in state scrip.)

[8] 62 W. Va. 253, 60 S. E. 584 (1907).

[9] 74 W. Va. 261, 82 S. E. 207 (1914).

[10] Accord, see Daniel v. Askew, 36 Ark. 487 (1880); Reynolds v. Norman, 114 Mo. 509, 21 S. W. 845 (1893); *contra,* Kansas City, Ft. Scott & M. R. Co. v. Thornton, 152 Mo. 570, 54 S. W. 445 (1899).

[11] State *ex rel.* Trust Co. v. Melton, *supra* n. 8, at 258.

[12] State *ex rel.* v. Davis, *supra* n. 9, at 263.

to the purpose for which levied.[13] The court properly construed this statute broadly to cover this case,[14] as being *in pari materia*[15] with the one making county warrants legal tender for the payment of taxes, and decided that the more recent statute is a qualification on the earlier one.[16] This is in accord with the majority rule of strict construction of statutes making taxes payable in a medium other than money.[17]

Similar statutes have caused great financial embarrassment to units of government. In the case of *City of Little Rock, et al. v. United States ex rel. Howard, et al.*,[18] a city with an annual income of $123,000 from taxes was compelled to issue $75,000 in tax-receivable warrants to a judgment creditor, at one time. In *People ex rel. Matthews v. Board of Education of Chicago*[19] the board of education was compelled to issue orders on the overdrawn school fund, with the result that taxes levied to pay the city debt were paid in these negotiable orders.

In West Virginia there is yet a possibility of impairment of present governmental functions. Although it is decided that warrants on one fund cannot deplete another fund, one fund may

---

[13] Acts 1919, c. 126, § 11; W. VA. REV. CODE (1931) *supra* n. 2.

[14] Kellar v. James, 63 W. Va. 139, 142, 59 S. E. 939, 940 (1907) ("The liberal rule of construction only requires that a statute be so enforced as to carry into effect the will of the legislature as expressed in the terms thereof, and give not stintedly, nor niggardly, but freely and generously, all the statute purports to give."); Wiseman v. Crislip, 72 W. Va. 340, 78 S. E. 107 (1913); Mapp v. Holland, 138 Va. 519, 122 S. E. 430, 37 A. L. R. 478 (1924) (Held that a statute is to be construed so as to embrace all situations in which the mischief sought to be remedied is found to exist).

[15] Statutes which are *in pari materia* should be construed together. Gill v. State, 39 W. Va. 479, 20 S. E. 568, 45 Am. St. Rep. 928 (1894); United States v. Ewing, 237 U. S. 197, 35 S. Ct. 571 (1915); Gleason v. Spray, 81 Cal. 217, 22 Pac. 551, 15 Am. St. Rep. 47 (1889); Kearney v. Vann, 154 N. C. 311, 70 S. E. 747, Ann. Cas. 1912A 1189 (1911).

[16] When two statutes conflict, the latter in point of enactment is to be construed as a qualification on the former. Board of Education v. County Court, 77 W. Va. 523, 87 S. E. 870 (1916); Price First National Bank v. Parker, 57 Utah 290, 194 Pac. 661, 12 A. L. R. 1373 (1920); Hall v. Stewart, 135 Va. 384, 116 S. E. 469, 31 A. L. R. 1489 (1923); N. & W. Ry. Co. v. Virginian Ry. Co., 110 Va. 631, 66 S. E. 863 (1910).

[17] J. M. Dougan Co. v. Van Riper, 99 Ore. 436, 198 Pac. 897 (1921); Wynn v. Stone, 169 Miss. 80, 13 So. 669 (1891); Oneida County v. Tibbetts, 125 Wis. 9, 102 N. W. 897 (1905); *cf.* Prescott v. McNamara, 73 Cal. 236, 14 Pac. 877 (1887); *contra*, Stilwell v. Jackson, 77 Ark. 250, 93 So. 71 (1905) (The court held that under the state constitution a special tax could be paid in county warrants, even though another section of the same article of the Constitution provided that no moneys arising from a tax levied for one purpose should be used for any other purpose).

[18] 103 Fed. 418 (C. C. A. 8th, 1900).

[19] 349 Ill. 390, 182 N. E. 455 (1932).

be depleted by unpaid orders from prior years,[20] so that present functions of the county are impaired. If such a case should arise, it might be met by paying the debt in instalments instead of out of the current levy.[21] The West Virginia statute provides that current levies shall cover prior indebtedness,[22] and recent legislation authorizes deferred payments as a solution, in case such prior indebtedness should become unnecessarily burdensome to a political subdivision.[23] Similar provisions are made to cover judgment debts of governmental units.[24]

[20] W. VA. REV. CODE (1931) c. 11, art. 8, § 13 "Nor shall any such fiscal body make any contract, express or implied, the performance of which, in whole or in part, would involve the expenditure of money in excess of funds legally at the disposal of such fiscal body, ..." This statute in a great measure prevents contractual liability from being held over from prior years. Similar difficulties have been avoided by refusing to receive warrants from prior years in payment of present taxes, Kansas City, Ft. Scott & M. R. Co. v. Thornton, *supra* n. 10; *cf.* Reynolds v. Norman, *supra* n. 10; *contra,* Daniel v. Askew, *supra* n. 10; Western Town Lot Co. v. Lane, 7 S. D. 599, 65 N. W. 17 (1895). Another possibility is to refuse to accept warrants on which there has been a default, Bummel v. Mayor of Houston, 68 Tex. 10, 2 S. W. 740 (1887); *cf.* B. & O. R. Co. v. Allen, 17 Fed. 171 (1883).

[21] Under the common law, as interpreted by the federal courts and in a number of states, the courts have an equitable discretion empowering them to defer payments on government indebtedness and to regulate these payments generally, in order to cause no more disturbance to the administration of the financial affairs of government than is necessary to protect the rights of the creditor. East St. Louis v. United States, 120 U. S. 600, 7 S. Ct. 739, 30 L. Ed. 798 (1887); Graham v. Quinlan, 207 Fed. 268, 273 (1913); Cleveland v. United States *ex rel.* Amy, 166 Fed. 677, 683 (1909); Little Rock *et al.* v. United States *ex rel.* Howard *et al., supra* n. 18; Perry v. Town of Samson, 11 F. (2d) 655 (1926); State *ex rel.* McWilliams v. Bates, 235 Mo. 262, 138 S. W. 482 (1911).

[22] W. VA. REV. CODE (1931) c. 11, art. 8, § 3.

[23] Act W. Va. Legislature, Jan. 26, 1934, House Bill No. 274. This statute provides for judicial proceedings for adjudicating the validity of prior indebtedness, not bonded, of all taxing districts, except the state itself, and for deferring the payments on such indebtedness over a period not to exceed ten years, when it would be unnecessarily burdensome in view of the existing emergency to pay such indebtedness by one levy. Interest is to be paid on these deferred instalments. As to the constitutionality of this statute, see *infra,* n. 24.

[24] W. VA. REV. CODE (1931) c. 53, art. 1, § 12; Acts W. Va. Legislature, Jan. 26, 1934, House Bill No. 263 "Wherever a writ of mandamus, issued to enforce the laying of a levy to satisfy a judgment against a political subdivision of the state, would produce a disturbance in the administration of the financial affairs of the political subdivision not necessary to the protection and enforcement of the right of the creditor, the court may order that the levy be distributed equally over a period of years not to exceed ten, and shall allow the creditor, interest, not in excess of the legal rate, upon the installments." This statute is believed to be constitutional as being merely declaratory of the common law, see *supra* n. 21. A California statute empowers the levying body to "provide for the payment of such final judgments . . . . by including in the tax levy for the next fiscal year an aliquot part or fraction of the amount of such judgments, and thereupon the treasurer shall pay to each judgment creditor a like aliquot part or fraction of the amount of the judgment of the creditor, and thereafter a like aliquot

By these means the West Virginia statute has been shorn of its evils, and yet retains the advantages of aiding the financially embarrassed taxpayer in a small measure, and of reducing the number of transactions between the state and its citizens.

—PAUL D. FARR.

---

part or fraction of the amount of such judgments shall be levied and paid each successive year until the whole thereof shall be fully paid; but each fractional levy and payment shall in no case be less than one tenth (1/10) of the whole amount of such judgments.'' CAL. GEN. LAWS (Deering, 1923) Act. 3918, § 3. The constitutionality of this procedure is upheld in: Metropolitan Life Ins. Co. v. Deasy, 41 Cal. App. 667, 183 Pac. 243 (1919); Metropolitan Life Ins. Co. v. Rolph, 184 Cal. 557, 194 Pac. 1005 (1920); Le Clerg v. San Diego, 24 P. (2d) 819 (Cal. 1933). The possible objection that such a statute impairs the obligation of contract may be overcome by the theory of Home Building and Loan Association v. Blaisdell, —— U. S. ——, 54 S. Ct. 231 (1934).