Louisiana Law Review

Volume 15 | Number 2
The Work of the Louisiana Supreme Court for the 1953-1954 Term
February 1955

Public Law: State and Local Taxation

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Repository Citation
Charles A. Reynard, *Public Law: State and Local Taxation*, 15 La. L. Rev. (1955)
Available at: https://digitalcommons.law.lsu.edu/lalrev/vol15/iss2/23

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discrimination in favor of the public and in accord with public policy as well as the expressed policy of the commission's General Order Number 2 exempting agencies of the public from its restrictions.[12]

STATE AND LOCAL TAXATION

*Charles A. Reynard**

Five of the decisions at the past term are of significance to students of state and local taxation. Two of these presented questions relating to ad valorem taxation and the remaining three involved corporate franchise taxation, intergovernmental tax immunity and summary confiscation of property used in violation of state revenue measures.

State Farm Mutual Auto. Insurance Co. v. Ott[1] presented the question whether deferred premium payments on automobile insurance policies are "credits" within the reach of state and city ad valorem taxation. It was shown to be the practice of the insurance company to issue its automobile insurance policies for periods of six months upon the payment of one-third of the premium with the stipulation that the balance was to be paid at the expiration of sixty days. The insurer contended that since it reserved the right to cancel its policies at the end of the sixty-day period upon the non-payment of the balance of the premium, the deferred payments were not in fact "credits"; or, put in another way, it was the company's contention that it was not extending credit under this method of doing business. The court rejected the claim of the insurance company in a unanimous opinion by Justice Hawthorne because "By the very terms of the policy issued, the insurance company obligates itself to insure for a term of six months. . . ."[2] The right of cancellation for non-payment of deferred premiums was regarded as immaterial since the policy did not relieve the insured from the obligation to pay the full amount of the premium, and thereby invested the insurer with the right, if it chose, to compel the payment of the deferred portion of the premium.

In *Albritton v. Childers*[3] the central issue of the case con-

12. *Ibid.*

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1. 224 La. 1008, 71 So.2d 548 (1954).

2. 224 La. 1008, 1012, 71 So.2d 548, 550 (1954).

3. 74 So.2d 156 (La. 1954).

cerned the validity of a tax sale of a tract of land consisting of 39 acres, 28 of which lie in East Feliciana Parish, the other 11 in East Baton Rouge Parish, by the sheriff of East Baton Rouge Parish for unpaid taxes allegedly due to his parish on the whole tract. Applicable provisions of the Revised Statutes relating to assessment procedure make it clear that "When a line between two parishes divides a tract of land, . . . each portion shall be assessed in the parish in which it lies . . . ."[4] Counsel for the losing party were not unaware of this statutory provision, but contended that under the circumstances the court should invoke the maxim "common error becomes the law." The court found the maxim inapplicable in this case, however, in the light of the fact that there had never been any misunderstanding between the several parties to the controversy concerning the exact location of the parish boundary. In this manner several earlier cases which applied the maxim in parish boundary situations were satisfactorily distinguished and the result seems proper.

A novel and significant issue of apportionment under the corporation franchise tax was presented in *Arkansas Fuel Oil Corp. v. Fontenot*[5] and the decision may give cause for concern to business firms operating on a parent-subsidiary corporate basis in Louisiana. The case was a suit for the refund of taxes paid under protest. The plaintiff, a Delaware corporation, had its principal office in Louisiana, but functioned here simply as a holding company, possessing few assets within the state. Two of its wholly owned subsidiaries (chartered in Delaware and West Virginia) did business here as well as in other states. Each of the three corporations had apparently paid corporation franchise taxes upon the basis of the allocation formula set forth in Subsection A of R.S. 47:606 which provides for an apportionment of capital based upon the arithmetic average of two ratios based upon property and sales. The Collector of Revenue, proceeding under the provisions of Subsection B had assessed substantial additional taxes against the parent corporation. This latter subsection, bearing the title "Allocation of intercompany items," reads in part as follows: "For the purpose of allocation, investments in, advances to, or revenues from a parent or subsidiary corporation shall be allocated to Louisiana on the basis of the percentage of capital employed in Louisiana for corpora-

4. LA. R.S. 47:1952 (1950).
5. 225 La. 166, 72 So.2d 465 (1954).

tion franchise tax purposes by the parent or subsidiary corporation."

The court stated the collector's contention in the following language: "This, the Collector contends, means that if the subsidiary, under the general allocation formula, has 50% of its 'taxable capital' allocated to Louisiana as capital employed in Louisiana, then 50% of all investments in or advances to a subsidiary corporation by the parent corporation are allocated to Louisiana as 'taxable capital' of the parent corporation, and 50% of all revenues received from a subsidiary corporation by the parent corporation are allocated to Louisiana as 'taxable capital' of the parent corporation."[6] The court was unanimous in its acceptance of the collector's construction of the statute, rejecting the taxpayer's theory that Subsection B merely imposed a limitation on the proportion of capital to be allocated to Louisiana under the terms of Subsection A. The decision on this point seems entirely correct as there is nothing to be found in the legislative language to support the contention of the plaintiff.

The further argument of the taxpayer that the parent's investments in and receipt of income from the subsidiary should be regarded as occurring outside the state (either at the domicile of the corporation in Delaware or elsewhere) was rejected with the well settled observation that the doctrine of *"mobilia sequuntur personam"* has no application to taxation of intangibles, citing the leading case of *Wheeling Steel Corp. v. Fox.*[7]

Similarly, and for substantially the same reason, the court rejected various constitutional objections advanced by the taxpayer. The mere fact that a reasonable allocation formula results in double taxation of similar items of intangible property is no longer considered constitutionally objectionable. *Curry v. McCanless*[8] settled that issue more than fifteen years ago.

Viewed objectively the result of the case, and the legislation which it sustains, seems reasonable. While there may be some objection to the prospect of double taxation as an abstract proposition, it does not seem to justify criticism in the context of this case. A corporation which determines to operate through the agency of subsidiaries must be presumed to have sound and economically desirable ends in view. For the right it confers upon the corporation to exploit these advantages a state must be

6. 72 So.2d 465, 471 (La. 1954).
7. 298 U.S. 193 (1936).
8. 307 U.S. 357 (1939).

accorded the right to exact tax revenue in return. The corporation may appraise the operational and economic advantages against the burden of increased taxation. The decision takes these factors into account and reaches a desirable conclusion. The taxpayer's appeal to the Supreme Court of the United States was dismissed for lack of a substantial federal question on October 14, 1954.

Murphy Corporation v. Fontenot[9] presented the court with a troublesome issue of intergovernmental tax immunity. In this case Louisiana had exacted severance taxes from several private oil and gas producers in connection with their operations under federal leases on Barksdale Air Force Base, and the taxpayers were suing for refunds, contending that the state was without legislative authority over activities occurring on the federal property.

If the land held by the federal government had been non-military in character there would have been little question of the right of the state to enforce its revenue measure in the light of the decision of the United States Supreme Court in *Helvering v. Mountain Producers Corporation.*[10] That case overruled a prior line of jurisprudence which had regarded taxation of the income of persons derived from contracts with the government for the exploitation of governmentally owned land as being tantamount to a tax on the source of the income itself.[11] Since that date there has been a constant narrowing of the doctrine of intergovernmental tax immunity to the point that state taxation has been sustained even where it could be clearly shown that the economic burden of the tax was sustained by the federal government.[12] Since the doctrine had no express foundation in the Constitution and was founded upon implications of federalism there is little reason to wonder about its tortured history. The real wonder is that it ever achieved a foothold in the jurisprudence of constitutional law in the first place.

It was the military character of the federal reservation which presented difficulty in the *Murphy Corporation* case because of the language of Article I, Section 8, of the Federal Constitution

9. 225 La. 379, 73 So.2d 180 (1954).
10. 303 U.S. 376 (1938).
11. Burnet v. Coronado Oil & Gas Co., 285 U.S. 393 (1932); Gillespie v. Oklahoma, 257 U.S. 501 (1922).
12. Alabama v. King & Boozer, 314 U.S. 1 (1941). See also James v. Dravo Contracting Co., 302 U.S. 134 (1937); *cf.* Kern-Limerick, Inc. v. Scurlock, 74 Sup. Ct. 403 (1954), 14 LOUISIANA LAW REVIEW 696.

which confers exclusive legislative authority upon Congress "over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." But even this express provision of the Constitution has been held to be no bar to state taxation when the activity taxed in no way derogates the independence and sovereignty of the United States. This construction was first adopted in 1885 when Kansas was permitted to tax the franchise of a railroad operating on the federal military reservation at Ft. Leavenworth[13] and that decision gave sound reason for the court's reaching the same conclusion here.

The case of *Cooper v. One White Model 1950 Motor Tractor*[14] was a forfeiture proceeding growing out of violations of the tobacco tax[15] and unquestionably occasioned much difficulty for the court. In its original decision the court unanimously agreed that there might be forfeiture of a truck used to transport unstamped cigarettes into the state for sale in violation of the tax despite the owner's ignorance of the driver's illegal activity. On rehearing, however, the court reversed its earlier decision by a vote of five to two. The entire controversy centered about an issue of statutory construction. All members of the court at both hearings were in agreement that the legislature has the constitutional power to compel forfeiture in such circumstances,[16] the narrow question here was whether it had in fact exercised such power.

The tobacco tax is set forth in Sections 841 to 869 of Title 47 of the Revised Statutes. Section 863 clearly authorizes the collector to proceed with forfeiture "of any automobile, truck, boat, conveyance, vehicle . . . used in the transportation of any article . . . on which the tax has not been paid . . . ." And this section does not, by its terms, make the owner's knowledge of the facts a condition precedent to the forfeiture proceeding. Section 865 authorizes the collector to seize and proceed with forfeiture of "All cigars, cigarettes . . . found in possession . . . of any person . . . with the design to avoid payment of the taxes . . . ." Section 866 then provides the controversial language, saying, "Any person who claims title to the seized property . . . and who did not

13. Fort Leavenworth R.R. v. Lowe, 114 U.S. 525 (1885).
14. 225 La. 190, 72 So.2d 474 (1953).
15. La. R.S. 47:841-869 (1950).
16. Van Oster v. Kansas, 272 U.S. 465 (1926).

in any respect participate in the violation of this Chapter, may . . . [have] the said property . . . released by the collector and delivered to him. . . ."

The majority on rehearing construed this language just quoted to refer to and embrace the types of vehicles mentioned in Section 863 which are used to transport untaxed goods, as well as the goods themselves, mentioned in Section 865. Justice Hawthorne in his dissenting opinion expressed the view that the provisions of Section 866 applied only to the contraband goods themselves, seizure of which is authorized by the next preceding section, and did not refer back to Section 863. Justice Moise did not express himself on the point, though voting to sustain the forfeiture.

The question is not free from doubt and while neither the majority nor the dissent make a completely persuasive case, it is suggested that the result may be sustained on the general theory that penal and forfeiture provisions are to be strictly construed.

Commercial Law

INSURANCE

*J. Denson Smith**

It seems clear that our ideas about insurance and its importance as an instrumentality of considerable social consequence for protecting the individual against personal loss have expanded a great deal over the past thirty years. That many years ago when an automobile tipped over and its side struck the road violently, the accident was held not to constitute a "collision." In January of this year when the right rear dual wheels of a dump truck came off while being driven and the rear portion of the body struck the roadway violently, the accident was held to constitute a "collision." Justices LeBlanc and Hamiter disagreed. Perhaps insurers may not try to do anything about it, but if they feel so inclined, they can pursue the will-o'-the-wisp beckoning in the suggestion, "if [the insurer] had desired to circumscribe its liability to certain specified types of collisions, it could have spelled out such restrictive coverage

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