Michigan Law Review

Volume 52 | Issue 5

1954

CONSTITUTIONAL LAW-COMMERCE CLAUSE-STATE TAXATION OF INTERSTATE AIR CARRIERS

Robert B. Olsen
University of Michigan Law School

CONSTITUTIONAL LAW—COMMERCE CLAUSE—STATE TAXATION OF INTERSTATE AIR CARRIERS—Plaintiff, an interstate air carrier, was incorporated in Delaware, and the home port of its planes was in Minnesota. It conducted regularly scheduled flights in and between twelve states. No landings were ever made in Delaware. Nebraska, one of the states in which landings were made by plaintiff, levied an ad valorem tax on a proportion of the flight equipment of the plaintiff measured by the proportion of the total use of the equipment that was attributable to Nebraska.[1] Plaintiff contended that the commerce clause of the United States Constitution precluded Nebraska from imposing any tax whatever upon such flight equipment used in interstate commerce. In an original action for a declaratory judgment, *held,* the tax is valid. *Mid-Continent Airlines, Inc. v. Nebraska State Board of Equalization and Assessment,* 157 Neb. 425, 59 N.W. (2d) 746 (1953).[2]

In view of the Supreme Court's numerous pronouncements that multiple taxation of tangible personalty employed in interstate commerce is prohibited by the commerce clause of the Constitution,[3] the courts have often been presented with the problem of determining exactly where such personalty is subject to taxation, i.e., what constitutes a tax situs for roving personal property?[4] When *Pullman's Palace Car Co. v. Pennsylvania*[5] was decided, it was thought that a substantial step had been taken toward establishing a uniform rule on the matter. In that case, it was held that railroad cars of a company domiciled in another state were subject to taxation by Pennsylvania to an extent proportionate to the use made of such cars within Pennsylvania com-

[1] Neb. Rev. Stat. (1943) §§77-1244 to 77-1250.

[2] The United States Supreme Court noted probable jurisdiction of this case on January 4, 1954, in Braniff Airways, Inc. v. Nebraska State Board of Equalization and Assessment, 74 S.Ct. 312.

[3] Standard Oil Co. v. Peck, 342 U.S. 382, 72 S.Ct. 309 (1952), contains a recent affirmance of this rule.

[4] See generally on tax situs of personal property: 123 A.L.R. 179 (1939); 139 A.L.R. 1463 (1942); 153 A.L.R. 270 (1944).

[5] 141 U.S. 18, 11 S.Ct. 876 (1891).

pared to the total use of the cars within and without that state. The Court abandoned the old rule that personalty was taxable only at the domicile of the owner, and announced the adoption of a new rule which would sanction proportionate taxation by those jurisdictions which provided protection and benefits to the owner, in his capacity as owner, and in which the personalty appeared regularly. Although the *Pullman* case has been followed closely in succeeding railroad cases,[6] the majority of the Supreme Court, in *Northwest Airlines, Inc. v. Minnesota,*[7] gave it a construction which has served to raise new doubts as to the scope of the taxing power of non-domiciliary states. In the *Northwest* case, it was held that airplanes flying on regularly scheduled flights in interstate commerce had not been shown to have acquired a taxable situs elsewhere than in Minnesota, which was the "home port" and domicile of the owner.[8] The vagueness of the Court on this point leaves it uncertain, however, as to whether it was thought that the *Pullman* decision is inapplicable to airlines cases, or whether the tests satisfactory to create a non-domiciliary taxing situs, as set forth in the *Pullman* case, had not been met. In the principal case, it was found that Nebraska had acquired authority to levy the proportional tax by virtue of the presence of plaintiff's planes in the state at regular intervals.[9] This would seem to be consistent with the *Pullman* decision, but in apparent conflict with the *Northwest* decision.[10] The latter decision indicates that the Supreme Court is not entirely content with the idea that personalty should be taxed proportionately by the states in which it is used. The trend of recent decisions, nevertheless, is toward sustaining the proportional tax of non-domiciliary, non-home port states. In several decisions rendered subsequent to the *Northwest* case, the Supreme Court has either sanctioned the proportional tax[11] or declared invalid the tax of a domiciliary-home port state which has been levied upon the total value of such moving personalty.[12] Although these decisions have not involved aircraft, the language employed by the Court is indicative of a willingness to treat the various types of interstate transportation on the same constitutional footing.[13] The principal case presents an opportunity for the Court to begin

[6] Johnson Oil Refining Co. v. State of Oklahoma ex rel. Mitchell, 290 U.S. 158, 54 S.Ct. 152 (1933).

[7] 322 U.S. 292, 64 S.Ct. 950 (1944).

[8] Four justices entertained this view. Since Justice Black concurred on separate grounds, it became the deciding view.

[9] On the negative side, the court concluded that no other state could tax the full value of the planes.

[10] The existence or non-existence of a tax situs in states other than Minnesota was not directly decided in the Northwest case, but evidence showing regular scheduled landings in these other states was held to fail to establish the existence of a tax situs in those states.

[11] Ott v. Mississippi Valley Barge Line Co., 336 U.S. 169, 69 S.Ct. 432 (1949); Smoot Sand and Gravel Corp. v. District of Columbia, (D.C. Cir. 1949) 174 F. (2d) 505, cert. den. 337 U.S. 939, 69 S.Ct. 1515 (1949).

[12] Standard Oil Co. v. Peck, note 3 supra.

[13] "We can see no reason which should put water transportation on a different constitutional footing than other interstate enterprises." Ott v. Mississippi Valley Barge Line Co.,

a retreat from the *Northwest* ruling because there is in this case no domiciliary state that qualifies as a tax situs for the flight equipment.[14] Should the Supreme Court reject the proposition that a non-domiciliary home port state is the sole tax situs for airplanes, the persuasiveness of the *Northwest* decision would be diminished considerably. Since in that event proportionate taxation would be permitted either (1) when another state into which the vehicles travel is the domiciliary state,[15] or (2) when another state is the non-domiciliary home port state, there would be little logical justification for making an exception when the domicile and the site of the home port happen to coincide. The possibility remains, of course, that the Court will incline in precisely the opposite direction, holding that the home port state, whether it be the domicile of the owner or not, is alone empowered to tax the roving personalty.[16] Should the latter course be adopted, the entire doctrine of proportional taxation of "rolling stock" would probably be drawn into question. This would indeed be unfortunate. The reasonableness of the doctrine is too well established to warrant a reversal in favor of "home port" states.[17]

Robert B. Olsen

note 11 supra, at 175. When a case involving one form of transportation is being decided, previous decisions involving other forms of transportation are invariably relied upon as precedents.

[14] Since none of the planes involved land in Delaware, that state is precluded from taxing them. Union Refrigerator Transit Co. v. Kentucky, 199 U.S. 194, 26 S.Ct. 36 (1905).

[15] Pullman's Palace Car Co. v. Pennsylvania, note 5 supra; Standard Oil Co. v. Peck, note 3 supra.

[16] See Justice Jackson's concurring opinion in the Northwest case, note 7 supra, in which he advocates the adoption of this rule.

[17] For a novel application of the "home port" doctrine, see Chicago v. Willett Co., 344 U.S. 574, 73 S.Ct. 460 (1953), where it was employed to sustain a city license tax on interstate motor carriers.