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Taxation: Double Taxation of Tangible Personal Property Used in Interstate Commerce

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TAXATION: DOUBLE TAXATION OF TANGIBLE PERSONAL PROPERTY USED IN INTERSTATE COMMERCE

Standard Oil Co. v. Peck, 342 U.S. 382 (1952)

Ohio, the domiciliary state of plaintiff corporation, levied an ad valorem personal property tax on the full value of its vessels used in interstate commerce on inland waterways. The vessels, almost continuously outside Ohio during the taxable year, traveled a maximum of 17½ miles on waterways bordering the state and neither picked up nor discharged cargo there. They were not taxed on any portion of their value by any state other than Ohio. After the Ohio Board of Tax Appeals and the Supreme Court of Ohio sustained the tax,[1] plaintiff appealed on the ground that the tax violated the due process clause of the Fourteenth Amendment. HELD, the domiciliary state may not levy such a tax on the full value of the corporation's vessels engaged in interstate commerce on inland waterways if they are outside the state long enough to render them taxable elsewhere.

The decision purports to be, finally, an answer by the Supreme Court to the question of whether double taxation of inland water transportation moving in interstate commerce is permissible. Early cases overruled the possibility of a tax by the nondomiciliary state when it alone was attempting to tax and when both it and the domiciliary state were attempting to tax, because of the temporary nature of the actual situs of the property.[2] The possibility of double taxation was recognized in the latter instance, but the question was not answered.[3]

The later case of *Pullman's Palace Car Co. v. Pennsylvania*[4] established that a tax might be levied by a nondomiciliary state on the valuation of the amount of movable tangible property continually and constantly used within the state even though no particular property remained in the state long enough to acquire a permanent situs, the theory being that the state could tax the owner for protection received under its laws. This principle, however, was held

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[1]Standard Oil Co. v. Glander, 155 Ohio St. 61, 98 N.E.2d 8 (1951).

[2]Morgan v. Parham, 16 Wall. 471 (U.S. 1872); Hays v. Pacific Mail S.S. Co., 17 How. 596 (U.S. 1854); St. Louis v. Wiggins Ferry Co., 11 Wall. 423 (U.S. 1870).

[3]*Ibid.*

[4]141 U.S. 18 (1891).

not applicable to water transportation.[5] The possibility of taxation by the domiciliary state of the owner was not considered.[6]

Subsequently the court allowed the nondomiciliary state to tax vessels engaged in interstate commerce when situated wholly in that state throughout the year,[7] but omitted mention of the possibility of double taxation. The maxim *mobilia sequuntur personam*[8] was applied in allowing the domiciliary state to tax vessels which had not acquired any other taxable situs even though the vessels had not been in the state.[9] Then came the inland water transportation case of *Ott v. Mississippi Valley Barge Line Co.*,[10] which allowed a tax by a nondomiciliary state using as a basis of assessment the number of miles the corporation's barges traveled within the state compared to the total number of miles traveled by all its barges everywhere. The resulting ratio was then applied to the total capital stock of the corporation and a taxable base was obtained.

Union Refrigerator Transit Co. v. Kentucky,[11] dealing with the possibility of double taxation in regard to land transportation, held that the domiciliary state could not tax the full value of all railroad cars of the company because some had acquired a permanent taxable situs outside the state, though no nondomiciliary states were taxing. In the determination of the number of cars having a permanent situs in the state it was necessary to compute the proportion of the corporation's cars shown to be used in the state under a system of averages set up by the state and based upon the gross earnings of the corporation.

In contrast, double taxation apparently will be allowed as to air and ocean transportation.[12] Due to the very natures of these respective types of travel, it is virtually impossible for an average number of units to acquire a taxable situs in any one state through use of an apportionment rule. Unless the domiciliary state is allowed to

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[5]*Id.* at 26.

[6]See *Id.* at 30 for Justice Bradley's dissent, which states that the law allowing double taxation on tangible personal property is unquestionable.

[7]Old Dominion S.S. Co. v. Virginia, 198 U.S. 299 (1905).

[8]STORY, CONFLICT OF LAWS §378 (5th ed. 1857). "Movables follow the [law of the] body or person of the owner."

[9]Southern Pac. Co. v. Kentucky, 222 U.S. 63 (1911).

[10]336 U.S. 169 (1949).

[11]199 U.S. 194 (1905).

[12]Northwest Airlines, Inc. v. Minnesota, 322 U.S. 292 (1944); Southern Pac. Co. v. Kentucky, 222 U.S. 63 (1911).

tax all units of such commerce belonging to a corporation in its state, many of the units may escape taxation.

The instant case seems to establish the principle that there is to be no double taxation of tangible property used in inland waterways in interstate commerce. This rule applies to tangibles used in interstate commerce on land in cases in which the property is "permanently" outside the domiciliary state.[13] But, as stated, it probably will not be applied in cases pertaining to air and ocean transportation. Unless it is shown that no distinction exists between intangible and tangible personal property[14] in regard to double taxation, the instant case will have a profound effect on revenue derived by domiciliary states from tangible personal property engaged in interstate commerce. Even if no other state is taxing the property, as long as a taxable situs can be established in other states the domiciliary state must disregard the maxim *mobilia sequuntur personam* and base taxes levied on the property on some equitable formula of apportionment determined by the number of miles the taxable units travel in the domiciliary state, which may be none at all, as compared with the total number of miles traveled in all states.

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[13]Union Refrigerator Transit Co. v. Kentucky, 199 U.S. 194 (1905).

[14]For the trend in allowing both the domiciliary state of the owner and the state where the property is located to tax intangible personal property, see State Tax Comm'n of Utah v. Aldrich, 316 U.S. 174 (1942); Curry v. McCanless, 307 U.S. 357 (1939); Pearson v. McGraw, 308 U.S. 313 (1939).