Michigan Law Review

Volume 50 | Issue 1

1951

CONSTITUTIONAL LAW-COMMERCE CLAUSE-STATE TAXATION OF COMMERCE

Allan Neef S.Ed.
University of Michigan Law School

Follow this and additional works at: https://repository.law.umich.edu/mlr

Part of the Taxation-State and Local Commons

Recommended Citation
Allan Neef S.Ed., *CONSTITUTIONAL LAW-COMMERCE CLAUSE-STATE TAXATION OF COMMERCE*, 50 MICH. L. REV. 150 (1951).
Available at: https://repository.law.umich.edu/mlr/vol50/iss1/12

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

CONSTITUTIONAL LAW—COMMERCE CLAUSE—STATE TAXATION OF COMMERCE—Plaintiff, a Massauchusetts manufacturing corporation operating on a mail order-f.o.b. delivery basis, maintained a branch office and warehouse in Chicago. While some over-the-counter sales were consummated in Chicago, this office acted mainly as a headquarters for an engineering staff maintained as a service to customers, and as a conduit for orders placed by Illinois customers with the company. Orders received at the branch office were forwarded to Massachusetts for acceptance or rejection, and some filled orders were shipped to customers by way of the local outlet as a means of reducing freight costs. Although the Chicago office did not solicit orders, and often had no connection whatsoever with sales made by the home office to Illinois customers, the plaintiff was compelled to pay, under protest, a state occupation tax measured by the entire gross receipts of the company from sales to persons in the state. On certiorari from the decision of the Illinois Supreme Court upholding the tax over federal constitutional objections,[1] *held,* that sales channeled through the local office are taxable, but transactions directly between the home office and Illinois customers are interstate sales beyond the taxing power of the state.[2] *Norton Co. v. Dept. of Revenue of Illinois,* 340 U.S. 534, 71 S. Ct. 377 (1951).

The commerce clause operates to protect interstate shipments from discriminatory[3] or unduly burdensome[4] taxation by the states, but it does not render such goods completely immune from local revenue-raising devices. It is reasonably clear that the interstate transaction itself cannot be taxed;[5] however, a local incident or separate component part of the entire transaction is taxable.[6]

[1] Norton Co. v. Dept. of Rev. of Ill., 405 Ill. 314, 90 N.E. (2d) 737 (1950).

[2] Justice Reed would have immunized sales resulting from orders forwarded to Massachusetts by the Chicago office where shipment was made directly to the customer, while Justices Clark, Black, and Douglas contended that all sales, whether channeled through the Chicago branch or made directly with the company in Massachusetts, made to Illinois customers should be taxable. See dissenting opinions in the principal case, 340 U.S. 534 at 539-541 (1951).

[3] Gwin, White & Prince v. Henneford, 305 U.S. 434, 59 S.Ct. 325 (1939); Best & Co. v. Maxwell, 311 U.S. 454, 61 S.Ct. 334 (1940); McGoldrick v. Berwind-White Coal Mining Co., 309 U.S. 33 at 45, 60 S.Ct. 388 (1940).

[4] Interstate Buses Corp. v. Blodgett, 276 U.S. 245 at 251, 48 S.Ct. 230 (1927); McGoldrick v. Berwind-White Coal Mining Co., supra note 3.

[5] Minnesota v. Blasius, 290 U.S. 1, 54 S.Ct. 34 (1933).

[6] Gwin, White & Prince v. Henneford, supra note 3.

The rationale of such a distinction is two-fold: (1) a state has no power to tax activities which take place completely outside of its borders,[7] and (2) interstate commerce cannot be compelled to submit to the possible burden of multiple state taxes on the same transaction.[8] Where neither of these objections is present, the tax has a valid jurisdictional basis,[9] although it may be vulnerable on other grounds.[10] In line with these general principles, a sales tax may be imposed only by the state in which the actual transfer of title or possession takes place. [11] Likewise, a tax measured by the gross receipts derived from such sales must not encompass out-of-state or interstate activities.[12] Locally produced revenues are taxable, but revenues of other branches of the same company in other states may not be included for local tax purposes.[13] The exact dividing line between the permissive tax and the prohibited one is by no means clear, however, despite the gradual process of judicial delimitation. It is well established that the sale of goods through local retail outlets or salesmen is a separate local taxable incident, even though the goods are shipped in interstate commerce;[14] while on the other hand, mere local solicitation of orders, either by advertising or through personal representatives, does not bring the out-of-state sale within the local tax orbit.[15] Where other elements are added, or where the two types of operations are combined, the tax consequences become more hazy. The principal case falls in this area. Conceding that the maintenance of either an office or a sales outlet within the state does not render dealings directly between the purchaser and an out-of-state office taxable,[16] the Court indicates that where the local office operates in the dual capacity of an in-state seller and an agency for handling orders filled outside the state, the receipts from all such sales are attributable to the local outlet, and are taxable

[7] Ott v. Mississippi Barge Line Co., 336 U.S. 169 at 174, 69 S.Ct. 432 (1949); separate opinion of Rutledge in McLeod v. Dilworth, 322 U.S. 327 at 349, 64 S.Ct. 1023 (1944); Gwin, White & Prince v. Henneford, supra note 3 at 438-9, 59 S.Ct. 325 (1939). It should be noted that this is really a due process requirement rather than one resulting from the commerce clause, although the two overlap.

[8] Gwin, White & Prince v. Henneford, supra note 3; Adams Manufacturing Co. v. Storen, 304 U.S. 307, 58 S.Ct. 913 (1937).

[9] The due process clause requires that the state have some basis for exerting its power over the property or activity sought to be taxed. See note 7, and also MAHANY, COMMERCE CLAUSE TAX PROBLEMS, c. 1 (1940).

[10] A tax may be invalid because of procedural defects, a violation of statutory or other constitutional limitations, or an abuse of power, even though it has a valid jurisdictional basis.

[11] McLeod v. Dilworth Co., supra note 7.

[12] Minnesota v. Blasius, supra note 5; McGoldrick v. Berwind-White Coal Mining Co., supra note 3 at 62 in the dissenting opinion; Freeman v. Hewit, 329 U.S. 249, 67 S.Ct. 274 (1946).

[13] Comm. of Corp. & Taxation v. Ford Motor Co., 308 Mass. 558, 33 N.E. (2d) 318 (1941); Cooney v. Mountain States Telegraph Co., 294 U.S. 384, 55 S.Ct. 477 (1935).

[14] McGoldrick v. Berwind-White Coal Mining Co., supra note 3; McGoldrick v. Felt and Tarrant Manufacturing Co., 309 U.S. 70, 60 S.Ct. 404 (1940).

[15] McLeod v. Dilworth Co., supra note 7; Cheney Bros. v. Massachusetts, 246 U.S. 147, 38 S.Ct. 295 (1918).

[16] Cooney v. Mountain States Telegraph Co., 294 U.S. 384, 55 S.Ct. 477 (1935); Cheney Bros. v. Massachusetts, supra note 15.

as such. Prior decisions had indicated that where goods are shipped to the customer by way of a local office, the sale is taxable, since title and possession do not pass to the purchaser until actual delivery is made to him.[17] However, the ruling that the mere forwarding of orders to the home office for fulfillment is sufficient to bring the transaction within the reach of the state represents a departure from the situs-of-transfer test formerly adhered to. The reasoning of the Court is that the presence of the local office contributes in some measure to the sale, both in the customer's mind and in actual fact, as evidenced by the initial placement of the order with it, and it thereupon becomes the duty of the company to prove that such sales are not attributable to the branch outlet if it wishes to escape tax liability. This seems to indicate that the real basis of the distinction drawn between direct sales and those passing through the local outlet is in the burden of proof, the presumption being that channeled sales are related to the intrastate business, while direct sales are not.[18] The exact breadth of this doctrine must be left to future judicial determinations, with the mail-order vendor merely on warning that channeled sales may involve local tax liability.

Allan Neef, S.Ed.

[17] McGoldrick v. Felt and Tarrant Manufacturing Co., supra note 14; McGoldrick v. DuGrenier, Inc., 309 U.S. 70, 60 S.Ct. 404 (1940).

[18] It should be noted that the difficulties of proof make these burdens practically conclusive presumptions in effect.