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Right of Owner of Personal Property to Challenge Assessments of Real Property - National Can Company v. State Tax Commission

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Right Of Owner Of Personal Property To Challenge Assessments Of Real Property

National Can Company v. State Tax Commission[1]

The taxpayer, National, appealed from the assessment for the year 1957 of its tangible personal property,[2] levied by the Maryland State Tax Commission pursuant to the Maryland Code, Article 81, Sections 6, 14, and 15, as amended by Chapter 73 of the Maryland Laws of 1958.[3] The appeal was taken to test the validity of the provisions of Chapter 73 separately classifying real and personal property, and the right of National to challenge the inflation factor provided for in Chapter 73 with respect to the valuation of real property. The lower court upheld the Commission's assessment. In affirming, the Court of Appeals found that amendments introduced by Chapter 73 were valid and constitutional under both the Maryland Constitution and the Federal Constitution, and that National was not permitted to challenge the inflation factor.

The Court of Appeals noted that this case was a sequel to the case of *Sears, Roebuck v. State Tax Commission*,[4] in which it held that the assessment practice of the State

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[1] 220 Md. 418, 153 A. 2d 287 (1959).

[2] The aggregate assessed value of the taxpayer's property exceeded $5,200,000, some $3,737,000 being placed on manufactured products and raw material and $1,432,000 on tools and machinery used for manufacturing.

[3] MD. CODE (1957). Chapter 73 was approved April 4, 1958, and the order of the lower court in the present case (Circuit Court No. 2 of Baltimore City, Joseph L. Carter, J.) was given April 8, 1958. The appeal to the Court of Appeals was decided July 9, 1959.

§ 14 of MD. CODE (1957), Art. 81, as amended by MD. LAWS 1958, Ch. 73, effective January 1, 1957, and reads as follows:

Sec. 14. (a) (Classification) Real and personal property shall be separately classified, and personal property separately sub-classified for assessment purposes. The following shall be separately sub-classified for purposes of personal property assessment:

(b) (Method of Assessment) Except as hereinafter provided: (1) all real property directed in this Article to be assessed, shall be assessed at the full cash value thereof on the date of finality. The term full cash value as used in this subsection shall mean current value less an allowance for inflation, if in fact inflation exists.

(2) All personal property directed in this Article to be assessed, shall be assessed at the full cash value thereof on the date of finality. The term full cash value as used in this subsection shall mean current value without any allowance for inflation.

The "date of finality" mentioned in subsection (b), as defined by Art. 81, § 31(c) and as applicable to National's assessment for the year 1957, was January 1, 1957.

[4] 214 Md. 550, 136 A. 2d 567 (1957); noted 18 Md. L. Rev. 66 (1958).

Tax Commission of making a deduction from the "full cash value" of real property for inflation, but denying a comparable deduction from the value of personal property was a discrimination not authorized by the then existing law[5] and that an owner of personal property was entitled to relief by having his assessment lowered. As a result of the *Sears* decision of November 22, 1957,[6] the legislature enacted Chapter 73.

In the present case, the Court stressed that in the *Sears* case[7] it based its decision not upon Article 15 of the Maryland Declaration of Rights,[8] but rather upon the pertinent Maryland statute. The *Sears* decision, in requiring the Tax Commission to lower Sears' assessment to that percentage of value applied to real property, relied on the "equal protection clause" of the Fourteenth Amendment to the Federal Constitution (". . . No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.") The Court of Appeals in the *Sears* case followed the decisions of *Sioux City Bridge v. Dakota County*[9] and *Hillsborough v. Cromwell*,[10] which interpreted the equal protection clause as requiring that discriminatory treatment of a taxpayer be remedied either by increasing the same taxes of other members of the same class or by reducing the tax against the complainant; and, moreover, that the State itself must remove the discrimination and

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[5] MD. CODE (1951), Art. 81, § 13(a):

"Except as hereinafter provided, all property directed in this article to be assessed, shall be assessed at the full cash value thereof on the date of finality . . ."

This may be compared with the excerpt from Art. 81 as amended by Ch. 73, *supra*, n. 3.

[6] *Supra*, n. 4.

[7] *Supra*, n. 4.

[8] Art. 15 does in fact permit separate assessment of real and personal property:

". . . [T]he General Assembly shall . . . provide for separate assessment of land and classification and sub-classification of improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied by the State for the support of the general State Government, and by the counties and by the City of Baltimore for their respective purposes, shall be uniform as to land within the taxing district, and uniform within the class or subclass of improvements on land or personal property which the respective taxing powers may have directed to be subjected to the tax levy; . . ."

The above section of Art. 15 was substituted in 1915 for the following provision:

". . . [B]ut every other person in the State, or person holding property therein, ought to contribute his proportion of public taxes, for the support of government, according to his actual worth in real or personal property; . . ."

[9] 260 U. S. 441 (1923).

[10] 326 U. S. 620 (1946).

may not place on the taxpayer the burden of seeking upward revision of the taxes of other members of the same class.

In the present case, the Court of Appeals ruled that separate classification, for purposes of taxation, of real and personal property is permissible under Article 15 of the Maryland Declaration of Rights and under the equal protection clause of the Fourteenth Amendment to the Federal Constitution so long as such classification is reasonable, and found that the classification in the amended statute was reasonable. The opinion continued that, even if it were assumed that the provision for an inflation factor is invalid, the provision for taxation of personal property at full cash value would remain in full force. Therefore the Court indicated that the appellant, since it had not demonstrated that the statute discriminated unreasonably against personal property, was in no position to challenge the provision allowing an inflation factor in assessment of real property. The majority opinion found the situation in this case to be clearly distinguished from that in the *Sears* case,[11] where the inflation factor was applied to real property without benefit of a statute separately classifying real and personal property.[12]

The Court, referring to the preamble to Chapter 73,[13] pointed quite clearly to the principle which was determinative of the instant case:

> "The preamble of the Act (Par. (5)) speaks of the inherent differences between real and personal property and the peculiarities of certain classes of personal property (first) as requiring and justifying separate classification and sub-classification for assessment purposes and (second) as requiring and justifying the making of an allowance for inflation with respect to real estate but not personal property. Other recitals

[11] *Supra*, n. 4.

[12] The appellant, National, in addition to its argument that the separate classification of real and personal property was discriminatory, had urged that the attempt to make the statute retroactive to January 1, 1957 was invalid without regard to its other provisions. The majority opinion concluded with a thorough consideration of the provisions of Chapter 73 as to retroactivity and found them valid.

[13] The fifth paragraph of the preamble is as follows:
"Whereas, it is the belief of the General Assembly that the natural and inherent differences between real and personal property, and the peculiarities of certain classes of personal property require and justify separate classification and sub-classification for assessment purposes as aforesaid, and require and justify the making of an allowance for inflation in respect to real estate assessments but not in respect to personal property assessments;".

> show, we think, that inflation at least prompted the adoption of the statute. . . . [W]e cannot say that the legislative classification based upon the finding stated in preamble clause (5), *supra* is unsustainable. There is a strong presumption in favor of the validity of a legislative finding."[14]

In dissent, Judge Henderson strongly criticizes the majority interpretation of the separability provision of Chapter 73. His opinion does not argue that Article 15 of the Declaration of Rights requires uniformity of tax rates or assessments between real and personal property; however, he questions the arguments of the majority that the Legislature was, independent of the provision in Chapter 73 for the inflation factor, exercising its power to classify. Judge Henderson argues that, on the contrary, the declared reason for the enactment of Chapter 73 was to continue legally the disparity which the *Sears* case[15] had found to be illegal. Since he finds the only purpose of the classification required by Chapter 73 to be the perpetuation of the disparity in assessments, he maintains that National may properly attack the vagueness of the provision for an inflation factor, that provision being the means of discrimination. As a consequence, the State could reasonably be required, under the precedent of *Hillsborough v. Cromwell*[16] which was followed in the *Sears* case, to remove the discrimination if the provision sustaining it were shown by the appellant to be invalid.

Judge Henderson proceeds to consider the appellant's charge of vagueness and improper delegation of the taxing power, and finds subsection 14(b) (1), as enacted by Chapter 73, to be a hopelessly inadequate guide for assessment. The provision for valuation of real property suggests no previous price level by which inflation is to be measured, nor any other objective standard for defining inflation.[17] Judge Henderson further disputes the argument

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[14] 220 Md. 418, 432, 153 A. 2d 287 (1959). The Court continues with a quotation from Dundalk Liquor Co. v. Tawes, 210 Md. 58, 62, 92 A. 2d 560 (1952):

> "'An invalid act cannot be made valid by a "preface of generalities" in the form of a legislative declaration of purpose. *Schechter v. United States*, 295 U. S. 495, 55 S. Ct. 837 . . . But if a legislative declaration is not demonstrably untrue or meaningless, and if true, would support the validity of the act, the courts must accept the judgment of the legislature and cannot substitute a contrary judgment of their own.'"

[15] 214 Md. 550, 136 A. 2d 567 (1957), noted 18 Md. L. Rev. 66 (1958).

[16] *Supra*, n. 10.

[17] The dissenting opinion, 220 Md. 418, 445, 153 A. 2d 287 (1959), states:

> "[T]he amount to be allowed would depend in each case upon the

of the Commission that the term "full cash value" is equally vague; that term, he says, has come to have a definite, objective meaning, whereas "inflation" has not.[18]

It seems thoroughly established that the equal protection clause of the Fourteenth Amendment permits different classes of property to be taxed at different rates, provided the classification is reasonable.[19] Neither the majority nor the dissent of this case questions this. The Court is at pains to show that the classification provided by Chapter 73 is a reasonable one, citing what it feels are very pertinent differences between real and personal property.[20] The majority does not feel that, in view of these differences and of the provision in Article 15 of the Maryland Constitution permitting separate classification, it would be warranted in declaring Chapter 73 invalid. It would be difficult to deny the right of the Court to thus avoid encroachment upon legislative prerogative, or the propriety of the restraint with which it reviews Chapter 73.

It is not so difficult, however, to question the wisdom of the Legislature in enacting Chapter 73. The criticism

point of reference, which is not designated. Inflation exists both as regards real and personal property. Its amount depends on the arbitrary selection of a previous price level. As I see it, the legislative directive is an open invitation to the taxing authorities to reduce assessments on real estate to whatever percentage of full cash value they please. This was precisely the vice we found in the *Sears* case. The directive supplies no point of reference, and hence leaves the matter to the uncontrolled discretion of the taxing authorities, without any objective standard at all."

[18] How definite the meaning of "full cash value" is could be disputed; see *Tax Assessments of Real Property: A Proposal for Legislative Reform*, 68 Yale L. J. 335, 344 (1958). There is little doubt that "inflation" under Maryland assessment practices is a term of uncertain and unpredictable meaning. While unchallenged testimony in the present case would seem to imply that the usual deduction for inflation by the State Tax Commission is about 40 percent, it was indicated in the *Sears* decision that deductions ranged from 40 to 75 percent.

[19] Bell's Gap R'd Co. v. Pennsylvania, 134 U. S. 232 (1890); Michigan Central Railroad v. Powers, 201 U. S. 245 (1906); Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61 (1911). Corwin, in THE CONSTITUTION OF THE UNITED STATES (Library of Congress Edition, 1952) 1152, states both this principle and its limits:

"Intentional and systematic undervaluation by State officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property (Sunday Lake Iron Co. v. Wakefield Twp., 247 U. S. 350 (1918); Raymond v. Chicago Union Traction Co., 207 U. S. 20, 35, 37 (1907)) . . . Differences in the basis of assessment are not invalid where the person or property affected might properly be placed in a separate class for purposes of taxation. (Charleston Assn. v. Alderson, 324 U. S. 182 (1945); Nashville, C. & St. L. Ry. v. Browning, 310 U. S. 362 (1940)). An owner aggrieved by discrimination is entitled to have his assessment reduced to the common level."

The same principle was reaffirmed very recently in Allied Stores of Ohio v. Bowers, 358 U. S. 522, 526, 527, 528 (1959).

[20] 220 Md. 418, 433, 434, 153 A. 2d 287 (1959).

in the dissenting opinion of the vague mandate to assess with an allowance for inflation, now embodied in subsection 14(b) (1) of Article 81, should be viewed against the background of assessment practices both in Maryland and in other States. The Maryland statute is apparently unique, among State constitutional and statutory provisions governing assessment, in its express reference to inflation.[21] However, the same consideration appears less explicitly in many other jurisdictions where assessors have hesitated to raise assessments of real property from pre-World War II levels.[22] It is generally accepted that assessment of property should be as objective as possible and — at least within particular classes — uniform. In many jurisdictions, if not most, the reality must fall far short of this ideal; nor is the situation necessarily better even if a State constitution, as Maryland's before 1915,[23] or statute (as Article 81 before enactment of Chapter 73) apparently requires complete equality without regard to classes. Facts brought out in the *Sears* case indicated that deductions for inflation in Maryland assessments had ranged from 40 to 75 per cent.[24] Somewhat similar situations have lately cropped up in two nearby States. In New Jersey, shockingly discrepant variations between counties in percentage of assessments used for taxation have been found and have been overthrown by the courts.[25] In Connecticut a recent decision found certain assessments void for lack of uniformity.[26]

The Maryland Legislature and the State Tax Commission have attempted to insure some uniformity and objectivity in assessment throughout this State. Over a period of years commencing in 1935 a system of rotating

[21] *Tax Assessments of Real Property: A Proposal for Legislative Reform*, 68 Yale L. J., 335, 355 and chart opposite 386 (1958).

[22] *Ibid.*, 355:

"Even after the economic tide had turned and inflationary pressures increased the revenue demands of municipalities, 'normal market' concepts remained in vogue. Nor have they been abandoned despite continued pressures for the release of additional taxing, borrowing, and spending power. The judiciary has evidently recognized the inequity of abandoning the normal-market standard before taxpayers could recoup their overpayments in depression years. In any event, courts have not overruled the assessors' adherence to that standard. Thus, taxpayers have benefited from the implicit extension of judicial language about inherent value to cover an area — valuations in inflationary periods — almost completely free of legislative guideposts. Today, assessments are made and reviewed in terms of a normal period, usually one somewhere around 1940."

[23] *Supra, circa* n. 7, 8.

[24] *Supra*, n. 14.

[25] See Baldwin Construction Co. v. Essex County Bd. of Tax., 16 N.J. 329, 108 A. 2d 598 (1954).

[26] E. Ingraham Company v. Town and City of Bristol, 144 Conn. 374, 132 A. 2d 563 (1957), cited in 18 Md. L. Rev. 66, 69, n. 10 (1958).

reassessments was authorized, in order that all taxable property in each county and Baltimore City might be periodically reassessed.[27] It is difficult to believe that Chapter 73 represents a further step forward. If an owner of real property believes that his assessment is too high, relative to other owners, the burden of showing this undoubtedly rests on him. Where real estate has been generally underassessed, proof of discrimination may be difficult to obtain under any circumstances.[28] In view of the enactment of Chapter 73 and of the present decision, it is apparent that such an aggrieved owner of real property will be forced to contend with a mysterious variable of inflation which seems to be for the first time, firmly established in Maryland law. However, some question arises as to whether the inflation factor attacked by National in the present case on the ground of vagueness would be sustained if attacked by an owner of real property.

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[27] Rogan v. Commrs. of Calvert County, 194 Md. 299, 71 A. 2d 47 (1950), discusses these efforts. See also Lewis, THE TAX ARTICLES OF THE MARYLAND DECLARATION OF RIGHTS, 13 Md. L. Rev. 83 (1953).

[28] "When general undervaluation exists, the taxpayer may have to prove not only the proper tax value of his realty but also, through an independent appraisal of similar property, that his realty is assessed above the general level." *Tax Assessments of Real Property: A Proposal for Legislative Reform*, 68 Yale L. J., 335, 348 (1958). Tax Comm. v. Brandt Cabinet Works, 202 Md. 533, 97 A. 2d 290 (1953), is illustrative of the difficulty of challenging an assessment where the inflation factor has been employed.