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Modification of Domiciliary State's Power to Tax Vessels Engaged in Interstate Commerce

Sam W. Baker

RECENT DECISION

MODIFICATION OF DOMICILIARY STATE'S POWER TO TAX VESSELS ENGAGED IN INTERSTATE COMMERCE.

A corporation domiciled in Ohio operated vessels to transport oil on the Ohio and Mississippi Rivers. Cincinnati was registered as home port of the vessels, which operated from terminals in Tennessee, Kentucky, Indiana and Louisiana. Oil was neither picked up nor discharged in Ohio, but the vessels made occasional stops in Cincinnati for fuel or repairs. Maximum mileage traveled on any cargo-carrying trip through waters bordering Ohio was 17½ miles. Acting under §§ 5325 and 5328 of the Ohio General Code, the Tax Commissioner of Ohio levied an ad valorem personal property tax on all of the corporation's barges and boats. On appeal by the oil company, which contended that its vessels were taxable only to the extent of use in Ohio, the Board of Tax Appeals affirmed and the Supreme Court of Ohio sustained the Commissioner's action.[1]

The oil company appealed to the United States Supreme Court on the ground that the tax violated the due process clause of the Fourteenth Amendment. *Held*: The ad valorem taxes levied by various states must be fairly apportioned to the commerce carried on within the taxing state. The rule permitting taxation of personal property used in interstate operations by two or more states on an apportionment basis precludes taxation on full value of all such property by the state of domicile.[2] Ohio, in effect, could tax the vessels only to the extent of their use within the jurisdiction of the state.

In reversing the Ohio court's decision, the United States Supreme Court relied on its decision in *Ott v. Mississippi Barge Line*,[3] which held that vessels moving in interstate operations were taxable by the same standards first applied to railroad cars in interstate commerce. That standard was to apportion the tax fairly to the commerce carried on within the state.[4] In the *Ott* case, however, the domiciliary state had not sought to tax the full

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

[2] Standard Oil Co. v. Peck, Tax Commissioner *et al.*, 72 S. Ct. 309 (1952).

[3] 336 U. S. 169 (1949).

[4] Pullman's Palace Car Co. v. Pennsylvania, 141 U. S. 18 (1890).

value of the vessels; its taxing statute only covered an average portion of property within the state throughout the taxing year.

A state taxing statute that discriminates against interstate commerce is invalid.[5] Interstate commerce cannot be subjected to a double tax to which intrastate commerce is not exposed. This type of tax is forbidden by the commerce clause of the Federal Constitution.

Domicile of the owner has always been the situs of vessels engaged in interstate commerce.[6] That domicile is the situs of the vessels for taxation purposes.[7] This rule was qualified in *Ayer & Lord Tie Co. v. Kentucky*,[8] which held that where a vessel engaged in interstate commerce has acquired an actual situs in a state other than the place of domicile of the owner, it may be taxed in the state of actual situs because it is within the jurisdiction of its taxing authority. Landing of a ship within the ports of a state does not in itself confer jurisdiction on that state to tax the ship.[9]

Prior to the decision in the principal case, courts held that the domiciliary state's power to levy an ad valorem tax on all the vessels of the domiciled corporation was not defeated by a mere possibility that some other state *might* attempt to levy an apportioned tax on the vessels.[10] It was necessary to show that the property taxed was continuously without the state during the whole tax year, or that a defined part of the domiciliary corpus had acquired a taxing situs elsewhere.[11]

A tax levied by the state of Minnesota on full value of airplanes owned by an airline, including those used in interstate commerce, was upheld because there was no showing that a defined part of the domiciliary corpus had acquired a taxing situs elsewhere.[12] In this instance, Mr. Justice Frankfurter pointed out that, if property having no locality other than the state of its owner's domicile is not subject to taxation there, such floating property would be free from taxation everywhere. Neither the

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[5] Adams Mfg. Co. v. Storen, 304 U. S. 307 (1938).
[6] Transportation Co. v. Wheeling, 99 U. S. 273 (1878).
[7] Southern Pacific Co. v. Kentucky, 222 U. S. 63 (1911).
[8] 202 U. S. 409 (1906).
[9] Hays v. Pacific Mail S. S. Co., 17 How. 596 (U. S. 1855).
[10] Southern Pacific Co. v. Kentucky, *supra*, note 7.
[11] New York *ex rel.* New York C. & H. R. R. R. v. Miller, 202 U. S. 584 (1906).
[12] Northwest Airlines v. Minnesota, 322 U. S. 292 (1944).

commerce clause nor the Fourteenth Amendment affords such constitutional immunity.

The principal case modifies the general rule that actual taxing situs of a defined part of the domiciliary corpus in another state must be shown. Now, mere absence of the property from the state of domicile, creating a possibility of taxation elsewhere, is sufficient to defeat the domiciliary state's power to levy an ad valorem tax on full value of the property.

SAM W. BAKER