State Taxation--Reciprocity--Equal Protection

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RECENT DECISIONS

pears established that henceforth each case must be decided on its own facts, with the existence of the right to appointment of counsel depending upon the fluctuating standard of a "fair trial."  

The states object that this standard leaves them no certain guide. The Court in the principal case has attempted to meet this objection by emphasizing that the trial judge may assume the function of counsel for the accused to guide him past errors that may make the trial unfair. The danger of otherwise valid convictions being voided on habeas corpus can be minimized by his active role in the proceeding.

Criticism and consistent dissent have failed to overturn the Betts rule, but they have succeeded in reducing its severity. There has been a noticeable relaxation in the attitude of the Court as to what aggravating circumstances are required to constitute denial of a fair trial. The principal case is an illustration of this trend.

JOHN BUTALA, JR.

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19 In Uveges v. Pennsylvania, 335 U. S. 437, 69 Sup. Ct. 184 (1948), also, the court indicated that its decision might have been different had the trial judge undertaken the function of counsel for the accused.

20 In Wade v. Mayo, 334 U. S. 672, 68 Sup. Ct. 1270 (1948), where the accused was eighteen years old, had been previously convicted, and faced no difficult legal issue, the Court held that he had been denied a fair trial. In Townsend v. Burke, 334 U. S. 736, 68 Sup. Ct. 1252 (1948), the trial judge, in imposing sentence, orally reviewed the numerous prior arrests of the accused, who was not represented by counsel. The possibility that the sentence had been influenced by his assumption that the accused had been convicted in each instance, and that counsel, had he been present, might have called attention to the court's erroneous assumption, was held sufficient to constitute denial of a fair trial.

21 The only aggravating circumstances were evidentiary error and the trial judge's reference in the presence of the jury to possible past convictions of the accused.

STATE TAXATION—RECIROCITY—EQUAL PROTECTION

A Delaware corporation with central offices in West Virginia maintained four of its manufacturing plants in Ohio. In accordance with statutes setting forth a formula for determining the business situs of intangible property, an ad valorem tax was assessed by the State of Ohio on the corporation's accounts receivable which had resulted from sales from a stock of its goods

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1 "... Property of the kinds and classes mentioned in section 5328-2 of the General Code, used in and arising out of business transacted in this state by,
maintained within Ohio. The effect of the formula was to exempt from taxation domestic corporations’ accounts receivable resulting from sales from their stocks of goods maintained outside Ohio, and to tax foreign corporations’ accounts receivable resulting from sales from their stocks of goods maintained within Ohio. The exempted domestic intangibles were impliedly offered to the taxing power of other states which might choose to adopt the same business situs formula. The Supreme Court of Ohio sustained the assessment.\(^2\) The United States Supreme Court, reversing the decision, held the taxing scheme discriminatory and invalid under the equal protection clause of the Fourteenth Amendment because accounts of foreign corporations were taxed while similar accounts of domestic corporations were not.\(^3\)

The requirement of equal protection in relation to taxation is simply that the states deal with parties similarly circumstanced in a reasonably uniform manner.\(^4\) If the general operation of the tax legislation is to adjust the burden of governmental expense

for or on behalf of a non-resident person . . . shall be subject to taxation; and all such property of persons residing in this state used in and arising out of business transacted outside of this state, by, for or on behalf of such persons . . . shall not be subject to taxation." \(\text{Ohio Gen. Code} \ § 5328-1.\)

"Property of the kinds and classes herein mentioned, when used in business, shall be considered to arise out of business transacted in a state other than that in which the owner thereof resides in the cases and circumstances following: In the case of accounts receivable, when resulting from the sale of property . . . from a stock of goods maintained therein . . . . The provisions of this section shall be reciprocally applied, to the end that all property of the kinds and classes mentioned in this section having a business situs in this state shall be taxed herein and no property of such kinds and classes belonging to a person residing in this state and having a business situs outside of this state shall be taxed . . . ." \(\text{Ohio Gen. Code} \ § 5328-2.\)

\(^2\) National Distillers Products Corp. v. Glander, 150 Ohio St. 229, 80 N.E.2d 863 (1948). That the Ohio business situs scheme violated due process was suggested in 17 U. of Cin. L. Rev. 61 (1948). For one writer’s interpretation of the plan shortly after its enactment, see Note, 6 U. of Cin. L. Rev. 61 (1932).

\(^3\) Wheeling Steel Corp. v. Glander, 337 U. S. 562, 69 Sup. Ct. 1291 (1949). The Court implied its conviction that there was also a violation of due process but found it “inappropriate to decide the Due Process question.” Attempts by the states to tax intangibles of non-residents can be attacked, depending upon the circumstances, on three constitutional grounds: due process, commerce clause or equal protection. See: Chertoff, \textit{Some Federal Constitutional Limitations upon State Business Taxes on Multi-state Enterprises}, 6 U. of Pitt. L. Rev. 165 (1940); Notes, \textit{Congressional Consent to Discriminatory State Legislation}, 45 Col. L. Rev. 927 (1945), \textit{The Due Process of State Taxation}, 29 Geo. L. J. 271 (1940).

\(^4\) Stewart Dry Goods Co. v. Lewis, 294 U. S. 550, 55 Sup. Ct. 525 (1935). That the states, in the exercise of their taxing power, are subject to the requirements of the equal protection clause of the Fourteenth Amendment, see Ohio Oil Co. v. Conway, 281 U. S. 146, 159, 50 Sup. Ct. 310, 314 (1930).
with a fair and reasonable degree of equality, the constitutional requirement is satisfied. The guarantee of equal protection extends to foreign corporations only if they have been duly licensed to do business in the taxing state. It is well settled that neither the equal protection clause nor any other constitutional provision prohibits taxation of the same property by more than one state. Any state which has extended benefits or protection to the taxpayer, or which has acquired sovereign power over his property by reason of its permanent situs within the state’s boundaries may make its exaction of taxes. Permissible multiple taxation under the accepted concepts of state taxing power may in its cumulative effect impose a financial burden of significant proportions, particularly upon corporations involved in multi-state operations.

The burdens of multiple taxation may be alleviated by the enactment of reciprocal legislation designed to establish self-imposed limitations upon the taxing powers of the respective enacting states. This type of voluntary cooperative action among

9 Greenough v. Tax Assessors, 331 U. S. 486, 67 Sup. Ct. 1400 (1947); see also cases cited note 8 supra.
11 Faught, Reciprocity in State Taxation as the Next Step in Empirical Legislation, 92 U. of Pa. L. Rev. 258 (1944); Brady, Statutory Solution of Multiple Death Taxation, 13 A.B.A.J. 147 (1927).
12 A more extensive use of the compact clause, U. S. Const. Art. 1, § 10, was suggested in Frankfurter and Landis, A Study in Interstate Adjustments, 34 Yale L. J. 685 (1925), but inherent delays in ratification procedure, lack of flexibility, difficulties of enforcement and other technical limitations have restricted the utility of this clause in the tax field. Sen. Doc. No. 69, 78th Cong., 1st Sess. 125 et seq. (1943).
the states requires each enacting state to relinquish a portion of its taxing power, such relinquishment being conditioned upon similar action by other states. Reciprocal legislation "depends for its full effect upon an event beyond the control of the enacting legislature." However, its constitutional validity must be considered in the light of the situation prevailing as of the date of the legislation without reference to possible future actions by the legislatures of other states.

In their efforts to derive as much revenue as possible from the taxation of intangible property, the states may employ the reciprocity device in one of two basic patterns. The statute may provide that the enacting state will grant an immunity or credit to residents of foreign states which offer similar immunity or credit to the enacting state's residents. Examples of this type of statute may be found in the fields of inheritance taxation and income taxation. The statute may, on the other hand, follow the lines of the West Virginia statute approved in *Wheeling Steel Corp. v. Fox.* This statute taxed all personal property located within the state; and all personal property located outside the state if owned by West Virginia residents, except where such property was already being taxed by other jurisdictions. Discrimination has been overcome under the first-mentioned basic pattern by offering a favorable immunity to non-residents only to the extent that such favoritism is reciprocated, and under the second basic pattern by offering an exemption to residents only to the extent that their property is actually taxed by other states.

The Ohio statute considered in the principal case does not conform to either of the two basic patterns. Instead of offering an exemption to residents of other states which see fit to enact reciprocal legislation exempting Ohio residents, it taxes the foreign residents and exempts Ohio's, regardless of whether their property has been taxed in other jurisdictions.

In reply to the appellant's allegation of unconstitutional dis-

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18 West Virginia Code c. 11, art. 5, §1.