Buffalo Law Review

Volume 9 | Number 1 Article 36

10-1-1959

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that particular area. It is not bound to extend the regulation to all the cases which it might possibly reach. As to the distinction made between private and double rooms, the balancing of the interest between the public health and the cost to petitioner might practically weigh in favor of petitioner in respect to the single rooms, and in favor of the public interest in respect to the double rooms. The fact that the removal of one bed from a double room would leave the remaining bed a floor area of 125 square feet, when viewed abstractly, would appear to be unreasonable. Although the regulations may bear heavily upon the petitioner here, petitioner must show that the regulations do an injustice to the class generally.[24] This has not been shown. It is difficult for a court of law to declare such regulations to be unreasonable, when the legislature, through its administrative agencies, has a greater knowledge of the factors that relate to the reasonableness of such regulations. Therefore, unless a clear discrimination appears, the Court cannot hold, as a matter of law, that the regulations are unreasonable.[25]

GROSS RECEIPTS TAX: APPLICATION TO FOREIGN CORPORATION

Cities in New York State having a population of one million or more are enabled to impose a gross receipts tax.[26] New York City has such a tax.[27] The requisite incidence of local activity or presence within the city, necessary to enable the city to impose this tax on the gross receipts of a foreign corporation, has been a problem in this area in recent years. In the Court of Appeals decision, *Berkshire Fine Spinning Associates, Inc. v. City of New York*,[28] an action for declaratory judgment was brought by the plaintiff, a Massachusetts corporation, which contended that the above mentioned tax law as applied to it was unconstitutional because its New York City activities constituted interstate commerce exclusively.[29] As the Court stated: "The applicable rule of law is old and simple to state but less simple to apply."[30] From the facts of each case the court must determine whether a local activity takes place and whether it is a separable business, distinct from the flow of interstate commerce or an integral part of that flow. The language of the above formula admits the existence of local activity which will not constitute an incident of taxation. The question presented is, how far can a corporation extend its activities without securing, in the eyes of the court, an advantage over locally taxed concerns?

Business wise, it is advantageous to keep close to the market. By maintain-

24. Bain Peanut Co. of Texas v. Pinson, 282 U.S. 499 (1931).
25. *Supra* note 18.
26. N.Y. GEN. CITY LAW § 24-a.
27. NEW YORK CITY ADMINISTRATIVE CODE § B46-2.0.
28. 5 N.Y.2d 347, 184 N.Y.S.2d 623 (1959).
29. The General Business and Financial Tax Laws prescribe an exclusive method of judicial review (NEW YORK CITY ADMINISTRATIVE CODE § B46-9.0), but when the jurisdiction of the taxing authority is challenged on constitutional grounds, that the statute is unconstitutional or by its own terms does not apply an action for declaratory judgment may be maintained. (M & M Transportation Co. v. City of New York, — Misc. —, 84 N.Y.S.2d 128 (1948).
30. *Supra* note 28 at 354, 184 N.Y.S.2d 623, 628 (1959).

ing an office in branch markets, a corporation by its presence creates confidence, can keep in touch with local demands and act as a home port away from home for salesmen. From an analysis of four comparatively recent cases pertinent in this area, it appears that many of the benefits of local presence may be had without a counter-balancing burden of taxation. In *Norton Co. v. Department of Revenue*,[31] attention was placed on the existence of offices, sales and related services in the out of state market. In that case, the court distinguished different sales and classified taxability according to individual transactions. Orders for the main office placed through the branch office as well as over the counter sales were taxable, but orders sent directly by customers to the main office and sent directly back were not taxable. In *United Piece Dye Works v. Joseph*,[32] a corporation maintained a four or five story office building in New York City where it serviced accounts, sales, promotion, advertising and claim handling. Although 95% of the billings were in New York City, no contracts were entered into there. The Court held, that the services rendered in New York were almost entirely promotional, or otherwise directly incidental to the Dye Works' interstate operations. In *Field Enterprises Inc. v. State of Washington*,[33] no contracts were consummated at the branch office nor was any merchandise kept on hand there. The branch office, however, controlled operations in several states and the court found taxability.

The Court of Appeals, in the *Berkshire* case, affirmed taxability on the determination that the local business operations, though related to interstate movement of goods, extended substantially beyond the sale and promotion of the products and included local incidents which were sufficient to bring the transactions within the New York City taxing powers. Among other local incidents, it was found that in some cases the actual contract for the goods was consummated in New York without further reference to the main office, and that all orders taken anywhere in the United States were processed in a New York City office.

It is not inconceivable in this world of credit that the promotional and solicitous aspects of trade and related services, may and often do require a local situs. This has been acknowledged by the decision in the *United Piece Dye Works* case. From an analysis of the cases set out above, it appears that taxability was found where a corporation maintained offices, when either contracts were completed in the branch office, or when the branch's activities extended over several markets, or both. It cannot be said, where a corporation uses its branch office to control its operations in several states or local markets, that it does no more than solicit. It has not chosen to stay at home, but rather, voluntarily assumes to utilize this *locus* as a base of operations and not merely to solicit a part of its business in the flow of interstate

31. 340 U.S. 534 (1951).
32. 282 App. Div. 60, 121 N.Y.S.2d 683 (1st Dep't 1953), *aff'd* 307 N.Y. 780, 120 N.E.2d 617 (1954).
33. 325 U.S. 806 (1956).

commerce. Therefore, it follows that taxability can be avoided, saving those *Dye Works,* activities deemed promotional, by refraining from those two types of activities.

STATE TAXATION OF INTERSTATE CARRIERS

In *Public Service Coordinated Transport v. State Tax Commission,*[34] the Court of Appeals held that Section 186-a of the Tax Law as amended by Chapter 601 of the Laws of 1951 was a constitutional imposition on carriers engaged in interstate commerce. The taxing statute as it existed prior to the above amendment was a tax on utilities, "for the privilege of exercising its corporate franchise, or holding property, or of doing business in the City of New York."[35] Later it was amended so as to become a state-wide imposition.[36] Up to this time, it was a tax exclusively on intrastate service companies, and carriers engaged in interstate service were not included among those taxed.[37] By Chapter 601 of the Laws of 1951 it was amended, so as to enlarge the definition of "utility" to include "every person engaged in the business of operating one or more omnibuses having a seating capacity of more than seven passengers," and the definition of "gross operating income" was amended so as to include "receipts from all transportation, whether originating, terminating or traversing this state . . . allocated on the basis of mileage within and without this state."[38]

The plaintiff argued, that the history of the act (its previous characterization) demonstrated it was a tax on interstate commerce for the privilege of doing business, an unconstitutional channel for taxation,[39] and that the tax had no relation to the use of the highways, hence violated the commerce clause.[40] There is no question that a non-discriminatory gross receipts tax on interstate commerce enterprises may be sustained if fairly apportioned to the business done in the taxing state.[41] Mileage in transportation is an approved method.[42]

The Court of Appeals construing the language,[43] and using the legislative history[44] determined the tax was a valid tax for the purpose of requiring contribution for the maintenance of the state highways, and that at the time of the

34. 6 N.Y.2d 178, 189 N.Y.S.2d 137 (1959).
35. New York Steam Corp. v. City of New York, 268 N.Y. 137, 146, 197 N.E. 172, 175 (1935).
36. N.Y. TAX LAW § 186(a); N.Y. GEN. CITY LAW § 20(b); N.Y. SESS. LAW 1937 c. 321.
37. *Supra* note 34 at 181.
38. N.Y. SESS. LAW 1951 c. 601.
39. Spector Motor Service v. O'Connor, 340 U.S. 602, 608 (1951). "The question whether a state may validly make interstate commerce pay its way depends first of all upon the constitutional channel through which it attempts to do so."
40. U.S. CONST. art. 1 § 8.
41. State of Maine v. Grand Trunk R. Co., 142 U.S. 217, 228 (1891).
42. Central Greyhound Lines of New York v. Mealy, 334 U.S. 653 (1948); Cantor R. Co. v. Rogan, 340 U.S. 511, 516 (1951); Mid-States Frt. Lines v. Bates, 345 U.S. 908 (1953).
43. *Supra* note 34 at 184.
44. N.Y. LEGIS. ANNUAL 1951, pp. 291, 196-297.