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Taxation—Taxation of Real Property Leased by the United States to Individuals

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for regulatory purposes. It assumed that because the firm could not carry on business in other jurisdictions directly, it necessarily could not do so through validly licensed agents. Whether this conclusion is required by the foreign licensing laws in question was not shown.

Since the majority relied heavily upon the proposition that the burden of proof is upon the taxpayer to overcome assessments and that determinations of the Tax Commission are to be set aside only if clearly erroneous, the present case does not seem to constitute overwhelming authority against future taxpayers' contentions of this nature. If the taxpayer can clearly establish that the licensing requirements of a foreign jurisdiction, although prohibiting a business from operating directly therein, do not preclude a valid agency relationship in which only the agent is licensed, this case should not foreclose the allocation of income.

Taxation of Real Property Leased by the United States to Individuals

In *Fort Hamilton Manor v. Boyland*[3] the taxpayers leased land, located in New York State, from the federal government and erected housing projects thereon. Under the terms of the lease the improvements were to remain the property of the lessee, but if not removed at the end of the lease were to become the property of the lessor.

The Tax Commission of the City of New York attempted to tax the leasehold interest of appellants. The Supreme Court sustained the determination of the Tax Commission, the Appellate Division affirmed, and the Court of Appeals unanimously reversed.

Congress has declared that when real property owned by the federal government is leased to private interests the lessee's interest in the property is subject to state taxation.[4] While the federal government permits taxation of such a leasehold interest, however, under New York law only real property is taxed and the interest of a tenant in real estate under lease is not deemed to be real property, but rather a chattel real which is personal property.[5] It can be taxed as real property only if the lessee has an enforceable option to acquire the real property, on the theory that the lessee is the beneficial owner with the government merely holding the bare legal title.[6] In the instant case appellants had no option to

3. Fort Hamilton Manor v. Boyland, 4 N.Y.2d 192, 173 N.Y.S.2d 560 (1958).
4. Act of Aug. 5, 1947, ch. 493 §6, 61 STAT. 775 (now 10 U.S.C. §2667(e) Supp. V, 1958).
5. People ex rel. Higgins v. McAdam, 84 N.Y. 287 (1881); Matter of Althause's Estate, 63 App. Div. 252, 71 N.Y. Supp. 445 (1st Dep't 1901), *aff'd* 168 N.Y. 670, 61 N.E. 1127 (1901); Fifth Ave. Bldg. Co. v. Kernochan, 221 N.Y. 370, 117 N.E. 579 (1917); First Trust and Deposit Co. v. Syrdelco, Inc., 249 App.Div. 285, 292 N.Y.Supp. 206 (4th Dep't 1936).
6. Grumman Aircraft Eng. Corp. v. Board of Assessors, 2 N.Y.2d 500, 161 N.Y.S.2d 393 (1957).

purchase the land; therefore, their leasehold interest could not be reached by a real property tax. The land itself cannot be taxed since it is owned by the United States and therefore exempt from taxation.[7]

However, when one erects buildings on land leased from either the federal or state government and the lessee reserves the right to remove the buildings, title to the buildings is in the lessee and the real property tax thereon may be assessed against him.[8] Therefore, in the instant case, the real property tax could be assessed only upon the buildings.

Tax Exemption for Charitable Organizations Performing Functions Through Independent Contractors

Pace College in the City of New York contains facilities for serving food to students and staff. These facilities are operated by a chain restaurant corporation. On the basis of this fact the Tax Commission of the City of New York withdrew $50,000 from a previous real property exemption of $1,200,000. The Appellate Division[9] affirmed the final order of the Official Referee who had sustained the position of the Tax Commission in a proceeding instituted by the college to restore its exemption. In the decision in *Pace College v. Boyland,*[10] from which two judges dissented, the Court reversed the position taken below and granted the petition for full exemption, holding that an educational institution does not lose any part of its exemption from real property taxes when an independent contractor operates the school cafeteria.

The majority noted that providing a cafeteria for the students of a college is one of the functions of a tax-exempt educational institution.[11] When the cafeteria is used exclusively for students and staff there is no reason why the tax exemption should be reduced; this is unlike the case of an exempt organization that uses its facilities to make a profit.[12] The Court analogized the situation herein presented to that of a hospital which fulfills one of its functions by providing doctors to care for patients. The doctor is like the chain restaurant providing a

7. N. Y. TAX LAW §4(1).
8. N. Y. TAX LAW §4(17); People ex rel. Hudson River Day Line v. Franck, 257 N.Y. 69, 177 N.E. 312 (1931).
9. Pace College v. Boyland, 4 A.D.2d 855, 167 N.Y.S.2d 429 (1st Dep't 1957).
10. 4 N.Y.2d 528, 176 N.Y.S.2d 356 (1958).
11. People ex rel. Trustees v. Mezger, 98 App.Div. 237, 90 N.Y.Supp. 488 (2d Dep't 1904), *aff'd mem.*, 181 N.Y. 511, 73 N.E. 1123 (1905); People ex rel. Seminary of Our Lady of Angels, 42 Hun 27 (5th Dep't 1886), *aff'd mem.*, 106 N.Y. 669, 13 N.E. 936 (1887); In re Syracuse University, 214 App. Div. 375, 212 N.Y. Supp. 253 (4th Dep't 1925).
12. People ex rel. Young Men's Association v. Sayles, 32 App. Div. 197, 53 N.Y.Supp. 67 (3d Dep't 1898), *aff'd mem.*, 157 N.Y. 677, 51 N.E. 1093 (1898).