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Taxation—Leasehold Interest: Personal Property, Not Subject to Taxation

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Per Curiam

Eminent Domain—The Court of Appeals in, *In re Port of New York Authority*,[33] reinstated the decree of Special Term in regard to the award given for two parcels of land condemned by the Port Authority, stating that they were not excessive.

TAXATION

Leasehold Interest: Personal Property, Not Subject To Taxation

All real property situate in the State of New York, and not specifically exempted, is taxable by the State.[1] The Tax Law, among other exemptions, provides that "Property of the United States except property subject to taxation under the constitution and laws of the United States" is tax-exempt.[2] However, the Tax Law seeks to reach real property, which would be otherwise exempt under the above provision, where "under a contract of sale or other agreement," between a private interest which had the "use, occupation or possession" of the realty and the United States (or State of New York) which retained the legal title thereto, "whereby upon certain payment or payments the legal title is to be or may be acquired" by the private interests, by taxing such interest in the real property, as real property.[3]

In *Gruman Aircraft Corporation v. Board of Assessors*,[4] a tax imposed under the latter provision was contested by the taxpayer. Petitioner had leased 4400 acres from the United States Government under 34 U. S. C. A. §522.[5] The agreement provided for up to three five-year leases, and that the petitioner should have an option to purchase the property if at any time before termination of the lease the Secretary of the Navy determined that it was "excess to the further needs and responsibilities of the Department," giving due notice thereof to the

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33. 2 N.Y.2d 296, 159 N.Y.S.2d 825 (1957).

1. N.Y. TAX LAW §3.
2. N.Y. TAX LAW §4(1).
3. N.Y. TAX LAW §4(17), prior to amendment, N.Y. Sess. Law 1957, c. 933, §1.
4. 2 N.Y.2d 500, 161 N.Y.S2d 393 (1957).
5. Repealed by Pub. L. No. 1028, 84th CONG., 2d Sess., c. 1041, §53, 70A STAT. 641 (August 10, 1956). Such leases are now covered by 10 U. S. C. §2667.

petitioner, and provided that the Department received all necessary authorizations to permit the sale.[6]

In a four to three decision, the Court of Appeals held that the Tax Law did not affect the interest in the present case. Section 3 thereof specifically excludes personal property from taxation and the petitioner, a mere lessee, was in effect being taxed on personalty.[7] Although the legislature may classify property as it desires for purposes of taxation, it must have a reasonable basis and not be arbitrary.[8] The contested provision was interpreted to tax as real property, interests held by agreement which amount to an equitable title in the land, the bare legal title remaining in the United States for purposes of debt security or otherwise. Here, however, the lessor had no enforcible rights to the property beyond his lease hold interest, in the absence of a prior determination completely within the discretion of the United States.[9]

In a vigorous dissent, Judge Fuld, speaking for the minority, argued that the language of the act was all-inclusive and that the legislature had plainly classified such an interest as was here held by the petitioner as real property. The presence of an option alone, however contingent, amounted to an interest in real property as contemplated in the act, and in the face of this and the rule that one seeking an *exemption* under the Tax Law must show clear statutory authority therefor, reasoned the minority, it was clear that the tax was correctly imposed by the Board of Assessors.[10]

The majority decision had applied the rule of construction that where a tax is levied, any doubts in the statute are to be resolved in favor of the taxpayer.[11] Although a technical exemption is involved, this appears to be the correct rule of application since the "exemption" of United States property is not an act of grace of the legislature, but merely declaratory of federal law.[12]

6. Grumman Aircraft Corp. v. Board of Assessors, 2 N.Y.2d 500, 503-506, 161 N.Y.S.2d at 394-397 (1957). Proceedings, as here, to review tax assessments are brought under Article 13 of the Tax Law. Note that the constitutionality of the tax was not at issue, Congress having waived immunity in circumstances of this nature. 61 STAT. 775, 34 U.S.C. §522e: "The lessee's interest . . . shall be made subject to State or local taxation . . . ." [Repealed later by Pub. L. No. 1028, 84th CONG. 2d Sess., c. 1041, §53, 70A STAT. 641 (August 10, 1956). Substantially reenacted as 10 U.S.C. §2667e.].

7. Matter of Althauses'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); First Trust and Deposit Co. v. Syrdelco, Inc., 249 App. Div. 285, 292 N.Y. Supp. 206 (4th Dep't 1936); RESTATEMENT OF PROPERTY, §8 (1936).

8. People ex rel. Farrington v. Mensching, 187 N.Y. 8, 79 N.E. 884 (1907).

9. Gruman Aircraft Corp. v. Board of Assessors, 2 N.Y.2d 500, 507-511, 161 N.Y.S.2d at 397-401 (1957).

10. *Id.* at 511-514, 161 N.Y.S.2d at 401-403.

11. Good Humor Corp. v. McGoldrick, 289 N.Y. 452, 46 N.E.2d 881 (1943).

12. Simonelli v. City of New York, 276 App. Div. 405, 95 N.Y.S.2d 316 (1st Dep't 1950), *mot. den.* 276 App. Div. 1011, 95 N.Y.S.2d 907 (1st Dep't 1950), *aff'd*, 301 N.Y. 752, 95 N.E.2d 626 (1950).

Subsequent to the decision of this case, the legislature amended the section herein discussed by extending the tax to any agreement "whereby a right to acquire the premises through an option, a first privilege or a first refusal is granted" in addition to the provisions previously in the statute.[13] Although this appears to clearly indicate the intent of the legislature to reach interests such as that of the petitioner in this case, it is not certain whether the dictum regarding reasonableness of classification will allow a different holding in a future decision under the amended statute.

State Income Tax—Exemption For Nondomiciliaries

In the case of *First Trust & Deposit Company v. Goodrich*[14] appellant, as guardian for two infants, contended that their income was within an exemption to the New York state tax law which excludes from taxation the income of any person who, though domiciled in the state, maintains no permanent place of abode within the state, but does maintain a permanent place of abode without the state.[15] The tax commission's sole contention was that the infants by a legal fiction, that infants do not have the power to change their own domicile, could not maintain an abode without the state and therefore failed to qualify under the above exemption.

Under the facts, upon the parents' death the infants' nearest living relatives were a paternal and maternal grandmother. The paternal grandmother petitioned the court to appoint the plaintiff, a first cousin of the infants, guardian of the infant. No one including the maternal grandmother objected and the court accordingly appointed the plaintiff, guardian. The plaintiff was at that time and has remained ever since a resident of California.

The Court of Appeals held that the Surrogate, under the circumstances, must have intended to change the infants' domicile and that in addition this was done on the recommendation of the infants' natural guardian (paternal grandmother).

There is no question but that a natural or a testamentary guardian may change the domicile of his ward.[16] Regarding a court appointed guardian, the better reasoned rule is that when such a guardian, in good faith, and for the benefit of the ward, changes his own domicile from one state to another he should also be deemed to have changed the domicile of his ward.[17] In the instant

13. N.Y. TAX LAW §4(17), as amended, N.Y. Sess. Laws 1956, c. 933, §1.
14. First Trust & Deposit Company v. Goodrich, 3 N.Y.2d 410, 165 N.Y.S.2d 510 (1957).
15. N.Y. TAX LAW §350(7).
16. Lamar v. Micou, 112 U.S. 452 (1884).
17. Matter of Kiernan, 38 Misc. 394, 77 N.Y. Supp. 924 (Surr. Ct. 1902); Matter of Robitaille, 78 Misc. 108, 138 N. Y. Supp. 391 (Surr. Ct. 1912).