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Taxation—State Income Tax—Exemption for Nondomiciliaries

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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).

case the change did not come about in this manner, but occurred because the Surrogate sent the infants to a new domicile, thereby precluding the possibility of manipulation by the guardian to suit his own, possibly fraudulent purposes. This can only be construed as having been done in good faith and for the sole benefit of the infants, which is the chief consideration in determining an infant's domicile.

City Sales Tax On Alcoholic Beverages

Hoffman v. City of Syracuse,[18] presented a problem of interpretation, involving an ambiguous regulation and conflicting directives issued by the city's commissioner of finance. Pursuant to a state enabling act,[19] the City of Syracuse imposed a two per cent tax on alcoholic beverages sold at retail for off-premises consumption. Simultaneously, with the adoption of an ambiguous regulation the city's commissioner of finance issued a directive effective as of January 1, 1952, which "authorized and directed" the liquor dealers of Syracuse to compute the sales tax on alcoholic beverages on the basis of the full retail prices, but, less the federal and state excise taxes included therein. This directive seemingly interpreted the regulation as to the proper method of calculating the taxes. Plaintiffs complied with this directive with the apparent approval of the local taxing authorities until 1955, when the commissioner issued new directives which in essence countermanded the 1952 directive and seemingly contradicted the regulation. The new directive stated that effective as of October 1, 1955, the plaintiffs would be required to include the federal and state excise taxes in the overall retail price when computing the tax.

Plaintiffs did not controvert the courts unanimous finding that the latter directives correctly interpreted the statute, but contended that since the regulation was still in effect, the method of computing the taxes remained as before, notwithstanding the 1955 directive. The court dismissed the plaintiffs' argument by replying that since the 1955 directives were in conformity with the statute, the plaintiffs were no longer justified in relying on either the "ambiguous regulation" or the "explicit but erroneous" 1952 directive. "The tax is imposed, not by the directive or, for that matter, by the regulation, but by the state and local statutes."[20]

This type of dispute points up the confusion that may result when an administrative official in attempting to clarify the meaning of an ambiguous regulation, issues a countermanding directive rather than an amendment to the regulation itself.

18. 2 N.Y.2d 484, 161 N.Y.S.2d 111 (1957).
19. N.Y. Sess. Laws 1947, c. 278.
20. Hoffman v. Syracuse, note 18 *supra* at 492, 161 N.Y.S.2d at 117; See also, Good Humor Corp. v. McGoldrick, 289 N.Y. 452, 46 N.E.2d 881 (1943).