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Taxation—Property Tax

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TAXATION

Property Tax

The New York Tax Law exempts property used exclusively for educational purposes from taxation. This exemption is lost if any officer, member, or employee of the school shall receive or may be lawfully entitled to receive any pecuniary profit from the school in excess of reasonable compensation, or if the organization is a guise for the receipt of profit by the corporation or any of its members.¹ In *Semple School For Girls v. Boyland*,² a private school gave a bond for the entire purchase price of realty to its president, Mrs. Semple. Interest was to be paid only if net earnings of the school for any twelve month period should exceed expenses and if the trustees should determine that the money was not needed for school purposes. Judge Van Voorhis, speaking for the majority, held that the property was not exempt on grounds that the school had not proven the property to be worth its purchase price, and that a profit could inure to an officer of the educational corporation.

Some authorities have propounded the theory that educational institutions receive exemption from taxation as *quid pro quo* for partially assuming the educational function of the state.³ The exemption is not lost because pupils pay for their instruction.⁴ However, exemptions from taxation are in derogation of the sovereign authority of the state, and it is clearly the legislative intent that statutes conferring such exemptions should not be extended beyond their express provisions. Such statutes confer a favor upon the recipients of the exemption, and thus it must be shown that the letter and the spirit of the law are met.⁵

The majority reasoned that the practical effect of this transaction was to place Mrs. Semple in the position of a holder of an equity interest in the enterprise. They contended that her situation was analogous to that of a stockholder having the right to receive dividends if and when declared by a board of directors. Judge Desmond, in a cogent dissent, argued that there was no showing of profit on the transfer of the realty to the school nor any likelihood of profits, as the school operated at a deficit. He also contended that the decision of the majority is contrary to the policy of the state towards liberal aid to education. It would seem that the better view is that the hypothetical profit foreseen by the majority would not stand up under a critical examination of the facts.

1. Tax Law, §4, subd. 6.

2. 308 N. Y. 382, 126 N. E. 2d 294 (1955).

3. See *People ex rel. Thomas S. Clarkson Memorial College v Haggatt*, 191 Misc. 621, 77 N. Y. S. 2d 182 (1948). (Supreme Court, St. Lawrence County).

4. *People ex rel. Doctors Hospital v. Sexton*, 267 App. Div. 736, 48 N. Y. S. 2d 201. (1st Dep't. 1944); *aff'd* 295 N. Y. 553, 64 N. E. 2d 273 (1945).

5. *Lawrence-Smith School v. City of New York*, 166 Misc. 856, 2 N. Y. S. 2d 752 (1938); *aff'd* 255 App. Div. 762, 7 N. Y. S. 2d 486 (1st Dep't. 1938); *aff'd* 280 N. Y. 805, 21 N. E. 2d 893 (1939).

BUFFALO LAW REVIEW

In a taxpayer's proceeding to review a tax assessment which the taxpayer contended was erroneous because of overvaluation and inequality, Special Term entered an order in favor of the taxpayer, based upon the findings of an Official Referee. The Court of Appeals, speaking through Judge Fuld, unanimously reversed Special Term and the Appellate Division on the grounds that the evidence was insufficient to sustain findings of inequality, excessiveness or overvaluation.⁶

The reference of the issues to the referee was stipulated by the parties. Once they have thus waived the statutory procedure, they cannot later, on appeal, claim that the reference was unauthorized.⁷

In a proceeding to review assessment, a comparison of the assessment of the subject property with the assessments of other properties, unaccompanied by evidence of their full value, cannot furnish the basis for a finding of inequality. The proper procedure is to compare the rate of assessment of the subject property with the rates of a fair sampling of property in the tax district.⁸ In order to obtain relief, a taxpayer must prove his property to be over-assessed, rather than the under-assessment of neighboring property. He must show that the inequality of which he complains would subject him to the payment of more than his just proportion of the aggregate tax.⁹

Unincorporated Business Tax

Article 16-A of the Tax Law¹⁰ imposes an Unincorporated Business Tax, which is designed to levy upon various types of non-corporate enterprise competing with corporations in the state.¹¹ In order to be exempt from this tax an individual or partnership must: (1) be engaged in the practice of a profession; (2) derive more than 80% of his gross income from services rendered by himself personally, and (3) not have capital as a material income-producing factor.¹²

In *Voorhees v. Bates*,¹³ the appellant was engaged in conducting the orchestra on "The Telephone Hour" and "Cavalcade of America" radio broadcasts. He listed as income the gross amount paid to him by the sponsors of the programs, and

6. *Wolf v. Assessors of the Town of Hanover*, 308 N. Y. 416 126 N. E. 2d 537 (1955).

7. *Pawley v. Dorland Building Co.*, 281 N. Y. 423, 24 N. E. 2d 109 (1939).

8. Tax Law, § 293.

9. *People v. Carter*, 109 N. Y. 576, 17 N. E. 222 (1888).

10. Tax Law, §§ 386-386k.

11. Corporations are required to pay a corporate franchise tax, measured by net income. Tax Law, §§ 180-207a.

12. Tax Law, § 386.

13. 308 N. Y. 184, 124 N. E. 2d 273 (1954).