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103 Md. 293, 63 A. 562, 7 Am.Ann.Cas. 1192

Court of Appeals of Maryland.
WILLIAM S. WILKENS CO.
v.
MAYOR, ETC., OF **CITY** OF **BALTIMORE** et al.
March 27, 1906.

Appeal from Baltimore City Court; Henry Stockbridge, Judge.

Petition by the William S. Wilkens Company against the mayor and city council of Baltimore and others to review and set aside an assessment for taxes. From a judgment sustaining the assessment, petitioner appeals. Affirmed.

Argued before McSHERRY, C. J., and BRISCOE, BOYD, PAGE, SCHMUCKER, JONES, and BURKE, JJ.

West Headnotes

Taxation 371 ⚿2155
371k2155 Most Cited Cases
(Formerly 371k47(6))
Where the principal place of business of a foreign corporation was within the state, and its preferred stock was held largely by residents, the taxation of both the stock and the tangible property constituted the taxing of distinct values belonging to different persons, and was not objectionable as double taxation.

Taxation 371 ⚿2286
371k2286 Most Cited Cases
(Formerly 371k191)
The state has full power to exempt any class of property from taxation as it may deem best according to its views of public policy.

Taxation 371 ⚿2295
371k2295 Most Cited Cases
(Formerly 371k200)
Code Pub.Gen.Laws 1904, art. 81, § 2 , provides that all property of every kind, nature, and description within the state shall be valued and assessed to the respective owners thereof, and section 4 exempts personal property of those corporations having stock "incorporated by the state" when the shares of the corporation are subject to taxation under the laws of the state. Held that, where the principal place of business of a foreign corporation was within the state, the fact that four-fifths of its preferred stock was held by residents and was subject to taxation did not exempt the corporation's tangible property within the state from taxation.

Taxation 371 ⚿2443
371k2443 Most Cited Cases
(Formerly 371k318)
Petitioner's counsel on February 8, 1905, appeared before the appeal tax court with a tax bill for 1905 made out against a firm, and stated that the bill should be made out against petitioner, a corporation, which was the firm's successor. Later one of the assessors made out a regular assessment form and delivered it to one of the officers of the corporation, who filled it out and returned it to the tax court. The values given by petitioner were adopted and the assessment was then made out, without any further objection, until a petition was filed to set the assessment aside. Held, that petitioner was estopped to object that the assessment was not made in time.

German H. H. Emory and T. R. Slingluff, for appellant.
Albert C. Ritchie, for appellees.

PAGE, J.
This is an appeal from the judgment of the Baltimore city court dismissing the appeal of the appellant from the assessment made by the appeal tax court of that city and confirming that assessment. The parties entered into an agreed statement of facts, from which it appears: That the appellant was incorporated by the state of Delaware on the 23d December, 1902, and has its

principal office, outside of that state, in the state of Maryland in the city of Baltimore. It transacts its business throughout the United States, and has offices in the states of New York and Illinois. It has duly complied with the laws of the state of Maryland regulating the admission of foreign corporations to transact business in this state. It has a capital stock of $500,000 divided into 5,000 shares of the par value of $100 each, of which $250,000 is preferred stock and $250,000 is common stock, all of which has been issued, with the exception of 37 shares of the common stock. The preferred stock bears interest at the rate of 5 per cent. per annum, payable in quarterly installments, on the 1st days of January, April, July, and October in each year, and it has been promptly paid. No dividend has ever been paid on any of the common stock. The preferred stock is owned as follows, viz.: $150,000 by Mrs. Anna Wilkens, a citizen of this state and a resident of Baltimore City; $50,000 by Gustav A. Schlens, also a citizen of the state and a resident of Baltimore county; and $50,000 by Herman Schoenijahn, a citizen of New York, and a resident of New York City. That the preferred stock owned by Gustav Schlens was assessed to him by the county commissioners of Baltimore county***563** for the year 1905 at the regular rates, and the tax was duly paid by him. But though the $150,000 of preferred stock has been owned by Anna Wilkens since the incorporation of the company, during all of which time she has been a resident of Baltimore City, no assessment was made on account of said stock, either against her or any other owner thereof. Said stock was assessed to Anna Wilkens for the year 1906. No assessment has ever been made on account of the preferred stock owned by Herman Schoenijahn. Prior to the incorporation of the appellant in 1902, the business of the company was conducted by the parties named as copartners, trading as William Wilkens & Co., and in 1898 an assessment was made by the appeal tax court of Baltimore City against the firm as follows: Stock 310 W. Pratt St. $10,000; stock, etc., Frederick Ave. $52,310; machinery, engines, etc., $7,500; total $69,810. This was the only assessment ever made on account of the personal property of said firm, and it remained without change until it was abated on July 20, 1905. After the incorporation of the appellant the assets of the firm were transferred and assigned to the appellant on the 1st day of January, 1903, but no assessment was made against the corporation until July 18, 1905. That about February 8, 1905, the appellant by its counsel appeared before the appeal tax court with a bill for 1905 taxes made out against the firm of William Wilkens & Co. upon the assessment already set forth, and represented that the said company had been succeeded in 1902 by the corporation, that the company had paid the assessment of 1904, and that the tax bill of 1905 should be against the corporation, provided "said personal property was legally assessable." Thereupon one of the assessors of the appeal tax court, under the instructions of the court, examined the company's plant and stock, and delivered to the company's secretary a "regular" form for the schedule and return of personal property. Schlens filled out said form and returned it to him, making at the time "some question whether a return of additional machinery should be made." The valuation placed by Mr. Schlens upon the company's property, as it appears from the said schedule, was as follows: Horses and vehicles $6,231; machinery, implements of trade or business $9,000; other personal property $61,285; total $76,516.

On notice to show cause why the corporation stock, horses, vehicles, and machinery should not be assessed for 1905 at a total valuation of $93,122, its counsel objected that the proposed assessment was "illegal, erroneous, and unequal, but not that the same was excessive." And on July 18, 1905, the following assessment for 1905 was made and entered against the corporation: Stock $61,285; horses and vehicles $6,231; machinery

$25,584; total $93,100. And on July 20, 1905, the assessment against William Wilkens & Co. for 1905 was abated. On the same day the tax court, on application, abated the assessment of $25,584 on account of its plant and machinery, leaving the total assessment $67,516. Thereupon the appellant filed his petition in the lower court, in which, after setting forth in substance the foregoing facts, he prayed the court to review the assessment, determine it improper, illegal, erroneous, and unequal, and set it aside. The court, by the appellees' third prayer, instructed itself, sitting as a jury, that the personal property consisting of stock in trade, horses, and vehicles situated in Baltimore City and belonging to a corporation incorporated under the laws of another state and transacting business in Maryland as a foreign corporation with its principal office (outside of Delaware) in Baltimore City is assessable for taxation in said city, even though all of the corporation's shares of preferred stock are held and owned as follows: By a resident of Baltimore City $150,000; by a resident of Baltimore county $50,000; by a resident of New York City $50,000; total $250,000. And, even though said preferred stock pays dividends and though the shares owned in Baltimore City and in Baltimore county, respectively, they are legally assessable and taxable in Baltimore City and county, respectively. The petition was dismissed and the assessment appealed from was confirmed by the order of the court from which this appeal is taken.

The position of the appellant, as stated in his brief, is that the personal property of a foreign corporation, permanently located in the city of Baltimore, is not assessable and taxable for state and municipal taxes, when the shares of the capital stock of said corporation are assessed and taxed to the respective owners residing within the state. Section 2 of article 81 of the Code of Public General Laws of 1904 provides, in substance, that all property "of every kind, nature and description within the state" shall be valued and assessed for the purposes of state, county, and municipal taxation, to the respective owners thereof, etc., except as provided in sections 4 and 89-91, and 214-224, which two latter sections relate to taxation of savings banks and distilled spirits. Section 4 exempts personal property of those corporations having stock incorporated by this state "when the shares of said corporation are subject to taxation under the laws of this state"; but there is no exemption of the personal property of foreign corporations. The language of the act declaring what shall be subject to taxation is broad enough to include the assessment of every kind of property in the state, and, to authorize its exemption from taxation, there must be shown some legal authority that it cannot be taxed. The doctrine stated in Co. Com'rs v. A. &. E. R. R., 47 Md. 592, is too well settled to be disputed, that the taxing power of a state is never presumed***564** to be relinquished unless the intention to relinquish is declared in clear and unambiguous terms. Many cases to this effect could be cited.

But, conceding that our statutes authorize the assessment of personal property situate in Maryland and belonging to a foreign corporation doing business here, the appellant also contends that to assess it after its shares of stock have been taxed would result in double taxation and is prohibited by the Constitutions of the state of Maryland and the United States. To support this contention the following cases are relied on: The Tax Cases, 12 Gill & J. 117; P. W. & B. R. R. Co. v. Bayless, 2 Gill, 355; Gordon v. Baltimore, 5 Gill, 231; Baltimore v. B. & O. R. R. Co., 6 Gill, 288, 48 Am. Dec. 531; State v. Sterling, 20 Md. 502; State v. Cumberland & Pa. R. R. Co., 40 Md. 22; State v. B. & O. R. R. Co., 48 Md. 49; Co. Com'rs v. F. & M. Bk., 48 Md. 117; State v. Wilson, 52 Md. 638. An examination of these decisions will enable us to determine how far the principles therein laid down are applicable to the facts here involved. In the present case the corporation is a foreign corporation, with a large

amount of its stock held by an owner who is a nonresident of the state. It is not claimed that the share of the nonresident stockholders is liable to taxation. Schoenijahn, a resident of the state of New York, holds one-fifth of the total number of shares, and cannot be assessed. It is a case where the entire stock is taxable, and therefore it would seem that, if the principle contended for here by the appellant be applicable, no personal property located within the state belonging to a foreign corporation would be taxable, if any of its shareholders do not reside within the state. In the cases cited by the appellant as above, there was none in which the question of double taxation was involved. In some of them, as 6 Gill, 288, 48 Am. Dec. 531, 48 Md. 49, and 52 Md. 638, the court was inquiring into the true construction of provisions of the charters of the corporations, for the purposes of determining with precision the extent to which the respective corporations were entitled to exemption. This was clearly expressed in State v. B. & O. R. R., 48 Md. 92, where the court said: "The question is not whether shares of stock abstractly considered embrace and represent the property and franchises of the appellee." "We are dealing," the court further said, "with an act incorporating a railroad company and endeavoring to ascertain how far, and to what extent, the Legislature meant to exempt the corporation from taxation. We are not bound, therefore, by the literal meaning of the words of the statute, but must look to the connection in which they are used, the subject-matter to which they are applied, and the motive and objects which actuated the Legislature in conferring the privilege." It was from such considerations, and not from the literal "meaning of the words employed," that it was held, that when the shares of capital stock were exempted, it was intended to exempt all the property of the corporation. None of these cases involved the question whether the capital stock in the hands of the corporation and the shares of stock in the hands of the shareholders could not both be taxed. In State v. Wilson, 52 Md. 641, the question was how far the company was entitled to certain exemption, and not whether the stock as well as the capital was liable. In the case at bar there is no exemption made by any law of the state, and both can be taxed at the same time. In the case of State v. C. & P. R. R. Co., 40 Md. 22, the opinion of the court declaring the legislation void as in violation of the Bill of Rights rested upon the fact that the court was of the opinion that the tax was a "special tax laid exclusively upon one species of personal property, namely, their coal mined for transportation." The learned judge, it is true, does remark that the "payment of tax on the capital stock exempts from taxation all the property both real and personal of the company." But this remark was uttered only arguendo, and was not involved in any issue of the case. In the case in 12 Gill & J. 117, no opinion was delivered by the court. The propositions therein attributed to the court are deduced solely from the arguments of counsel as stated by the reporter. This seems to be the authority on which many of the early cases are made to rest. See Judge Bowie's dissenting opinion in State v. B. &. O. R. R. Co., 48 Md. 49. In 1894 the case of the United States Electric Power & Light Co. v. State, 79 Md. 63, 28 Atl. 768, arose. It was sought there to subject the company incorporated under the laws of Maryland to the payment of a tax on its gross receipts, after the tax upon its real property had been paid and also the taxes on its shares of stock.

It was claimed by the company that tax sought to be collected was a double tax. It was held that the value which the capital stock possesses after the assessed value of the corporation's property has been deducted is such only as arises out of the ownership and operation of its franchises, and therefore a tax on gross receipts would be an additional tax on the same thing. But the court declined this contention, and held (1) that the tax on the shares of stock is not a tax on the corporation, but upon the owners of the shares, and, being property, they are taxable; (2) that the

tax on the gross receipts is a tax on the corporation not measured by the value of its stock, but by the amount of its gross receipts; and (3) that the two taxes, therefore, are not upon the same individual, natural or artificial, in consequence of his or its ownership of the same property, notwithstanding the franchises of the corporation in some measure gave value to the shares of stock. But the opinion proceeds: "If this were conceded to be a double tax, it would not necessarily on that account be void. The ***565** Declaration of Rights requires equality in taxation, and in so far as a double tax destroys that equality it is invalid, but not otherwise. Cooley on Taxation, 161 et seq. Taxes are levied upon the individual, and not upon property, though the value of the property owned by him is the standard by which the extent of the individual's liability is ascertained and measured. Hence the imposition of a tax twice upon one person for the same purpose because of his ownership of a particular piece of property would be a double tax, which, in consequence of its inequality, would not be sustained. But, when the same property represents distinct values belonging to different persons, be those persons natural or artificial, both persons may be lawfully taxed, and the amounts of their separate contributions would be fixed by values which the same property represented in the hands of each, respectively. And this would not be double taxation in the sense in which it is obnoxious to the organic law."

The subsequent decisions in this state all seem to be in harmony with the case just cited. We will refer to them, without however undertaking to review them at length. Crown Cork & Seal Co. v. State, 87 Md. 687, 40 Atl. 1074, 67 Am. St. Rep. 371, where the case in 79 Md. 63, 28 Atl. 768, was cited at length. Hull v. Southern Devel. Co., 89 Md. 8, 42 Atl. 943; Baltimore v. Allegany Co., 99 Md. 1, 57 Atl. 632. In this last case the opinion of the court, in referring to the system of assessing prescribed by the state in assessing domestic corporations, states that the personal property is represented and included in the shares of stock to be ascertained by the tax commissioner and that is required "to avoid double taxation." That, however, is a requirement of the statute referable to domestic corporations, and has no application to foreign corporations having property permanently located in the state. Anne Arundel v. Sugar Ref. Co., 99 Md. 481, 58 Atl. 211; Clark Distilling Co. v. Cumberland, 95 Md. 468, 52 Atl. 661; Allen v. Bank, 92 Md. 509, 48 Atl. 78, 52 L. R. A. 760, 84 Am. St. Rep. 517. The principles laid down in 79 Md. 63, 28 Atl. 768, supra, are sustained by the great preponderance of authority elsewhere. In the Bank of Commerce v. Tennessee, 161 U. S. 134, 16 Sup. Ct. 456, 40 L. Ed. 645, the Supreme Court of the United States said: "The capital stock upon a corporation and the shares into which such stock may be divided and held by individual shareholders are two distinct pieces of property. The capital stock and the shares of stock in the hands of the shareholders may be both taxed and it is not double taxation." This court cites the cases of Churchill v. Utica, 70 U. S. (3 Wall.) 573, 18 L. Ed. 229, New York v. Tax Com'rs, 71 U. S. 244, 18 L. Ed. 344, and Farrington v. Tennessee, 95 U. S. 687, 24 L. Ed. 558; of which the last has been cited with approval in more than one case in this court. Cook on Corporations, vol. 2, § 567; 27 A. & E. Enc. of Law, tit. "Taxation," p. 949 (also note 1, citing cases from 11 states, in support of the text). It seems, therefore, to be clear upon authority, as well as upon reason, as set forth in the case in 79 Md. and 28 Atl., supra, that the assessment of the personal property permanently located in the state of Maryland belonging to the appellant is not obnoxious to any provisions of the Constitution of the state, although the shares of stock belonging to and held by residents of Maryland have also been assessed and the taxes thereon paid.

The property being subject to assessment under

the laws of the state of Maryland, it is objected that it is in violation of the fourteenth amendment to the Constitution of the United States. But it has been shown that the reason why the personal property of Maryland corporations is not taxed after their stock has been taxed is, if for no other reason, because the statute provides it shall not be. The state has full power to exempt any class of property as it may deem best according to its views of public policy. It cannot now be questioned that a state may classify property in all proper reasonable ways, provided the discriminations made are based upon sound reasons of public policy, and are not arbitrary or hostile. "Such classification may properly be based upon the want of adaptability to the same methods." 27 A. & E. Enc. of Law, p. 27, note 2.

The appellant by its sixth prayer asked the court to rule that the assessment was erroneous because it was not made until July 18, 1905. This ruling could clearly not have been made, because of the fact that it appeared from the agreed statement that the transfer from the account of Wilkens & Co. to that of the appellant was made at the suggestion of the latter. On February 8, 1905, its counsel appeared before the appeal tax court with the tax bill for 1905 made out against the firm and stated it should be against the corporation. Later one of the assessors made out a regular form, delivered it to one of the officers of the corporation, who filled it out and returned it to the tax court. The valuation given by the appellant was adopted and the assessment was then made out. No objection was then or ever made before those proceedings. Under these circumstances the appellant is estopped from raising this objection. In re McLean, 138 N. Y. 158, 33 N. E. 821, 20 L. R. A. 389.

The order of the lower court must be affirmed.

Affirmed, with costs.

Md. 1906.

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