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103 Md. 400, 63 A. 810

Court of Appeals of Maryland.  
**MAYOR, ETC., OF CITY OF BALTIMORE**  
 v.  
**CHESTER RIVER STEAMBOAT CO.**  
 April 20, 1906.

Appeal from Baltimore City Court; Henry Stockbridge, Judge.

Action by the mayor and city council of Baltimore against the Chester River Steamboat Company to recover taxes. From a judgment in favor of defendant, plaintiff appeals. Affirmed.

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

**Taxation 371 ↪2497**  
[371k2497 Most Cited Cases](#)  
 (Formerly 371k369)

Code Pub.Gen.Laws 1904, art. 81, § 150 , requires a corporation by the 15th of March to report to the state tax commissioner as to the number of shares of capital stock, the par value of each, and the place of residence of stockholders as of January the 1st of each year; and section 156 requires the corporation to furnish by March 1st to the county commissioners of each county, or the appeal tax court of Baltimore city, and the city clerk of each city in which any stockholders may reside a list of the stockholders so far as their place of residence may be known and a list of land shares held by nonresidents of the state; the section 159 requires the state tax commissioner to certify to the proper local authorities the assessed taxable value of the shares of stock as ascertained by him, and by the same section all stock owned by residents of the state is for county and municipal purposes to be valued to the owners in the county or city in which they reside, and such

as is owned by nonresidents is to be valued to the owners in the county or city in which the corporation is situated. Held, that section 156 is to be construed in harmony with sections 150 and 159, and as if the report required was to be made as of the 1st day of the preceding January.

**Taxation 371 ↪2497**  
[371k2497 Most Cited Cases](#)  
 (Formerly 371k369)

It is the duty of the corporation, in making the report, to furnish to the tax commissioner with the statement of the number of shares of capital stock, a list of the stockholders, and their places of residence.

**Taxation 371 ↪2855**  
[371k2855 Most Cited Cases](#)  
 (Formerly 371k589)

Under Code Pub.Gen.Laws 1904, art. 81, § 70 , making taxes in arrear on the 1st day of January next succeeding the date of their levy, taxes levied for the year 1905 under article 81 could not be enforced by action until the 1st of January, 1906.

\***811** Albert C. Ritchie, for appellant.  
 Ralph Robinson, for appellee.

JONES, J.  
 The question to be determined in this case is presented in one exception which was taken to the ruling of the court below upon the prayers submitted by the respective parties. The facts upon which these prayers were based are set out in an agreed statement of facts and are in substance as follows: The appellee is a corporation incorporated under the laws of this state having its principal office for the transaction of its business in the city of Baltimore of this state. Its capital stock on the 1st of January, 1905, consisted of 1,000 shares of the par value of \$100 each, all of which, on said date, were held and owned by Henry Scott & Co., who were nonresidents of this state and residents of the state of Delaware. On February 1, 1905, all of these

shares of stock were transferred by Henry Scott & Co. to the Maryland, Delaware & Virginia Railway Company, a corporation incorporated under the laws of Maryland and Delaware, having its principal office for the transaction of its business in Queen Anne's county of this state; and from the time of said transfer all of said shares of stock have been held and owned by, and have stood in the name of, the said last-named corporation on the books of the appellee. On the 28th of February, 1905, the appellee reported to the county commissioners of Queen Anne's county that the whole of the capital stock of the company, consisting of 1,000 shares of the par value of \$100 per share, was owned by the Maryland, Delaware & Virginia Railway Company. On March 14, 1905, the appellee filed with the state tax commissioner of Maryland a report as to its capital stock in which it stated that all of said stock, consisting of 1,000 shares, was, "on the 1st day of January, 1905," owned "by Scott & Co., of Wilmington, Del." On the same day, as the result of correspondence between the appellee company and the appeal tax court of Baltimore city, the appellee made to said appeal tax court a report which set forth that its entire capital stock was owned by the Maryland, Delaware & Virginia Railway Company whose principal office was in Queen Anne's county; that its capital stock consisted of 1,000 shares of the par value of \$100; that this stock was acquired by the railway company aforesaid on the 1st of February, 1905; that the said Maryland, Delaware & Virginia Railway Company was a corporation organized under the laws of the states of Maryland and Delaware; that "on the 1st day of January, 1905, the entire capital stock" of the appellee "was held by Scott & Co. of Wilmington, Del.," and that the ownership of the said stock had been returned to the county commissioners of Queen Anne's county "for the purposes of assessment and taxation for the year 1905." In the correspondence, which resulted in this report being made, it was claimed on behalf of the

appeal tax court of Baltimore city that the stock of the appellee was liable for assessment and taxation for the year 1905 for municipal purposes in said city. The appellee, on the other hand, claimed that its stock was so liable to be taxed in Queen Anne's county; and its said report gave notice to the appellant that any attempt by the authorities of the city of Baltimore to assess the said stock for taxation in the said city would be resisted. Pending the controversy thus raised the payment of the taxes in question for the year 1905 has been suspended and the same have not been paid either to the city of Baltimore or to Queen Anne's county. On the 24th of March, 1905, the state tax commissioner certified to the appeal tax court of Baltimore city the taxable value of the stock in question, as ascertained and determined by him, to be \$72.06 per share, making the assessment of the 1,000 shares equal to \$72,060. On April 27, 1905, the said stock was assessed according to said valuation by the appeal tax court of Baltimore for taxation for municipal purposes against Scott & Co. at the rate of \$2.11 1/2 on the \$100, making the aggregate tax upon said stock \$1,524.07, which was charged against the appellee. On the same day a bill for the taxes so assessed for 1905, for city purposes was rendered to the appellee; and in the agreed statement of facts it appears that it was "agreed that the advertisements prescribed by section 51 of the Baltimore city charter were duly given." This suit was instituted in the Baltimore city court on the 1st day of August, 1905.

The action is in assumpsit and the narr. contains the common counts and a special count setting out the facts upon which the appellant bases the liability of the appellee which are substantially those that have been set out in the recital of facts made, with the allegation in addition to these, that no appeal was taken from the valuation made of the stock in question by the state tax commissioner and that said valuation thereby became final, as also that by ordinance of the

appellant approved on the 14th December, 1904, a tax of \$2.11 1/2 was duly levied on every \$100 worth of assessable property in the city of Baltimore for municipal purposes for the year 1905. The appellee pleaded the general issue pleas, never indebted, and never promised. The agreed statement of facts authorized the court to enter judgment for the plaintiff or for the defendant according to its opinion upon the said facts. The court entered judgment for the defendant (appellee here) and from such judgment the present appeal was taken.

The provisions of our law with reference to the imposition of taxes upon the shares of stock of corporations require that such shares, when held by residents of the state, shall be valued for taxation to the owners thereof, for county or municipal purposes, in the county or city in this state in which such owners reside; and when held by nonresidents\*812 of the state shall be so valued to the owners in the county or city in which the corporation is situated. Article 81, § 159, Code Pub. Gen. Laws 1904; [Skinner Dry Dock Co. v. Baltimore City, 96 Md. 32, 53 Atl. 416](#); [Corry v. Baltimore City, 96 Md. 310, 53 Atl. 942, 103 Am. St. Rep. 364](#). It has been seen that the question to be determined here is, where is the stock involved in this controversy properly assessable for taxation for local purposes for the year 1905? It is claimed on behalf of the appellant that it was so assessable in the city of Baltimore; and that this is so from the fact that on the 1st day of January, 1905, this stock was owned by nonresidents. With this contention we agree. It is now provided by Acts 1902, p. 614, c. 417 (section 150, art. 81, Code Pub. Gen. Laws 1904), that by the 15th day of March in each year the president, cashier, or other chief officer of every incorporated institution, located and doing business in this state shall "report to the state tax commissioner a true and correct statement of the number of shares of capital stock" in such incorporation "and the par value of each share

with such information in regard to the value of the same as may be required by the said commissioner, and may be in possession of such officer as of the 1st day of January of each year, and the commissioner shall annually by the 15th day of May in each year assess the said shares as hereinafter provided as of the 1st day of January next preceding and levy the state taxes prescribed by law upon the same."

Section 156 of the same article of the Code (Acts 1902, p. 680, c. 468), provides that the president or other proper officer of the corporation "shall annually on or before the 1st day of March, furnish to the county commissioners of each county or the appeal tax court of Baltimore city and the city clerk of each city, town or village incorporated in the state of Maryland in which any of its stockholders may reside, a list of the said stockholders, so far as their place of residence may be known to such officer together with the number of shares held by each." It is then further provided that such officer of the corporation "shall annually on or before the 1st day of March make out and deliver to the county commissioners of the county or appeal tax court or city clerk of the municipal corporation where said corporation is situate an account of the number of shares of stock in such corporation held by persons not residents of this state, and the same shall be valued at its actual cash value to, and in the name of such stockholders respectively; but the tax assessed on such stock shall be levied and collected from said corporation, and may be charged to the account of such nonresident stockholders in the said corporation and shall be a lien on the stocks therein held by such stockholders respectively until paid; and in no case shall the stock of any corporation, in the aggregate be valued at less than the full value of the real estate and chattels, real and personal, held by or belonging to such corporation in the several counties and city of Baltimore, whether shares of said stock are quoted on the market or not."

Section 159 of the same article of the Code provides that, at the time of making the report provided for and required in section 156, the officer making the same “shall furnish to the county commissioners of each county” in which the corporation, of which he is such officer, owns “any real property and to the appeal tax court of Baltimore city” if such corporation “shall own and possess any real property in said city, and such real property shall be valued and assessed by said county commissioners and appeal tax court respectively” to the corporation owning the same, “and the said county commissioners and appeal tax court shall give duplicate certificates of such valuation and assessment” to the said officer “who shall transmit one of such duplicate certificates with his return to the state tax commissioner, and state, county and city taxes shall be levied upon and paid by such” corporation “on such assessment in the same manner as the same are levied upon and paid by individual owners of real property in such county or city.” There is then prescribed in this same section how the valuation and assessment of the shares of stock of the corporation are to be made by the state tax commissioner: “He shall deduct the assessed value of such real property belonging to” the corporation “from the aggregate value of all shares of such” corporation “and divide the remainder by the number of shares of the capital stock or shares” of the corporation “and the quotient shall be the taxable value of each of such respective shares for state purposes, and all state taxes thereon shall be paid as provided now or hereafter by law.” The state tax commissioner is then required to “certify to the county commissioners of each county where any of the stockholders or shareholders may reside and to the appeal tax court of Baltimore city, if any of said stockholders or shareholders reside in said city, and to the county commissioners of the county in which” the corporation “is situated or to the appeal tax court of Baltimore city if it is situated in said city, the assessed taxable value of such

respective shares of stocks, or shares so ascertained as aforesaid.” It is then provided that all of such stock as is owned by residents of this state shall, for county and municipal purposes, be valued to the owners thereof in the county or city in which such owners reside; and such as is owned by nonresidents shall be valued to the owners thereof in the county or city in which the corporation is situated, but that all county and municipal taxes thereon shall be collected from the corporation which shall or may charge the taxes paid by it to the account of the stockholders to whom the shares of stock are so valued.

**\*813** Prior to Acts 1902, p. 614, c. 417 (now section 150, art. 81, Code Pub. Gen. Laws 1904), there was no precise and definitely fixed time with reference to which shares of stock of corporations, liable to taxation, were to be valued and assessed by the state tax commissioner for that purpose. Under the law as it stood in Code of Public General Laws 1888, art. 81, § 133 (Acts 1878, p. 298, c. 178), it was provided that the president, cashier, or other chief officer of the corporation, the shares of which were subject to taxation, should, by the 15th of April in each year, report to the state tax commissioner a statement of the number of shares of capital stock of such corporation and the par value of each share with such information in regard to the value of the same as might be required by said commissioner; and that the said commissioner should annually, by the 15th of May, in each year assess the said shares as in subsequent provisions of the article was prescribed, and levy the state taxes upon the same. But no time was specified, as of which the valuation and assessment of the shares were to be made by the tax commissioner save only that this was to be done by the 15th of May, and upon the report to be made to him from the corporation by the 15th of April. The corporations were thus left to select their own time, subject to having their reports to the tax commissioner sent in by the prescribed date, for having the shares of stock



valued and assessed. This was found to expose the law to abuse and to afford facilities for evading the provisions for the imposition of taxes upon stocks. To remedy and prevent this, and to give more system to the administration of the law in respect to the assessment of these taxes, Acts 1902, p. 614, c. 417 (article 81, § 150, Code Pub. Gen. Laws 1904), was enacted, whereby it is provided that the tax commissioner "shall annually by the 15th day of May in each year assess the said shares [of stock] as hereinafter provided as of the 1st day of January next preceding, and levy the state taxes prescribed by law upon the same." It seems plain enough that this provision fixes the time for the assessment and levy of state taxes. County and municipal taxes are within the reason of the law and the reason applies to these with the more force since they are the larger and more burdensome part of taxation under our system. It is not to be supposed, therefore, that these last-mentioned taxes were not intended to be embraced within the operation of a law having the object which has been indicated. The proper effect to be given to the three sections (150, 156, and 159 of article 81) of the Code, reading them together, would seem to be this: First, by the provisions of section 150 the proper officer of the corporation is, for the purpose of having the shares of stock of the corporation valued and assessed for taxation, to make the report required by said section as of the 1st of January preceding; and, though not in terms so prescribed, as the tax commissioner is required, after so valuing the stock, to certify such valuation to the local authorities of the counties, or of Baltimore city, according to the residence of the stockholders, or in case of the stock being held by nonresidents, to the county or city in which the corporation is situated, it is the duty of the officer of the corporation in making the report required of him to furnish to the tax commissioner with the "statement of the number of shares of capital stock," a list of the stockholders and their places of residence. This must of necessity be so because

without the information as to the stockholders and their residence the tax commissioner could not perform the duty required of him by section 159, of certifying to the proper local authorities "the assessed taxable value of such respective shares of stock or shares so ascertained" by him; and the only medium for conveying to him information in respect to the stocks that are to be valued and assessed is that provided in section 150. The reasonable intendment is that the information so to be conveyed to the tax commissioner is to be sufficient to enable him to perform the duty required of him by the related sections. Imputing an intendment of this nature has support in the cases of *Mayor & C. C. of Balt. v. Baltimore City Pas. Ry. Co.*, 57 Md. 31, and *Amer. Coal Co. v. Co. Commissioners of Allegany Co.*, 59 Md. 185, in the construction given by them to Acts 1878, p. 298, c. 178. That act provided that the tax commissioner after valuing the shares of stock of corporations as therein required should certify the valuation made by him to the county commissioners of counties in which the holders of the stock resided and to the appeal tax court of Baltimore city if any of such holders resided in Baltimore city; but did not, in terms, provide for his certifying as to stock held by nonresidents to the authorities of the county or city, as the case might be, in which the corporation was situated. It was held in the cases referred to that, notwithstanding this, "inasmuch as the shares of stock owned by nonresidents of the state are given a fixed situs by law, and are equally liable to taxation as the shares owned by residents of the state," it was "within the reason and purview of the statute that the tax commissioner should not only certify the number and value of shares owned by residents, but should likewise certify to the county or city authorities where the corporations are situated \*\*\* the number and value of the shares owned by nonresidents of the state, for purposes of local taxation." Upon the information to be conveyed to the tax commissioner under the provisions of sections

150 and 159 he is to assess and value for taxation the stocks that are reported to him as therein provided. By section 150 he is to make this valuation as of the 1st of January \*814 preceding, and by section 159 he is to certify to the local authorities the valuation that he makes of the stocks. As the only information he has, or can have, in an authentic way, as to the value and ownership of the stocks, which he is so to value and certify, is as of the 1st of January preceding, his certificate to the local authorities must necessarily have reference to that date. This is illustrated in the case at bar. Here the proper officer of the appellee made the required report to the tax commissioner of the shares of stock of the corporation and of the ownership of the same as of the 1st of January, 1905. The stock was valued by him in the manner prescribed. It then being his duty to certify this valuation to the proper local authorities for taxation of the stock for local purposes he, of necessity, so certified to the appeal tax court of Baltimore city, because the situs of the corporation was in Baltimore city and the only information that was before him as to the ownership of the stock was that, on the 1st of January preceding, the same was owned by nonresidents. This would seem to be the logical result of the operation of the provisions of sections 150 and 159. This being so, in reading section 156, which provides for a report by the proper officer of the corporation, before the 1st day of March in each year, to the county commissioners of each county in which any of its stockholders may reside a list of the said stockholders and their place of residence together with the number of shares held by each, the reasonable intendment to be given to it is, as the appellant here contends, that it is to be read in harmony with sections 150 and 159, and as if there was repeated in section 156 that the report therein required to be made of the stockholders and their residence was to be made as of the 1st of January preceding. This is obviously necessary to give system to the law in reference to the taxation

of shares of stock of corporations and to rescue it from contradiction and confusion in its practical operation.

It follows from what has been said that the shares of stock here in question were properly taxable for the year 1905 in the city of Baltimore and that the prayer of the defendant which affirmed the contrary upon the hypothesis of fact therein set out was improperly granted. While this is so the prayers of the plaintiff (appellant here) were properly rejected and the judgment was properly entered for the defendant upon the facts as they existed at the time of the trial, and as they appear in the record, under the authority given, in the agreed statement of facts, to the court to enter judgment according to its opinion upon these facts subject to the right of appeal. The first of the plaintiff's prayers asserted the right of the plaintiff to recover the taxes sued for upon the facts therein set out; the second the right to recover interest on said taxes from May 1, 1905; and the third the right to recover the penalty of 3 per cent. upon the amount of said taxes under the provisions of section 51 of the Baltimore city charter. These prayers seem to treat the stock here in question as a part of the basis of taxation in the city of Baltimore on the 1st of October, 1904, upon which the ordinance of estimates for that year was made up; and to have been embraced in the levy under said ordinance making the taxes levied thereon subject to the provisions of sections 40 and 51 of the charter of Baltimore city. This is obviously untenable. The taxes upon the stocks here in question were assessed and levied under the provisions of article 81 of the Code to which reference has been made herein. Section 70 of that article provides that "taxes shall be considered in arrear on the 1st day of January next succeeding the date of their levy and shall bear interest from that date." The taxes here sued for therefore were not due and enforceable, according to repeated decisions of this Court, until the 1st day of January 1906. [Wheeler v. Addison, 54 Md. 41;](#)

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Condon v. Maynard, 71 Md. 601, 18 Atl. 957; State v. Safe Dep. & Trust Co., 86 Md. 581, 39 Atl. 523. In Condon v. Maynard, 71 Md. 605, 18 Atl. 958. it is said “the taxes must necessarily be due before payment can be enforced.” A reference to section 40 of the charter of Baltimore city will show that it, in terms, relates only to the annual levy of taxes in the said city upon the basis of taxation which it is provided shall be furnished to the board of estimates as of the 1st of October of each year. This suit having been brought in August, 1905, for taxes levied for that year under the provisions of article 81 of the Code was prematurely brought and there was therefore no error in the action of the court in giving judgment for the defendant (appellee). The judgment must therefore be affirmed, without prejudice.

Judgment affirmed, with costs to the appellee, without prejudice.

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