C
132 Md. 618, 104 A. 175

Court of Appeals of Maryland.
MAYOR AND **CITY COUNCIL** OF **BALTIMORE**
v.
MACHEN et al.
No. 22.

May 3, 1918.

Appeals from Baltimore City Court; Carroll T. Bond, Judge.

Action by the Mayor and City Council of Baltimore, a municipal corporation, against Mary Gresham Machen and Arthur W. Machen, Jr., executors of the last will and testament of Arthur W. Machen, deceased. From an order affirming the action of the State Tax Commission vacating and annulling an assessment made by the appeal tax court of Baltimore city, for state and city taxation, the Mayor and City Council appeal. Affirmed.

West Headnotes

Statutes 361 ⚿218
361k218 Most Cited Cases
Any unvarying construction of a taxing statute for such a lapse of time as 20 years should be disregarded only on the most imperious grounds.

Statutes 361 ⚿221
361k221 Most Cited Cases
It is presumed that Legislatures succeeding passage of a taxing statute not only had knowledge that bank deposits, to which it is now claimed the statute applies, were to be found in many banks, but that they also knew of the construction generally placed upon the statute that such deposits were not regarded as taxable under it.

Taxation 371 ⚿2181
371k2181 Most Cited Cases
(Formerly 371k73)
If a deposit with a trust company is money, it is not taxable under Code Pub.Civ.Laws, art. 81, § 2, unless it be the proceeds of the sale of stock, bonds, or other property disposed of to evade and escape taxation.

Taxation 371 ⚿2181
371k2181 Most Cited Cases
(Formerly 371k73)
A deposit with a trust company, evidenced by a written receipt for the amount, signed by the treasurer, if an indebtedness, as distinguished from money, is not taxable under Code Pub.Civ.Laws, art. 81, § 214, not being a "certificate of indebtedness or an evidence of debt."

Argued before BOYD, C. J., and BRISCOE, THOMAS, PATTISON, URNER, STOCKBRIDGE, and CONSTABLE, JJ.

R. Contee Rose, Asst. City Sol., and S. S. Field, City Sol., both of Baltimore, for appellant.
Arthur W. Machen, Jr., of Baltimore (Machen & Williams, of Baltimore, on the brief), for appellees Mary Gresham Machen and Arthur W. Machen, Jr., executors.

PATTISON, J.
This is an appeal from an order of the Baltimore city court affirming the action of the State Tax Commission of Maryland, vacating and annulling the assessment made by the appeal tax court of Baltimore city for the purpose of state and city taxation for the years 1913, 1914, 1915, and 1916 upon a deposit in the Safe Deposit & Trust Company of Baltimore, made by appellee's testator, Arthur W. Machen, in his lifetime.

By the agreed statement of facts found in the record, Arthur W. Machen, deceased, on or about June 8, 1896, deposited with the Safe Deposit & Trust Company of Baltimore, a corporation

incorporated under the laws of Maryland, the sum of $25,000, and received for such deposit the following receipt:

> "Safe Deposit & Trust Company of Baltimore, 13 South Street, Baltimore, June 8, 1896. Received of Mr. A. W. Machen, twenty-five thousand dollars ($25,000) on deposit returnable on demand. [Signed] Francis M. Darby, Treasurer."

On the back of said receipt was indorsed the following:

> "$13,000 of this has been repaid to me some time ago. [Signed] A. W. Machen. Oct. 6, 1909."

That Arthur W. Machen in his lifetime withdrew $13,000 of said deposit, leaving a balance of $12,000 on deposit at the time of his death, which occurred on December 19, 1915, and for more than four years prior thereto. That interest at varying rates was paid by said trust company to said testator on said deposit, but at no time at a higher rate than 3 per cent. per annum. That the receipt remained in his possession until the time of his death, and has since been in the possession of his executors. That some time after the payment of the $13,000, a portion of the deposit, the testator made in pencil in his own handwriting the entry which appears on the back of the receipt. That the whole amount of the deposit was withdrawn by his executors, the appellees, upon the death of the testator, to wit, in or about July, 1916, and was used by them in paying pecuniary legacies and expenses.

The only question presented by this appeal is whether the above-mentioned deposit is taxable under the laws of this state.

The valuation and assessment was made by the appeal tax court under section 214 of article 81 of the Code of Public Civil Laws of this state (Code of 1912), which is as follows:

> "All bonds, certificates of indebtedness or evidence of debt in whatsoever form made or issued by any public or private corporation incorporated by this state or any other state, territory, district or foreign country, or issued by any state (except the state of Maryland,) territory, district or foreign country not exempt from taxation by the laws of this state, and owned by residents of Maryland, shall be subject to valuation and assessment to the owners thereof in the county or city in which such owners may respectively reside, and they shall be assessed at their actual value in the market, and such upon which no interest shall be actually paid shall not be valued at all, and upon such valuation the regular rate of taxation for state purposes shall be paid, and there shall also be paid on such valuation thirty cents (and no more) on each one hundred dollars for county, city and municipal taxation in such county or city of this state in which the owner may reside."

The city contends that the deposit is taxable under the aforegoing section of the Code, in that the aforesaid receipt is a "certificate of indebtedness or an evidence of debt" within the meaning of the provision of the statute, and as such is taxable; and, as we understand the city's contention, the deposit would be taxable if the acknowledgment of its receipt were evidenced by the usual certificate of deposit, or by bank passbook, or by the mere entry of such deposit upon the ledger of the bank if interest is paid on such deposit. In other words, any evidence in writing of a deposit, in whatever form it might appear, is a "certificate of indebtedness or an evidence of debt" within the meaning of the statute and taxable thereunder, as contended by the appellant.

This construction of the statute is not the one that has been placed thereon by those whose duty it has been, since the passage of the act in 1896 (Laws 1896, c. 120), more than 20 years ago, to value and assess the taxable property included

within its provisions. It was not, so far as we are informed, until 1911, 16 years after the statute was passed, that any doubt was entertained as to the meaning of the statute in respect to the question here raised. To such time the deposits were never regarded as taxable.

In 1911 this identical question was submitted to the circuit court for Carroll county for its decision, and the arguments there made were the same as those made in this court ***177** in the case now before us. That court held, however, that deposits were not taxable, and no appeal was taken therefrom.

The statute has remained the same, and since that time no further attempt has been made to tax bank deposits except in some instances, where it had been disclosed in the settlement of estates in the orphans' court of Baltimore city that the decedent had money on deposit in bank, the city authorities, without resistance, valued and assessed the same for taxation.

In Baltimore v. Johnson, 96 Md. 737, 54 Atl. 646, 61 L. R. A. 568, the attempt was made to value and assess, for taxable purposes, a seat in the Baltimore Stock Exchange. In speaking of the effect of the long acquiescence in the construction of the statute, by the city's taxing authorities, by which a seat in that body was not held taxable, the court, speaking through Chief Judge Boyd, said:

> "That it is not necessarily conclusive of the question, but it is an important circumstance when we remember that the language now relied on is in substance the same that has been in the statutes for so many years. The value of a seat may change from year to year, but if it is property now, within the meaning of our tax laws, it has been during all those years. If it was, not only have the owners of those seats been placed in a position, by the construction put on the law by the tax officers, by which they omitted them from their schedules of personal property, as provided for in section 173 of article 81 (Code Pub. Gen. Laws), although each swore that his schedule contained 'a true, full and complete list of all real and personal property held or belonging to me,' etc., but the tax officers themselves have failed to discharge their duties. Not only the original assessors were required to add any property omitted from the schedules, but the appeal tax court and assessors appointed by them are required to take steps to place unassessed property on the books. *** We certainly can assume that all of the holders of such seats would not intentionally have violated the law in making up their schedules, and we are equally positive that the tax officers throughout all those years would not have willfully failed to discharge their duties. *** During these years the Legislature has frequently had questions of taxation before it, and has passed many laws in relation thereto. *** And although the members of the Legislature and the city and state tax officers may be presumed to know that these seats have not been assessed, the Legislature has not attempted, in terms, to have them taxed, and, as we have seen, the constructions placed on the tax laws during this great length of time seems to have been that they were not taxable. It was said in Hays v. Richardson, 1 Gill & J. 366, in speaking of the construction of a statute: 'This contemporaneous unvarying construction of the act of Assembly for 60 years ought not to be disregarded, but upon the most imperious and conclusive grounds.' See, also, Harrison v. State, 22 Md. 468, 85 Am. Dec. 658; Stuart v. Laird, 1 Cranch, 299, 2 L. Ed. 115; McPherson v. Blacker, 146 U. S. 1, 13 Sup. Ct. 3, 36 L. Ed. 869. When therefore the language of the statute relied on is not now more comprehensive than it has been for half a century, and the thing sought to be taxed has been in existence during all that time, but has never been taxed, there ought to be some valid and substantial reason assigned before the new construction of the statute, now contended for, should be adopted."

What we said in that case is particularly applicable to the case before us.

As we have said, bank deposits, with the exception above mentioned, have never been regarded and treated as taxable under the unvarying construction placed upon the act of 1896 by those who have been intrusted with its enforcement.

[1] It is presumed that the Legislatures, succeeding the passage of the act, not only had knowledge of the fact that deposits such as the one before us were to be found in the many banks of this state, but that they also knew of the construction generally placed upon this statute that such deposits were not regarded by the taxing authorities of the state as taxable thereunder (Baltimore City v. Johnson, supra); nevertheless we find no amendments to the statute passed more than 20 years ago, by which bank deposits are unanimously brought within its provisions. This any one of the Legislatures that have convened since its passage had the power to do, and no doubt would have done had they thought that the construction placed thereon was inconsistent with the intention of the Legislature that passed the act, or had they wished to bring bank deposits unmistakably within the provisions of the statute.

[2] Applying the principles announced in Hays v. Richardson, supra, and quoted in Baltimore City v. Johnson, supra, that any unvarying construction of a statute for such lapse of time "ought not to be disregarded, but upon the most imperious grounds," we do not feel warranted or justified in placing upon the statute a construction differing from that placed thereon by the taxing authorities of the state.

It is further contended by the appellant that, should we hold that deposits are not taxable under section 214 of article 81, then such deposits cannot escape taxation under section 2 of said article, because of the clause therein contained that:

> "All other property of every kind, nature and description within this state, except as provided by section 4, shall be valued and assessed for the purpose of state, county and municipal taxation to the respective owners thereof in the manner prescribed by this article," etc.

[3] [4] The deposit is claimed by appellees to be money and by the appellants to be an indebtedness. If it be money, it is clearly not taxable, unless it be "the proceeds of the sale of stock, bonds or other property disposed of for the purpose of evading and escaping taxation," and that is not shown in this case. Section 2 of article 81. And if it be an indebtedness it does not fall within the clause named, as it is not property within the meaning of that section, to be valued and assessed in the manner therein provided. Discrimination is therein made as to debts liable to taxation thereunder, and it is evident that it was not the intention of ***178** that statute to impose taxes upon every kind of debt. Buchanan v. Commissioners of Talbot County, 47 Md. 293.

For these reasons and those already stated, the order of the court below will be affirmed.

Order affirmed, with costs to the appellee.

Md. 1918.
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