Taxation -- Exemption of Property Bought with Federal War Risk Insurance or Compensation Money

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gation to the state, or, if business as such owes an extra obligation, the tax should be on all business.

In addition to a lack of actual equality in classification the license system is subject to criticism as regards the measure of the tax on enterprises within the same formal classification. In effect, when the same tax applies to firms of diverse ability to pay this is a discrimination against the smaller firms. Some taxes are flat rates without regard to extent of activity; others are graduated according to the population of the town in which the business operates, which manifestly is an inaccurate gauge of ability; other licenses are measured by various external signs which may not be good criteria for the levying of taxes. If the license tax is not imposed for revenue but for regulation, in which the ability principle is not an important consideration, the measure should be selected with regard to the purpose in view.

E. M. PERKINS.

Taxation—Exemption of Property Bought with Federal War Risk Insurance or Compensation Money.

An act of congress provides that the money payable to veterans of the World War shall be exempt from "all taxation." A later section adds that "no sum payable under this chapter shall be subject to national or state taxation." Three state supreme courts have held that these exemptions applied to personal property. 

T. S. Adams, The Taxation of Business, Proc. Nat. Tax Assn. (1917) 185. "A large part of the cost of business is traceable to the necessity of maintaining a suitable environment." "... business ought to be taxed because it costs money to maintain a market and those costs should in some way be distributed over all the beneficiaries of that market."

Of 131 license taxes in the 1931 Revenue Act, 37 are flat rates, 25 are measured according to population, and 69 have various measuring devices such as type and size of equipment used, gross receipts, persons accommodated, persons employed.

At first thought net income would seem to be the most equitable and efficacious measuring device. However, administrative difficulties of a tax measured by net income might prohibit such a device.

Moving pictures, soda fountains, laundries, and automotive service stations are among those measured by population. N. C. Pub. Laws (1931) c. 427, §105, §114, §150, §153. Obviously the individual enterprises within these groups are of diverse profitableness.

Various measures have been sustained. Gatlin v. Tarboro, 78 N. C. 119 (1878) (volume of business); State v. Stevenson, 109 N. C. 730, 14 S. E. 385 (1891) (amount of purchases); Cobb v. Commissioners, 122 N. C. 307, 30 S. E. 338 (1898) (gross receipts); State v. Carter, 129 N. C. 560, 40 S. E. 11 (1901) (population); Clark v. Maxwell, 197 N. C. 604, 150 S. E. 190 (1929) (tonnage of trucks).

courts have construed these sections recently with somewhat varying results. The Kansas court decided that corporate securities bought with federal insurance money were not exempt from state taxation.\(^3\) The Georgia court decided that land bought with such money was exempt.\(^4\) The North Carolina court held that land and an automobile bought in part with compensation money could not escape any part of the assessed taxation.\(^5\)

The Georgia court in reaching its conclusion that, under these statutes, land bought with federal insurance money was exempt from all taxation, applied the specific exemption of a "sum" to property bought with this "sum" as well. The underlying reason for the decision seems to have been one of policy. The court reasons that such exemption from state taxation adds value to the federal aid; that it encourages World War veterans to buy homes for themselves instead of spending foolishly the money paid them by the federal government.

In view of this decision some pertinent questions might be raised as to what extent the Georgia court would carry its exemption policy. Would land for which this exempted land had been exchanged also be exempt? Would personal property bought either with the "sum" or with the proceeds of the sale of this exempted land be exempt? Would profit realized from transactions involving this exempted sum be exempt even as to the income tax?\(^6\) Does this exemption apply with reference to the inheritance tax?\(^7\) If either the legal justification or the policy of this decision is followed to its logical conclusion it seems that these questions would have to be answered in the affirmative. The complications and absurdities to which such holdings would lead are apparent. It would be possible

\(^3\) State, \textit{ex rel} Smith, Att'y. Gen'l. v. Board of County Commissioners of Shawnee County, 132 Kan. 233, 294 Pac. 915 (1931).
\(^4\) Rucker, Tax Collector v. Merck, 159 S. E. 501 (Ga. 1931).
\(^6\) Bednar v. Carroll, 133 Iowa 338, 116 N. W. 315 (1908), holds that interest on pension money exempt from taxation is not itself exempt.
\(^7\) The question of the application of the inheritance tax has been passed upon. In Watkins v. Hall, 107 W. Va. 202, 147 S. E. 876 (1929), it was held that since the heirs took as beneficiaries under the policy, they were exempt by the express provision of these statutes from paying the inheritance tax. See also: Commonwealth v. Rife, 119 Ohio St. 83, 162 N. E. 390 (1928); \textit{In re} Harris' Estate, 179 Minn. 450, 229 N. W. 781 (1930); The Succession of Greier, 155 La. 167, 99 So. 26 (1924). But in \textit{In re} Schaefer's Estate, 224 N. Y. Supp. 305 (1927), it was held that the inheritance tax was a tax on the right to inherit and not on the property itself. Therefore, an exemption of the property by statute would not affect this tax.
for war veterans to build up small fortunes that the state could not tax. It would be a very difficult task to administer the tax laws.

The policy of the decision might be further questioned. Is it the function of the state to protect payments by the federal government to veterans of National Wars? Granting this, it does not seem that the protection should take the form of exempting real estate from taxation.8

The North Carolina9 and Kansas courts10 have reached a much more desirable result, both from the standpoint of policy in tax exemptions and that of practical administration of tax laws. Congress, they say, had no intention by these statutes to exempt property in the states from taxation. Under these decisions no property is taken out of taxation; the complicated problem of taxing property bought in part only with war risk money does not arise; nor does there arise the perplexing question as to how far and to what extent the exemption should apply.

However, the reasoning of the Kansas court, which the North Carolina court apparently adopts, leads one to believe that it would hold the money itself taxable once it had been paid to the veteran.11 The court says the exemption of a “sum payable” means an exemption only while it remains payable; that is, unpaid. After it is paid it is no longer payable, hence the provision for tax exemption does

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8 This would place an increased burden on tax payers by reducing the amount of property to be taxed. Theoretically, in a state that makes no distinction between the taxation of tangible and intangible property, there would be no less property to be taxed, since the money paid by the veteran for the property could be taxed in the hands of the vendor. But actually, the money paid for such real estate could be invested in an intangible form of property and not declared, thus escaping taxation. This would necessitate an increased tax rate, to be borne by those who could not hide their property. Martin v. Guilford County, et al, supra note 5.

9 State, ex rel Smith, Att’y. Gen’l. v. Board of County Commissioners of Shawnee County, supra note 3.

10 The Kansas court draws an analogy between the present statute and one passed in 1873, having reference to pensions. 17 Stat. 576 (1873), 38 U. S. C. A. 54 (1928). The court holds that “payable” in the statute under consideration means the same as the words, “due or to become due” in the statute of 1873. The words of the latter statute have been construed by the Supreme Court of the United States to provide for an exemption only up to the time of the delivery of the money. McIntosh v. Aubrey, 185 U. S. 122, 22 Sup. Ct. 561, 46 L. ed. 834 (1902). But there is a distinction between these two statutes. The last part of the statute of 1873 clearly limits the first part and makes it applicable only to money in the process of transmission to the pensioner. However, the New York Supreme Court in 1927 in In re Schaefer’s Estate, supra note 7, places the same interpretation on the federal statute of 1924 as does the Kansas court in State, ex rel. Smith, Att’y. Gen’l. v. Board of County Commissioners of Shawnee County, supra note 3.
not apply. This construction seems contrary to the intention of congress, and it is an unreasonable and somewhat strained interpretation of the actual language of the statutes. It might lead to difficulties should the actual case for the taxation of the money itself be presented.

WILLIAM MEDFORD.

Taxation—Exemption of State Governmental Instrumentalities from Federal Taxation.

The plaintiff, a manufacturer of motorcycles in Massachusetts, sold one of its machines to a Massachusetts municipality for use in its police department. An excise tax was levied and collected from the plaintiff in conformity with Revenue Act, 1924, §600, which provides that there shall be paid upon motorcycles, etc., sold or leased by the manufacturer, producer, or importer a tax equivalent to five per cent of the price for which so sold or leased. The plaintiff sued to recover the amount of the tax. Held: The tax was on the sale alone and could not be upheld as it infringed the exemption of state governmental instrumentalities from federal taxation.

The instant case follows the language of a bare majority decision of the Supreme Court in Panhandle Oil Co. v. Mississippi, where a state excise tax levied on the distributor of gasoline, assessed on the number of gallons sold, was disallowed on a sale to a federal agency. In the intervening case of Wheeler Lumber Co. v. U. S., a united court upheld a tax on transportation charges for materials sold and shipped to state instrumentalities, on the ground that the tax was not on the materials or the sale but on a preliminary service rendered the seller. Decisions of a federal district court and of a state supreme

29 Congress, by these two acts, expressly provides for the exemption of this money from taxation. The money, in the hands of federal authorities, could not be assessed and taxed against an individual who has not received it. Therefore, this provision for tax exemption would seem superfluous in the light of the reasoning of the Kansas court.

Two cases have applied the provisions of the instant statute to money already paid the veteran. Payne v. Jordan, 152 Ga. 356, 110 S. E. 4 (1921) (money held by administrator exempt from claims of creditors of veteran); Wilson v. Sawyer, 177 Ark. 492, 6 S. W. (2d) 825 (1928), (sum paid to veteran not subject to garnishment proceedings).

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