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Taxation - Due Process - Power of States to Tax Intangibles

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TAXATION—DUE PROCESS—POWER OF STATES TO TAX INTANGIBLES. Testamentary trustee, residing in Rhode Island, was assessed $50 as a personal property tax upon one half of the value of the corpus of the trust located in New York. This suit is to recover the tax paid under protest. The trustee's contention is that the Rhode Island statute, under which the assessment was made, violates the due process clause by exhorting payment measured by the value of property when that property is not given protection or benefit by the state. The Rhode Island Supreme Court affirmed a holding that the tax was valid. On appeal to the United States Supreme Court it was *held*, that the judgment be affirmed. The state, having power to tax its residents on the value of their out-of-state intangibles, can tax a resident trustee on intangibles with a situs outside the state upon the theory that the state provides equal benefits and protection under an organized government to its residents regardless of the nature of their interest in the property taxed. *Greenough v. Tax Assessors of City of Newport*, 67 S. Ct. 1400, 71 R. I. 477, 47 A. 2d 625 (1947).

The land mark in the development of the taxation of intangibles from 1903 to the 30's was *Blackstone v. Miller*, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439 (1903). Here, Justice Holmes decided that double taxation of intangibles did not contravene the fourteenth amendment, the privilege and immunities clause, nor was there a denial of full faith and credit. The case of *Safe Deposit and Trust Co. v. Virginia*, 280 U. S. 83, 50 S. Ct. 59, 74 L. Ed. 180 (1929), was a stepping stone in developing the basis of the taxation of intangibles, in holding that intangibles in the hands of the owner of the legal title (trustee), with a definite taxable situs in Maryland, could not be taxed in Virgina, the residence of the equitable owner. The majority of the court inferred that double taxation was unjust and refused to apply ". . . the fiction of *moblia sequuntur personam*. . . in order to determine the situs of intangible personal property for taxation." Justice Stone concurred in the result, but pointed out that double taxation is not the controlling factor, since there are different legal interests to be protected and taxed by the two jurisdictions in such a situation. In the early 30's the Supreme Court reversed thirty years of decisions, among them *Cream of Wheat Co. v. Grand Forks*, 253 U. S. 325, 40 S. Ct. 558, 64 L. Ed. 931 (1920) (upholding N. D. taxation of out-of-state intangibles), by adopting the restrictive doctrine of the undesirability of multiple taxation. *Baldwin v. Missouri*, 281 U. S. 586, 50 S. Ct. 436, 72 Am. L. Rep. 1303 (1930); *First National Bank v. Maine*, 284 U. S. 312, 52 S. Ct. 174, 76 L. Ed. 313, 77 Am. L. Rep. 1401 (1932). *The Blackstone Case* was explicitly overruled by *Farmers Loan Co. v. Minn.*, 280 U. S. 204, 50 S. Ct. 98, 74 L. Ed. 371, 65 Am. L. Rep. 1000 (1930). The undersirability of multiple taxation was once more denied in 1936 when Mr. Chief Justice Hughes sustained the double taxation of intangibles. *Wheeling Steel Corp. v. Fox*, 298 U. S. 193, 56 S. Ct. 773, 80 L. Ed. 1143 (1936); *Curry v. McCandless*, 307 U. S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 Am. L. Rep. 162 (1939). However, Justice Stone restated the reasoning of the concurring opinion in the *Safe Deposit and Trust Co. Case* and made those principles in law in this case. He again pointed out the distinction between double taxation and taxation according to the benefits and protection given by the state: reiterating that separate interests are involved when a resident testatrix is taxed on an intangible interest held by a trustee in another state, the theory being that when the taxpayer conducts his activities so as to avail himself of the protection and benefit of the laws of another state, that state has the right to tax these interests. The principle case extended the benefits and protection theory to a point where the domicile of a trustee is an adequate basis for the taxation of intangible interests, the documentary evidence of which is wholly outside the territorial limits of the taxing state. Cf. *Pearson v. McGraw*, 308 U. S. 313, 60 S. Ct. 211, 84 L. Ed. 293, discussed in Comment, 13 S. Cal. L. Rev. 453, 459 (1940), ". . . the court has left the inference that if the benefits and protection theory will be the new criterion, it will make little difference whether the property is tangible or intangible."

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