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Constitutional Law--Foreign Corporation--Validity of State Statute Levying Tax for Privilege of Doing Intrastate Business (Ford Motor Company v. Tom L. Beauchamp, Secretary of State of the State of Texas, et al., 308 U.S. 331 (1939))

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be awarded, does not mean that the Board cannot remove the appellant.[13]

C. G.

CONSTITUTIONAL LAW—FOREIGN CORPORATION—VALIDITY OF STATE STATUTE LEVYING TAX FOR PRIVILEGE OF DOING INTRASTATE BUSINESS.—Petitioner, incorporated under laws of Michigan, owns and operates a large manufactory of motor vehicles and maintains assembly plants in Texas. Parts are shipped to Texas, assembled and sold in intrastate commerce, through dealers, to the public. The State of Texas imposes a tax upon the gross receipts of the business done in Texas, in proportion, as that bears to the total gross receipts of the corporation from its entire business throughout the United States. Petitioner maintains, (1) the tax imposed by statute [1] is a burden on interstate commerce, in violation of Article I, Section 8, of the Constitution; [2] (2) that the tax operates to deprive him of his property without due process of law in violation of the Fourteenth Amendment. The District Court upheld validity of the tax. The Court of Appeals affirmed the judgment of the District Court. Upon *certiorari* to the Supreme Court, *held,* the tax is not unconstitutional. "In a unitary enterprise, property outside the state, when correlated in use with property within the state, necessarily, affects the worth of the privilege within the state." *Ford Motor Company* v. *Tom L. Beauchamp, Secretary of State of the State of Texas, et al.,* 308 U. S. 331, 60 Sup. Ct. 273 (1939).

There is no question but that the state has the power to make a charge against a domestic or foreign corporation for the privilege of transacting intrastate business,[3] nor is the state required by the Constitution, in levying this charge, to adopt the best possible taxation

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[13] State Board of Agriculture v. Meyers, 20 Colo. App. 139, 77 Pac. 372 (1904).

[1] VERNON'S TEXAS STATUTES (1936). "Article 7084. Amount of tax.—(A) Except as herein provided, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas, shall, * * * each year, pay * * * a franchise tax * * *, based upon that proportion of the outstanding capital stock, surplus and undivided profits, plus the amount of outstanding bonds, notes and debentures, other than those maturing in less than a year from date of issue, as the gross receipts from its business done in Texas bears to the total gross receipts of the corporation from its entire business, which tax shall be computed at the following rate for each one thousand ($1,000) dollars or fractional part thereof, one ($1.00) dollar to one million ($1,000,000) dollars, * * *."

[2] U. S. CONST. Art. I, § 8: "Congress shall have power to regulate commerce among the several states. * * *."

[3] American Mfg. Co. v. City of St. Louis, 250 U. S. 459, 39 Sup. Ct. 522 (1919); Matson Navigation Co., *et al.* v. State Board of California, 297 U. S. 441, 56 Sup. Ct. 553 (1936).

system.[4] It is none the less reasonable to assume that a tax based upon a graduated charge upon such proportion of the outstanding capital stock, as the gross receipts of the Texas business bear to the total gross receipts from its entire business, as here, is justified.[5] The state is due some consideration for the measure of protection it affords the corporation, especially since the privilege granted enables the corporation to successfully exploit the business possibilities within the state. Then, too, the volume of property outside the state may cause intrastate property to fluctuate at random. Financial power, no matter where located, if inherent in the assets, may be applied at any point determined by the managers of the corporation. For this reason, it has been held that an entrance fee may be properly measured by capital wherever located.[6] In *Atlantic & Pacific Tea Company* v. *Grosjean*,[7] where the tax was graduated on the number of chain stores under the same management, whether in the same state or not, the Court said: "The law rates the privilege enjoyed in Louisiana according to the nature and extent of that privilege in the light of the advantages, the capacity, and the competitive ability of the chain stores in Louisiana considered not by themselves, as if they constituted the whole organization, but in their setting as integral parts of a much larger organization."[8] This same rule applies to the case in question.

Foreign corporations are entitled to protection under the "due process" and "equal protection" clauses of the Federal Constitution.[9] This protection does not, however, prohibit the states from enacting tax laws aimed at foreign corporations doing business within the state itself. It is sometimes difficult to determine just what constitutes "interstate commerce". Very thin, indeed, is the line separating the power of the state from the exclusive power of Congress in this regard. Consequently, the particular facts of each case will be the determining factor in reaching the ultimate decision.

E. R. D.

CONSTITUTIONAL LAW—FOURTEENTH AMENDMENT—REQUIREMENT BY MUNICIPAL ORDINANCE OF PERMIT TO CANVASS.—Petitioner, Clara Schneider, is a member of the Watch Tower Bible and Tract Society and is known as one of "Jehovah's Witnesses". She

[4] People of the State of New York v. Gamble Latrobe, Jr., *et al.*, 279 U. S. 421, 49 Sup. Ct. 377 (1929).

[5] See note 1, *supra*.

[6] Atlantic Refining Co. v. Virginia, 302 U. S. 22, 58 Sup. Ct. 75 (1937).

[7] 301 U. S. 412, 57 Sup. Ct. 772 (1937).

[8] Atlantic & Pacific Tea Co. v. Grosjean, 301 U. S. 412, 425, 57 Sup. Ct. 772 (1937).

[9] Quaker City Cab Co. v. Commonwealth of Pennsylvania, 277 U. S. 389, 400, 48 Sup. Ct. 553 (1928).