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Irving Diamond

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A point worth observing in the Concord Compact is that it creates its own interstate arbitration commission composed of the chairmen of all the state commissions.⁵⁶ Any difficulties which may arise under the compact are to be submitted for settlement to this body. In this manner, many problems might probably be solved without the necessity of resorting to the courts. Another interesting provision of the compact is the one providing for withdrawal by a state two years after the interstate commission has reported upon the request for withdrawal.⁵⁷ The states under this provision are not bound indefinitely to the compact but may free themselves of its obligations within a period that seems to be reasonable. If it should develop that a compact has become unduly oppressive to a state, speedier withdrawal could be obtained by consent of all the signatories.

It is naturally difficult if not impossible to anticipate and particularize the various legal problems which may arise out of the adoption of interstate compacts. Such difficulty should not, it would seem, be reason for not accepting what would otherwise appear to be a progressive experiment to achieve by cooperation a sound status for labor and industry.

THOMAS BRESS.

TAXATION—THE NONRESIDENT ALIEN'S INCOME WITHIN THE UNITED STATES.

No doubt is suggested as to the power of Congress to tax income produced within the United States or arising from sources located therein, even if it be the income of a nonresident alien.¹ Prior to the Sixteenth Amendment the taxation² of the nonresident alien's property was upheld on the theory of *lex situs*,³ which superseded⁴

writ of error directed to it from the Supreme Court of the United States and went so far as to release an offender by *habeas corpus* from the custody of a United States marshal. *Abelman v. Booth*, 62 U. S. 506 (1858); SMITH, THE SUPREME COURT AS AN INTERNATIONAL TRIBUNAL (1920) 89 *et seq.*

⁵⁶ *Supra* note 35, tit. II, §4.

⁵⁷ *Supra* note 35, tit. II, §5.

¹ *Shaffer v. Carter*, 252 U. S. 37, 54, 40 Sup. Ct. 221 (1920). The constitutionality of an Oklahoma statute taxing the income produced from oil leases owned by a non-resident was upheld.

² REV. ACT OF 1913, c. 16, §11, A, subd. 1, 38 STAT. 166.

³ *Pullmans Palace Car Co. v. Pennsylvania*, 141 U. S. 18, 11 Sup. Ct. 876 (1891) deals with a foreign corporation tax. *De Ganay v. Collector of Internal Revenue*, 250 U. S. 376, 39 Sup. Ct. 524 (1918) where a French citizen was taxed on stock in the hands of an active trustee in the United States.

⁴ *New Orleans v. Stemple*, 175 U. S. 309, 20 Sup. Ct. 110 (1899), a separate situs of property is established for purposes of taxation; *Bristol v. Wash-*

the maxim of *mobilia sequuntur personam* where actual control⁵ was at the situs. Now it is the recognized policy of the government that the nonresident alien share in the burdens of the government because as an income earner he realizes "current pecuniary benefits under the protection of the government."⁶ The trend of the legislature has been to extend the sources of income upon which the nonresident alien is to pay his tax. Where the Act of 1916⁷ taxed the income from domestic interest-bearing obligations, the Act of 1918⁸ added a tax on dividends distributed by corporations operating in the United States to nonresident alien stockholders. And the Revenue Act of 1934⁹ embraces, as income from sources within the United States, interest on obligations of residents¹⁰ (with some exceptions),¹¹ dividends from domestic and foreign corporations,¹² compensation for personal services,¹³ rentals and royalties from property or for the privilege of using patents and copyrights,¹⁴ profits derived from the sale of real property¹⁵ or personal property.¹⁶ Though the legislature has attempted by amendment to "remove all doubts as to the future"¹⁷ and the courts have aided with definitions of

ington County, 177 U. S. 133, 20 Sup. Ct. 585 (1899), "Personal property, as this court has declared again and again may be taxed either at the domicile of its owner, or at the place where the property is situated," at 145.

⁶ *Liverpool & London Globe Insurance Co. v. Board of Assessors for the Parish of Orleans*, 221 U. S. 346, 31 Sup. Ct. 550 (1911). The maxim yields to the fact of actual control elsewhere. Taxed interest on obligations held by nonresident.

⁵ *Shaffer v. Carter*, 252 U. S. 37, 51, 40 Sup. Ct. 221 (1920).

⁷ REV. ACT OF 1916, §§1 (a), 10, 39 STAT. 756.

⁸ REV. ACT OF 1918, §§213 (a), 233 (b).

⁹ 26 U. S. C. A. 901.

¹⁰ §119 (a) (1). Interest from the United States, any Territory, any political subdivision of a Territory, or of the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise.

¹¹ §119 (a) (1) (A) (B) (C). Interest on deposit with persons carrying on a banking business. If less than 20 per centum of the gross income of the resident payor has been derived from sources within the United States for the three-year period ending with the taxable year.

¹² §119 (a) (2) (A) (B). With an exception of those within the 20 per centum clause.

¹³ Compensation for labor or personal services performed in the United States.

¹⁴ §119 (a) (4). Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States, patents, copyrights, secret processes and formulas, good-will, trade-marks, trade brands, franchises, and other like property.

¹⁵ §119 (a) (5). Gains, profits, and income from the sale of real property located in the United States.

¹⁶ §119 (a) (6). From the sale of personal property.

¹⁷ FINANCE COMMITTEE REPORT No. 558, 73d Cong., 2d Sess., p. 38 (1934).

"income,"¹⁸ "source,"¹⁹ "resident,"²⁰ and "nonresident alien"²¹ "the difficult problem of taxing nonresident aliens justly and upon a basis consistent with economic reason is far from solved."²²

In the case of *Helvering v. Stockholm Enskilda Bank*²³ where the taxpayer was compelled to pay a tax on interest accruing to him because the government in the first instance had overassessed him—on a refund—the court abandons the policy of favoring the taxpayer when in doubt²⁴ and to justify the conclusion that the refund was an interest-bearing obligation announces that the

"general object of this act is to put money into the federal treasury; and there is manifest in the reach of its many provisions an intent on the part of Congress to bring about a generous attainment of that object by imposing a tax upon pretty much every sort of income subject to the federal power."²⁵

This decision lends weight to the cases holding that an interest-bearing obligation may arise from an open-account transaction²⁶ and that bank interest received by a resident trustee and transmitted to an alien beneficiary is taxable interest though derived from a resident banking business.²⁷

While the taxation of dividends in the hands of a nonresident

¹⁸ Income arises from capital, labor, or sale of capital assets. *Stratton's Independence, Limited v. Howbert*, 231 U. S. 399, 34 Sup. Ct. 136 (1913); *Doyle v. Mitchell Bros.*, 247 U. S. 179, 38 Sup. Ct. 467 (1918); *Eisner v. Macomber*, 252 U. S. 189, 40 Sup. Ct. 189 (1920); *Merchant's Loan & Trust Co. v. Smietanka*, 255 U. S. 509, 41 Sup. Ct. 386 (1921).

¹⁹ The place of origin of income and the place of the obligor. *Standard Marine Insurance Co., Ltd.*, 4 B. T. A. 853, 861 (1926); *Lord Forbes*, 25 B. T. A. 154, 161 (1934), U. S. Treas. Reg. 33, Art. 66; *Sumitomo Bank, Ltd.*, 19 B. T. A. 480 (1930). Place of payment has no bearing.

²⁰ *Helvering v. Stockholms Enskilda Bank*, 293 U. S. 84, 55 Sup. Ct. 50 (1934). The Court held that the United States was a resident paying interest to the petitioner and though the interest was created due to a refund, it was held to be taxable income.

²¹ U. S. Treas. Reg. 62, Art. 311. A nonresident alien individual is one "whose residence is not within the United States and who is not a citizen of the United States." An alien who is here as not a mere transient is a resident.

²² 4 PAUL AND MERTENS, *THE LAW OF FEDERAL INCOME TAXATION* (1934) §37.18.

²³ 293 U. S. 84, 55 Sup. Ct. 50 (1934).

²⁴ *Gould v. Gould*, 245 U. S. 151, 38 Sup. Ct. 53 (1917); *United States v. Merriam*, 263 U. S. 179, 44 Sup. Ct. 69 (1923); *Reinicke v. Northern Trust Co.*, 278 U. S. 339, 49 Sup. Ct. 123 (1929); *Tyler v. United States*, 281 U. S. 497, 50 Sup. Ct. 356 (1933).

²⁵ *Supra* note 23, at 89.

²⁶ *Motty Eittington*, 27 B. T. A. 1341 (1933).

²⁷ *Vondermuhl v. Commissioner of Internal Revenue*, 75 F. (2d) 656 (App. D. C. 1935). The alien receives trust income while the trustee is held to receive the interest.

alien has created some difficulty,²⁸ the source of royalties has created no little difficulty. In the case of *Rafael Sabatini*²⁹ the Board of Tax Appeals was confronted with a dual situation. Under contracts, previously negotiated by resident agents, but executed by petitioner abroad, the petitioner granted and assigned the volume and second serial rights to his literary productions with the additional right to secure copyrights either in the name of the publisher or in his own name and covenanted not to authorize any other publication in the United States where copyrights could not be secured. Under separate contracts he granted the movie and dramatization rights to some of his books. For the serial and dramatization rights he was to receive a percentage on volume of sales and gross receipts, respectively; but for the movie rights he received a lump sum. The court determined that the serial and dramatization contracts provided for payments to be made "for the use of or for the privilege of using property in the United States,"³⁰ while the movie contract was considered as a sale consummated abroad with no further income forthcoming in the United States.

Clearly this income is not within the court definition.³¹ A possible case may be made out on the theory of a sale of property abroad as the agent's negotiations were subject to confirmation.³² To effectuate the sale the petitioner must of necessity transfer the ownership of property.³³ The right to a copyright is a right to property derived by grant from the United States³⁴ which may be exercised for exclusive and extensive business enterprises. But the contract carries with it a right to royalties which is a right to payment proportionate to the use of the device.³⁵ If it was a property right it was not, under the decided cases, a fixed property right on the date of payment but one arising only as the income accrued with the forthcoming of the royalties.³⁶ Thus the sale of the serial and dramatization rights, even if personal property abroad, gave rise to an income-producing property within the United States which adheres to the contract on

²⁸ Cf. *Lord Ferres*, 25 B. T. A. 154 (1932). The burden is on the non-resident alien who co-mingles his funds from resident branch with alien branch to establish that no profits arose out of transactions in this country.

²⁹ 32 B. T. A. No. 102 (June, 1935).

³⁰ Instant case.

³¹ Cf. *supra* note 18. Definitions of income.

³² *Compañía General v. Collector of Internal Revenue*, 279 U. S. 306, 49 Sup. Ct. 304 (1929).

³³ *Whitfield v. United States*, 92 U. S. 165 (1875); *Butler v. Thomson et al.*, 92 U. S. 412, 415 (1875). A man cannot sell and still remain the owner.

³⁴ *Fox Film Corp. v. Doyal*, 286 U. S. 123, 52 Sup. Ct. 546 (1931).

³⁵ *Western Union Tel. Co. v. American Bell Tel. Co.*, 125 Fed. 342 (C. C. A. 1st, 1903); *Tersa Co. v. Holland Furnace Co.*, 73 F. (2d) 553 (C. C. A. 6th, 1934).

³⁶ *Zimbalist v. Collector of Internal Revenue*, 38 F. (2d) 57 (C. C. A. 2d, 1930). Royalties on records continued, consequently income continued, although the singer had retired. *Ingram v. Bowers*, 57 F. (2d) 65 (C. C. A. 2d, 1932). The reproduction of Caruso's voice here created the income, though the records were sold abroad.

any assignment³⁷ and holds such assignee as trustee of the royalties;³⁸ thus justifying the tax as an income from a source within the United States.³⁹ Furthermore, as the petitioner is receiving his royalties only through the protection and by the grant of the United States, it is only just that he share the burdens of the government.⁴⁰ The test is always whether the income flows from the purchaser in the United States to the seller abroad.⁴¹

IRVING DIAMOND.

³⁷ *In re Waterson, Berlin & Snyder Co., Fain et al. v. Irving Trust Co.*, 48 F. (2d) 704 (C. C. A. 2d, 1931).

³⁸ *Rude v. Westcott*, 130 U. S. 152, 9 Sup. Ct. 463 (1889). Assignee of a patent was held to have full title to the patent but was considered as trustee of the royalties.

³⁹ *Tootal Broadhurst Lee Co., Ltd. v. Commissioner of Internal Revenue*, 30 F. (2d) 239 (C. C. A. 2d, 1929) where goods were manufactured in England but sold here—held to be income here. *Billwiller's Estate v. Commissioner of Internal Revenue*, 31 F. (2d) 286 (C. C. A. 2d, 1929). Alien partner's share of the profits gained in business here is taxable.

⁴⁰ *Cf. supra* note 22.

⁴¹ *Yokohama Ki-Ito Kevaisha, Ltd.*, 5 B. T. A. 1248 (1926). Silk bought abroad was sold in the United States.