

June 2014

## Constitutional Law--Corporations--Franchise Tax

St. John's Law Review

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### Recommended Citation

St. John's Law Review (1932) "Constitutional Law--Corporations--Franchise Tax," *St. John's Law Review*.  
Vol. 7 : No. 1 , Article 30.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol7/iss1/30>

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## CONSTITUTIONAL LAW—CORPORATIONS—FRANCHISE TAX.—

The relator, formerly a Delaware corporation, purchased for \$1,500,000 on July 1, 1919, the majority of the assets of the "Salisbury Axle Co., Inc.," a corporation organized under the laws of the state of New York. The purchase included all of the real and personal property used by the vendor corporation in its ordinary business of manufacturing axles, and excluded certain special materials and equipment valued at about \$495,000. In June of 1920, the vendee corporation made a franchise tax report under Article 9-A of the Tax Law and denied having either directly or indirectly acquired by merger, consolidation or purchase, the major part of the assets or of the franchises of any other corporation or corporations since January 1, 1917. Subsequently, however, the tax commission ascertained that this was erroneous and made a corrected assessment against the relator, pursuant to Section 214-A of the Tax Law, which was based on the entire income of both corporations for the calendar year of 1919. The relator contended (1) that Section 214-A, Tax Law, is violative of the equal protection clause of the 14th Amendment of the Federal Constitution, in that a purchaser acquiring 51% of the assets of another corporation would be required to pay as much tax as the purchaser of the entire business. (2) If the statute is held to be constitutional, it should be construed so as to tax the purchasing corporation only on such part of the income of the vendor corporation as was derived from the assets transferred to the purchaser. *Held*, the determination of the State Tax Commission affirmed. *People ex rel. Salisbury Axle Co. v. Lynch*, 259 N. Y. 228, 181 N. E. 460 (1932).

The states in the exercise of their taxing power are subject to the requirements of the due process and the equal protection clause of the 14th Amendment, but that Amendment imposes no iron rule of equality prohibiting the flexibility and variety that are appropriate to schemes of taxation.<sup>1</sup> The rule is generally stated to be that a classification resting upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced are treated alike, is not repugnant to the Federal Constitution.<sup>2</sup> In order to render a classification illegal, the

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<sup>1</sup> *Giozza v. Tierman*, 148 U. S. 657, 13 Sup. Ct. 721 (1893); *Ohio Oil Co. v. Conway*, 281 U. S. 146, 50 Sup. Ct. 310 (1930). Note (1931) 45 HARV. L. REV. 33 at 50: "It is settled that mere inequalities or exemptions in state taxation are not forbidden by the equal protection clause of the 14th Amendment; that the power of the state to make any reasonable classification of property, occupations, persons or corporations for purposes of taxation is not abridged thereby; and that the Amendment forbids mere inequality which is the result of clearly arbitrary action and, particularly, of action attributable to hostile discrimination against particular persons or classes."

<sup>2</sup> *Central Lumber Co. v. South Dakota*, 226 U. S. 157, 33 Sup. Ct. 66 (1912); *La Coste v. Dept. of Conservation of the State of Louisiana*, 263 U. S. 545, 44 Sup. Ct. 186 (1924); *Ohio Oil Co. v. Conway*, 281 U. S. 146, 50 Sup. Ct. 310 (1930). These cases are authority for the proposition that legislation which, in carrying out a public purpose, is limited in its application,

situation discriminated against must be shown to be precisely the same as that included in the class which is shown to be favored.<sup>3</sup> Whatever inequality of burden results from the statute in question comes from the election of certain taxpayers to avail themselves of privileges offered to all, and not an arbitrary classification by the legislature.<sup>4</sup> From the holdings of the courts in previous decisions relating to similar statutes, it seems clear that Section 214-A of the Tax Law bears a real and reasonable relation to the privilege granted, is not unnecessarily burdensome, and is not violative of the Federal Constitution.<sup>5</sup>

In adjudicating the instant case, the Court would not give a false interpretation to the statute which is clear and unequivocal.<sup>6</sup> The judiciary will not construe a statute so as to give to it a meaning neither intended nor warranted by the language used.<sup>7</sup> Once again, the Court, in its liberal construction of the equality clause of the 14th Amendment of the Federal Constitution, gives to the state great power in its constitutional right of taxation.

A. H.

FEDERAL ESTATE TAX—CALIFORNIA ESTATE TAX AS A DEDUCTION.—On April 25, 1917, Rosa Von Zimmerman, an enemy alien, died testate. Her will was probated and taxes paid to the Federal and State Governments. The Alien Property Custodian, under act of Congress, served notice on the executors to surrender the estate to him and it was in his hands until the passage of the Winslow Act.<sup>1</sup> This action was brought by Kombst and other residuary legatees joined with the Alien Property Custodian who allege that the tax paid to the state of California is a deductible item for computation of Federal Estate Tax. As the action was brought eight years after

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does not violate the provision if, within the sphere of its operation, it affects alike all persons similarly situated. See also 1 COOLEY, THE LAW OF TAXATION (1924) §§249, 357, 358.

<sup>3</sup> Bradley & Co. v. City of Richmond, 110 Va. 521, 66 S. E. 872 (1910).

<sup>4</sup> Merchants and Manufacturers Bank v. Pennsylvania, 167 U. S. 461, 17 Sup. Ct. 829 (1897).

<sup>5</sup> Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113, 41 Sup. Ct. 45 (1920); People *ex rel.* Bass, Ratcliff & Gretton v. State Tax Commission, 232 N. Y. 42, 133 N. E. 122, 266 U. S. 271, 45 Sup. Ct. 82 (1924); National Company v. Commonwealth of Massachusetts, 277 U. S. 413, 48 Sup. Ct. 534 (1928).

<sup>6</sup> Wiley v. Solvay Process Co., 215 N. Y. 584, 109 N. E. 606 (1915); Cooper-Snell Co. v. State, 230 N. Y. 249, 129 N. E. 893 (1921), holds that a statute should be read according to the natural and obvious import of the language used without resorting to a subtle or forced construction either limiting or extending the effect.

<sup>7</sup> *Ibid.*

<sup>1</sup> 42 STAT. 1511, c. 285, March 4, 1923.