

Liability of Stockholder of Dissolved Corporation for Unpaid Taxes

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nor with the policies that determine the situs of corporate shares. That these are related problems is obvious. At present, however, none of these factors have influenced the court to announce a definite stand in regard to the limitation of multi-state taxation of stock. The *quaere* is still left open as to whether the taxpayer's convenience would best be served by localizing the tax at the corporate domicile or whether the interests and economic claims of the state where the property happens to be located is paramount.

WILLIAM H. SHAPIRO.

LIABILITY OF STOCKHOLDER OF DISSOLVED CORPORATION FOR UNPAID TAXES.—In 1919, the Coombe Garment Company, a Pennsylvania corporation, distributed its assets among its stockholders and then went into voluntary dissolution. Thereafter, the Commissioner of Internal Revenue made deficiency assessments against the corporation for income and profits taxes for the years 1918 and 1919. A small part of these taxes was collected, with an unpaid balance remaining of \$9,306.36. I. L. Phillips, of New York City, had owned one-fourth of the company's stock and had received \$17,139.61 as his distributive dividend. Pursuant to section 280 of the Revenue Act of 1926, the Commissioner sent due notice to Phillips that he proposed to assess against and collect from him the entire remaining amount of the deficiencies. No notice of such deficiency was sent to any of the other stockholders nor were any proceedings instituted against them. Upon appeal by the executors of Phillips for a redetermination, the Board of Tax Appeals held that the taxpayer was liable for the full amount. This decision was subsequently affirmed by the United States Circuit Court of Appeals for the Second Circuit. Because of conflicts in the decisions of the lower courts a writ of *certiorari* was granted by the Supreme Court. *Held*, that section 280 of the Revenue Act of 1926, providing for the collection of revenue by summary administrative proceedings, is constitutional. *Phillips et al. v. Commissioner of Internal Revenue*, 51 Sup. Ct. 608 (1931).

The lower federal courts have often questioned the constitutionality of employing summary administrative proceedings to enforce the liability of a transferee stockholder for the unpaid taxes of a corporation.¹ It has been argued that the power given the

¹ *Owensboro Ditcher and Grader Company v. Lucas*, 18 F. (2d) 798 (D. C. Ky. 1927): " * * * section 280 of the Revenue Act of 1926, if enforced, * * * will result in denying to the plaintiff due process of law within the meaning of the Fifth Amendment to the Constitution of the United States." See also *Elmhurst Investment Co. v. U. S.*, 24 F. (2d) 561 (D. C. Kan., 1928); *Mid-Continent Petroleum Corp. v. Alexander*, 35 F. (2d) 43 (D. C. Okla., 1929).

Commissioner to determine questions of fact and of law amounts to a conferring of judicial powers upon an executive officer and is therefore a violation of the principle of separation of powers.² The Supreme Court has held however that property rights must yield provisionally to governmental necessities and that, in any event, the findings and decision of the Commissioner are always subject to review by the Circuit Court of Appeals.³ Under the statute, the remedies of the taxpayer consist of a suit to recover taxes paid⁴ or, in the alternative, an immediate appeal to the Board of Tax Appeals with a right to a review of its determination in the courts.⁵ These provisions, it has been argued, are not sufficient to satisfy the "due process" clause of the Constitution.⁶ Urging again the priority of governmental needs, the Court has held that, if an adequate judicial determination is eventually given, there is no denial of due process.⁷

The decision in the instant case is a reaffirmance by the Court of the constitutionality of the statute; it also expounds several other important tenets of taxation and constitutional law. The taxpayer claimed that he was liable only for his *pro rata* share of the unpaid corporate tax, but the Court held that he as transferee was liable up to the full amount of the assets received by him,⁸ with the right to contribution from the other transferees.⁹ But with this right of contribution the government is not at all concerned.¹⁰ Plaintiff also protested that the transfer of assets had been made prior to the passage of the Revenue Act of 1926 and that the section, as applied, was unconstitutional because retroactive. The Court stated that Congress has a clear right to provide additional remedies for the enforcement of existing liabilities.¹¹ The principle is here enunciated that, although differences in state laws may affect the extent

² United States v. Sugar, 243 Fed. 423 (D. C. Mich., 1924).

³ Snyder v. Marks, 109 U. S. 189, 3 Sup. Ct. 157 (1881); Routzahn v. Tyroler, 36 F. (2d) 208 (C. C. A. 6th, 1929). See also Rev. Act of 1926, §1001.

⁴ Rev. Act of 1926, §1113; Rev. Act of 1928, §617B.

⁵ U. S. C. A., tit. 26, §1048 (1926).

⁶ Williamsport Wire Rope Co. v. United States, 277 U. S. 551, 48 Sup. Ct. 587 (1928); cf. Routzahn v. Tyroler, *supra* note 3; Collin v. Commissioner of Internal Revenue, 32 F. (2d) 753 (C. C. A. 6th, 1929).

⁷ Cheatham v. United States, 92 U. S. 85 (1875); Springer v. United States, 102 U. S. 586 (1880).

⁸ Hatch v. Dana, 101 U. S. 205 (1879); Bartlett v. Drew, 57 N. Y. 587 (1874).

⁹ In Bartlett v. Drew, *supra* note 8 the court states: "Where stock and property has been divided between stockholders before all the debts of the corporation have been discharged if any one stockholder is compelled to pay more than his fair share of any unpaid debt he may resort to an action against the other transferees for equitable contribution." See also Aspenwall v. Sacchi, 57 N. Y. 331 (1874).

¹⁰ Hatch v. Dana, *supra* note 8.

¹¹ Schwab v. Doyle, 258 U. S. 529, 42 Sup. Ct. 391 (1921); Blodgett v. Holden, 11 F. (2d) 180 (D. C. Mich., 1926).

and incidence of federal taxes, such variations are not *ipso facto* in conflict with the Constitution.¹²

J. L.

COUNTY ATTORNEY'S FEES—EXEMPT FROM FEDERAL INCOME TAX.—Appellee was employed by the Board of Commissioners of Duval County, Florida, to represent it as legal advisor. His salary, covering compensation for attendance at meetings, preparation of resolutions and contracts, legal advice and services in litigated matters of an ordinary nature, was fixed by resolutions of the Board, and was paid to him monthly. In connection with certain litigated cases, extraordinary in nature, and for services rendered in regard to issuance of bonds extra compensation was paid him. It is conceded that he maintained his private law office during this period, but that he devoted approximately seventy-five per cent of his time as attorney for the Board, and did not allow his private practice to interfere with his duties to the county. *Held*, that appellee was an employee of a political subdivision of a state and as such his compensation was exempt from taxation pursuant to the Revenue Act of 1926.¹ *United States of America v. J. Turner Butler*, 49 F. (2d) 52 (C. C. A. 5th, 1931).

An attorney who has not contracted to give his entire and exclusive services to a state instrumentality but was free to engage, and was engaged in private practice, did not thereby become an officer or employee within the purview of the statute.² The court here, however, takes the position that the statute³ authorizing the deduction of compensation received as an employee of a state, or a political subdivision thereof, does not require that such employee shall give his full time to the subject of his employment, and whether he gives his full time or not has no legal significance as a test. But, if it has any, appellee has satisfied the requirement, for he was first obligated to give all the time necessary to accomplish the tasks re-

¹² *Grand Trunk Western Ry. Co. v. United States*, 252 U. S. 112, 40 Sup. Ct. 309 (1920); *Bistline v. United States*, 229 Fed. 546 (C. C. A. Idaho, 1916); *Northern Pacific Ry. Co. v. Cash*, 67 Mont. 585, 216 Pac. 782 (1923).

¹ Section 1211 provides: "Any taxes imposed by the Revenue Act of 1924 or prior revenue acts upon any individual in respect of amounts received by him as compensation for personal services as an officer or employee of any state or political subdivision thereof (except to the extent that such compensation is paid by the United States Government directly or indirectly), shall, subject to the statutory period of limitations properly applicable thereto, be abated, credited, or refunded."

² *Blair v. Byers*, 35 F. (2d) 326 (C. C. A. 8th, 1929).

³ *Supra* note 2.