

June 2014

## Gross Receipts Tax--Interstate Commerce--Constitutionality (N.J. Bell Telephone Co. v. State Board of Taxes and Assessment of N.J., 280 U.S. \_\_\_ (1930))

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

---

### Recommended Citation

St. John's Law Review (1930) "Gross Receipts Tax--Interstate Commerce--Constitutionality (N.J. Bell Telephone Co. v. State Board of Taxes and Assessment of N.J., 280 U.S. \_\_\_ (1930))," *St. John's Law Review*: Vol. 4 : No. 2 , Article 28.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol4/iss2/28>

This Comment is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [selbyc@stjohns.edu](mailto:selbyc@stjohns.edu).

portioned" and by Section 9 of the same article which provides that "no capitation or other direct tax shall be laid unless in proportion to the census," the tax complained of therefore being unapportioned, is unconstitutional, if direct.

A tax levied upon the exercise of only one of the powers incidental to ownership of property is an excise and as such falls into the class of indirect taxes which need not be apportioned and does not violate any of the provisions of the Constitution.<sup>3</sup>

The tax in the instant case was levied against a particular use made by the plaintiff of his property, that of giving it away. This tax is indistinguishable from the unapportioned tax levied upon the use of carriages, which tax was declared valid in *Hylton v. United States*,<sup>4</sup> or the tax on the privilege to use foreign-built yachts upheld in *Billings v. United States*.<sup>5</sup> Taxes of this nature levied upon the exercise of a particular power incidental to ownership of property never having been understood to be direct, the Court is very reluctant to curtail or limit by construction the sovereign power of taxation.

The presumption in favor of the constitutionality of any act of Congress is overcome when the question is free from any reasonable doubt, and only in the event that there is no reasonable doubt will the Court hold an act of Congress to be unconstitutional.<sup>6</sup> The power to tax being the most important power of Government it is doubly essential to regard this presumption of validity in regard to Revenue Acts of Congress.

E. S.

**GROSS RECEIPTS TAX—INTERSTATE COMMERCE—CONSTITUTIONALITY.**—The plaintiff, a New Jersey corporation, having a part of its lines in and over New Jersey roads, transmits messages over them to places both within and without the state. The state levied a property and franchise tax of 5% on such part of the gross receipts received from all the work transacted within the state, as the lines in the public places bear to the total lines in the state. The lines in public places are about half of the total lines, fully a quarter of the total receipts in the intrastate business results from an extensive interstate commerce. The plaintiff contends that the tax is invalid inasmuch as it is a direct tax on the gross receipts derived from interstate commerce. *Held*, that the tax sought to be imposed is in violation of the commerce clause since it is a direct tax on the gross receipts derived from interstate commerce rather than a franchise tax on property, using gross receipts as a measure of value of property rights in accordance with Constitution N. J., Art. 4, Sec. 7,

---

<sup>3</sup> *Hylton v. U. S.*, 3 Dall. 171 (U. S. 1796); *Billings v. U. S.*, *supra* Note 1.

<sup>4</sup> *Hylton v. U. S.*, *supra* Note 3.

<sup>5</sup> *Billings v. U. S.*, *supra* Note 1.

<sup>6</sup> *Nicol v. Ames*, 173 U. S. 509, 514, 515, 19 Sup. Ct. Rep. 522 (1898).

Para. 12. *N. J. Bell Telephone Co. v. State Board of Taxes and Assessment of N. J.*, 280 U. S. —, 50 Sup. Ct. Rep. 111. Decided Jan. 15, 1930.

Although a state may tax property used entirely in interstate commerce, it may not burden such commerce by taxing gross earnings derived therefrom by imposing a license fee for the privilege of carrying on such commerce.<sup>1</sup> A direct tax on gross receipts derived from interstate commerce is not a tax on property, and is therefore void.<sup>2</sup> If the gross earnings are not taxed, but are used merely to ascertain value the tax is legitimate.<sup>3</sup> The dissenting opinion in the case is founded upon the theory that the fixing of a price for the privilege of using something to which the state's consent is essential is within the constitutional power of the state.<sup>4</sup> Even interstate commerce must pay its way.<sup>5</sup> It is submitted that the Supreme Court should have given greater weight to the right of the state to tax the privilege which it had granted.

W. S.

INCOME—DEDUCTIONS—OBSCOLESCENCE—GOOD WILL.—The plaintiff brought this action to recover taxes alleged to have been illegally exacted from it. The defendant, Collector of Internal Revenue, refused to allow plaintiff's claim for a deduction from its income, for the obsolescence of its good will due to the imminence of Prohibition Legislation. The plaintiff contended that its good will was such property as was meant by Section 234 (a), Subdivision 7 of Revenue Act of 1912 (Act of Feb. 24, 1919) C 18; 40 Stat. 1057, 1078, allowing as deductions, *inter alia*, a reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence. The collector disallowed the claim on the ground that the obsolescence intended by Section 234 (a), Subdivision 7 of Revenue Act of 1918 could only apply to obsolescence of property used in the trade or business as was subject to exhaustion, wear and tear, and therefore could not include good will or obsolescence of the good will. *Held*, that a deduction for obsolescence of good will of a brewery due to the imminence of national prohibition legislation is not allowable under Section 234 (a),

<sup>1</sup> Pullman Co. v. Richardson, 261 U. S. 330, 338, 43 Sup. Ct. Rep. 366, 368 (1922), and cases cited therein; Sprout v. South Bend, 277 U. S. 163, 171, 48 Sup. Ct. Rep. 502, 62 A. L. R. 45 (1928).

<sup>2</sup> U. S. Express Co. v. Minnesota, 223 U. S. 335, 32 Sup. Ct. Rep. 211 (1912); Pullman v. Richardson, *supra* Note 1; U. S. Glue Co. v. Oak Creek, 247 U. S. 321, 38 Sup. Ct. Rep. 449, Ann. Cas. 1918 E, 748 (1918).

<sup>3</sup> Cudahy Packing Co. v. Minnesota, 246 U. S. 450, 38 Sup. Ct. Rep. 373 (1917).

<sup>4</sup> Per Holmes, J.

<sup>5</sup> Postal Telegraph Cable Co. v. Richmond, 249 U. S. 252, 39 Sup. Ct. Rep. 265 (1918).