

## Taxation: Constitutional Law

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evidence cannot be given to add to a written contract. It is to be remembered, however, that seldom can one tell from a mere examination of the face of the instrument the exact location of the property, without resort to extrinsic evidence. A liberal attitude in admitting parol proof certainly helps to place the court in the position of the parties at the time of the making of the agreement and thereby enables it to intelligently interpret the contract.

BERNARD SOREF

### Taxation; Constitutional Law

A decision of far reaching importance was recently handed down by the Wisconsin Supreme Court.<sup>1</sup> It is a decision not only of interest to the bar, but also to every person who is in anyway interested in the distribution of merchandise. It effects every wholesaler and every retailer in the state of Wisconsin. It is welcomed by every manufacturer outside of the state who looks to Wisconsin as a field of distribution for his product. And more directly it has lulled into security an industry in which millions of dollars are invested, namely public warehousing.

The case was in the form of declaratory relief asking for judicial construction of subdivision 7 of Section 70.13:

Merchandise placed in storage in the original package in a commercial storage warehouse shall while so in storage be considered in transit and not subject to taxation.

Before the passage of this section in 1927, the situation was indeed far from satisfactory. Not only were goods, shipped from outside the state, taxable but such tax had to be paid by the warehouseman if the goods were in his possession on the taxing date, May 1. The warehouseman was expected to collect the taxes paid from the consignees. But here he was given the choice of either paying the tax himself or relinquishing the business to warehouses outside the state where there was no property tax. This was an obvious hardship to the warehouseman. It also prevented the free dissemination of goods into the state, thus depriving the Wisconsin merchant of the benefits to be derived.<sup>2</sup>

With a view toward remedying this situation the legislature passed the above quoted section. That this section does not apply to goods which are at all times within the state, though warehoused, is pointed out by the court in the light of other sections passed by the same legislature. Sec. 70.205 expressly provides for the taxation of intrastate property stored in warehouses. Subsection of section 70.13 provides

<sup>1</sup> *Nash Sales v. City of Milwaukee*, 224 N.W. 126.

<sup>2</sup> *State ex rel Bloch Bros. v. Tiesberg*, 220 N.W. 217.

for the taxation of all property in transit on May 1. The phrase "in the original package" is another indication of the legislative intent, in that it generally applies to goods shipped from outside the state.<sup>3</sup>

The general rule is that a state has power to tax interstate shipments only when they have come to rest and are under the protection of the state laws.

The act evinces no intent to change the rule. What the legislature did by the passage of this act was to declare that goods which are the subject of interstate commerce shall "be considered in transit" and therefore "not subject to taxation" while in storage in the original package in commercial warehouses.

In effect this section extended the time during which goods are subjects of interstate commerce so as to prevent them from coming within the state's taxing power.

The principal contention of the local manufacturer and shipper was that to exempt goods shipped from without the state and to tax goods shipped from within the state was invalid discrimination in the light of Article 8 Section 1 of Wis. constitution:

the rule of taxation shall be uniform and taxes shall be levied upon such property as the legislature shall prescribe.

However, the court held that such discrimination was within the power granted to the legislature. Under this section the power of the legislature to tax certain classes or to exempt certain classes is unrestrainedly within its province, as long as the classification is uniform.

The amount of exemption is peculiarly a subject for the exercise of legislative discretion. In our state the right to make reasonable exemptions in tax laws has always been recognized, and, of course, the legislature must be the judge as to the proper amount thereof. No court will assume to say that the legislature is wrong in its judgment as to the amount, unless such error appears so clearly as to leave no reasonable doubt.<sup>4</sup>

The outlook now after the passage of subsection 7 of section 70.13 and after the instant construction of said section is indeed very promising. Wisconsin's commercial warehousing industry which has flourished in the last few years will no doubt continue to grow and assume vast proportions. Along with the growth of warehouses, the cartage and insurance businesses will prosper. Goods will flow into the state normally to be easily available by the Wisconsin retailer, and the people will obtain the goods taxfree.

<sup>3</sup> 12 Wheaton 419.

<sup>4</sup> *Black v. State*, 113 W. 205.

But what of the local manufacturer and shipper? What is his lot as the result of this statutory construction? He must accept the situation as the evitable, and console himself with the thought that in other states where there is a personal property tax a like result is bound to be arrived at, and thus the scales will be evenly balanced.

CLARENCE A. BUTENHOFF