

REDFIELD et al. v. FISHER et al.

Supreme Court of Oregon.

Oct. 24, 1930.

1. Taxation ⇨1.

Five per cent. tax on net income of corporations is not tax on intangibles, but is excise levied on privilege of doing business in corporate form (Laws 1929, p. 617, §§ 3, 4, 6).

2. Taxation ⇨74.

"Credits," right to receive money of debtor, are taxable as species of property.

[Ed. Note.—For other definitions of "Credits," see Words and Phrases.]

3. Taxation ⇨104.

Tax laid directly on income of property, real or personal, may be regarded as tax on property producing income.

4. Taxation ⇨104.

For purpose of taxation, income can be considered property.

5. Taxation ⇨74.

Interest coupon attached to bond is property as bond itself, and is subject to taxation if bond is taxable.

6. Taxation ⇨74.

Five per cent. tax on gross income from intangibles received by all individuals residing in state *held* not intended as tax on income but as tax on property (Laws 1929, p. 636, §§ 1(c), 2).

Laws 1929, p. 636, §§ 1(c), 2, applicable only to individuals resident within state, imposed 5 per cent. tax per annum on income from money and credits, and defined "money and credits" as including intangible properties, bonds, notes, claims, etc. Section 2 provided that tax is imposed on resident taxpayer on income from money and credits.

7. Constitutional law ⇨68(4).

Legislative declarations as to nature of tax imposed are not controlling on courts determining for themselves true nature of tax.

8. Evidence ⇨5(2).

In determining validity of tax on intangibles, court may take notice of fact that intangibles have escaped taxation in state (Laws 1929, p. 636, § 1).

9. Taxation ⇨57.

Individual, unlike corporation, cannot be taxed for mere privileges of existing and owning property, which are natural rights.

10. Taxation ⇨200.

Legislature cannot grant exemption from tax on property by accepting as substitute excise tax not based on value of property of exempted individuals.

11. Taxation ⇨200.

Five per cent. tax on gross income from intangibles received by individuals being tax on property *held* not valid as in lieu of personal property tax under act exempting intangibles from property tax when owner has been subjected to income tax (Laws 1929, p. 636, § 1; Laws 1927, p. 405).

Laws 1927, p. 405, provided that all stocks, bonds, notes, moneys, or debts due or to become due to any person, dividends, interest, or other income from which is taxable, are hereby exempted from taxation as property.

12. Constitutional law ⇨229(1).

Statutes ⇨72.

Taxation ⇨45.

Five per cent. tax on gross income from intangibles received by individuals residing in state *held* invalid as unreasonably discriminating between individual and corporation and denying equal protection of laws (Laws 1929, p. 636, § 1; Const. Or. art. 1, § 32, and art. 9, § 1; Const. U. S. Amend. 14).

Const. Or. art. 1, § 32, required all taxation to be uniform on same class of subjects within territorial limits of authority levying tax, and article 9, § 1, authorized Legislature to provide uniform rules of assessment and taxation, and required all taxes to be levied and collected under general laws operating uniformly throughout state.

13. Taxation ⇨95(1).

Tax on intangibles permanently deposited in state by nonresidents to facilitate their use in business in state would be valid.

In Banc.

Appeal from Circuit Court, Marion County; L. H. McMahan, Judge.

Action by Scott Redfield and another, co-partners doing business as Redfield & Wood, and others, against Earl L. Fisher and others. Decree for defendants, and plaintiffs appeal.

Remanded, with instructions to enter decree for plaintiff.

Plaintiffs are five individuals residing within this state who are engaged in the investment banking business; that is, they purchase and sell bonds, stocks, notes, and other intangible property of the kind described in section 1 of 1929 Session Laws, c. 429, p. 636. Three of the defendants comprise the tax

here in the advantages of business thus conducted, which do not exist when the same business is conducted by private individuals or partnerships. It is this distinctive privilege which is the subject of taxation, not the mere buying or selling or handling of goods, which may be the same, whether done by corporations or individuals."

[9] The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individuals' rights to live and own property are natural rights for the enjoyment of which an excise cannot be imposed. 26 R. C. L. Taxation § 209, p. 236; Cooley Taxation (4th Ed.) § 1676; In re Opinion of the Justices, 195 Mass. 607, 84 N. E. 499. Thus when the corporation pays 5 per cent. of its net income to the state in obedience to chapter 427, it has not paid an ad valorem tax based upon the value of its intangibles, or calculated upon the return from such possessions, but has discharged an entirely different tax imposed for a very different reason.

[10] Thus we have a situation where the individual is compelled to pay a tax upon his intangibles while the corporation escapes entirely from this tax; yet the tax could be levied as well upon the corporation as upon the individual. Double taxation would not result if the corporation were given credit upon its excise tax for any payments made upon its intangible tax. The Legislature cannot grant an exemption from a tax on property by accepting as a substitute an excise tax not based upon the value of the property of the exempted individuals. 26 R. C. L. Taxation § 223, and Cooley Taxation (4th Ed.) §§ 662 and 663.

The effect of the Fourteenth Amendment to the federal Constitution, wherein it guarantees to all the equal protection of the laws, and the provisions of the Oregon Constitution, previously quoted, requiring uniformity and equality in taxation, were recently ably expounded by Mr. Justice McCourt in Standard Lumber Co. v. Pierce, supra. We quote from Atchison, etc., Railroad Co. v. Matthews, 174 U. S. 96, 19 S. Ct. 609, 612, 43 L. Ed. 909:

"The equal protection guaranteed by the constitution forbids the legislature to select a person, natural or artificial, and impose upon him or it burdens and liabilities which are not cast upon others similarly situated. It cannot pick out one individual, or one corporation, and enact that whenever he or it is sued the judgment shall be for double damages, or subject to an attorney's fee in favor of the plaintiff, when no other individual or corporation is subjected to the same rule. Neither can it make a classification of individuals or corporations which is purely

arbitrary, and impose upon such class special burdens and liabilities. Even where the selection is not obviously unreasonable and arbitrary, if the discrimination is based upon matters which have no relation to the object sought to be accomplished, the same conclusion of unconstitutionality is affirmed."

In Standard Lumber Co. v. Pierce, supra, this court declared that classification must "rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike." In Quaker City Cab Co. v. Pennsylvania, 277 U. S. 389, 48 S. Ct. 553, 555, 72 L. Ed. 927, the federal Supreme Court held invalid a statute which imposed a tax of 8 mills per dollar upon the gross receipts of corporations engaged in the transportation of persons and freight, but made no mention of individuals engaged in the same pursuit. The court declared: "The character of the owner is the sole fact on which the distinction and discrimination are made to depend. The tax is imposed merely because the owner is a corporation. The discrimination is not justified by any difference in the source of the receipts or in the situation or character of the property employed." In Frost v. Corporation Commission, 278 U. S. 515, 49 S. Ct. 235, 238, 73 L. Ed. 483, the same court said: "A classification which is bad because it arbitrarily favors the individual as against the corporation certainly cannot be good when it favors the corporation as against the individual."

It must be evident that chapter 429 is invalid unless other circumstances not yet considered by us come to its support. The Attorney General believes that the act can be sustained by disregarding the corporate entity, and comparing the situation of a group of individuals engaged in the investment banking business, as a partnership, with another group engaged in the same business who have incorporated their association. He argues that the first group would be taxed only under chapter 429, while the second group would be taxed twice; once by reason of chapter 427, and a second time when the profits of the enterprise are passed from the corporation to the stockholder in the form of dividends. In comparing the conditions of the two groups, we must disregard the tax imposed by chapter 427 because that is a sum taken from the second group on account of a special corporate privilege which it enjoys, and which the first group evidently felt it could not afford. But let us now determine whether chapter 429 will operate equally upon both groups. If it were evident that the corporation would distribute to the associates all of its profits like a partnership is bound to do, then every dollar of corporate profits would be taxed, and the two groups would be brought into an equal condition. But it is