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THE TAXATION OF BONDS OR STOCK OF FOREIGN STATES, MUNICIPALITIES AND CORPORATIONS.

I. ARE bonds or obligations of other states, and of municipal corporations incorporated by other states, commonly called the stock or debt of such states and municipalities, subject to valuation and assessment by the state in which the holder of such bonds or obligations may reside?

The basis of our systems of state taxation is the fundamental rule that every person in a state, or person holding property therein, ought to contribute his proportion of public taxes for the support of the government, according to his actual worth in real and personal property.

The principle, which must be deduced from this rule, is that immovable properties within a state are subject to valuation and assessment in such state, whether such property be owned by residents or non-residents; and that movable properties, owned by residents of such state, follow the persons of their respective owners, and must be accounted part of the property by which the actual worth of such owners shall be measured.

This principle is a rule of public law: 2 Domat's Civil Law, by Strahan, 2 ed. 330; Story Conf. Laws, 3 ed., §§ 379, 380, 381; *Sill v. Worswick*, 1 H. Black. 690; *Freke v. Lord Carberry*, Law Rep. 16 Eq. Cas. 466, Lord SELBORNE.

The words "movable properties," used by the continental writers, are now recognised as the fitting term by which to distin-

guish those properties which follow the person, and are, therefore, "movable" from those properties, which, though treated by a local law as personal estate, are yet, as matter of fact, *immovable*, because, being an interest in lands, "they savour of the realty." *Freke v. Lord Carberry*, Law Rep. 16 Eq. Cas. 466, 467.

It certainly cannot be reasonably doubted that state and municipal bonds, bearing interest, belong to the class of movable properties. "States and cities when they borrow money and contract to repay it with interest, are not acting as sovereignties. They come down to the level of ordinary individuals. Their contracts have the same meaning as that of similar contracts between private persons." *Murray v. Charleston*, 96 U. S. 445. See also *U. S. Bank v. Planters' Bank*, 9 Wheat. 907. Their obligations are simply evidences of debt, due from such states and cities to the holders of such obligations. Such bonds are, undoubtedly, property in the hands of those who hold and own them: *State Tax on Foreign-held Bonds*, 15 Wall. 320. If they are property in the hands of those who hold and own them, they have, as property, no other *situs* than the residence of such holders and owners: *State Tax on Foreign-held Bonds*, 15 Wall. 323.

Such securities show the right of the persons owning them to demand payment of the interest thereon, as it may accrue and become payable, and of the principal, when it shall become due according to the terms of the respective contracts: Williams on Personal Property, 4th Am. ed. 4. These rights are properties belonging to the owners of such securities: *State Tax on Foreign-held Bonds*, 15 Wall. 320; *Murray v. Charleston*, 96 U. S. 445. They are properties, having a value in the market while the interest is maturing and before the debts are due. They are properties, which, because they consist of the right of their respective owners to demand such interest and principal, as they may respectively become due, are personal to such owners; and have, as such rights, no taxable *situs*, except the residences of their respective owners: Cooley on Taxation 65; Burroughs on Taxation, secs. 41, 134, 432; *Latrobe v. Mayor and City Council of Baltimore*, 19 Md. 22; *Mayor and City Council of Baltimore v. Sterling and Ridgely*, 29 Md. 49; *Champaign County Bank v. Smith*, 7 Ohio 52, 54; *Hall v. County Commissioners of Middlesex*, 10 Allen 102; *Webb v. Burlington*, 28 Vt. 198; *Kirtland v. Hotchkiss*, 42 Conn. 426, 435.

It does not matter that by the terms of the contracts the owner of such securities is obliged to demand payment in a state other than that in which he may reside. It does not matter that he is required, by the terms of the contracts, to assign these securities in a particular manner, or that the registry of such assignment is required to be made or kept in a particular place. Such conditions do not alter the situs of the right of property, or separate such properties from the person of the owner of them. They are only precautions, intended for the greater safety of the debtor: *Black v. Zacharie*, 3 Howard 513; *Farmers' Bank of Maryland v. Iglehart*, 6 Gill 56; *Baltimore City Passenger Railroad Co., v. Sewell*, 35 Md. 252, 253.

Such bonds may be securities, which are of record as the property of the owner thereof, in the proper offices of the states and corporations by which such bonds were executed; but the title to the bonds does not depend upon the register only. Each of such owners has actual possession of his bonds. Each of said owners is competent to sell, bequeath, or give them away as part of his estate. They are not subject, in any wise, to the taxing jurisdiction of the states under whose authority they were issued, as the property of such owners; because such owners are not within the jurisdiction of those states: *Murray v. Charleston*, 96 U. S. 445. They are taxable only under the laws of the state in which their owner may reside.

It is true that the Supreme Court, in the case of *State Tax on Foreign-held Bonds*, 15 Wall. 323, 324, said: "That the actual situs of personal property, which has a visible and tangible existence, and not the domicile of its owner, will, in many cases, determine the state in which it may be taxed. The same thing is true of public securities, consisting of state bonds, and bonds of municipal bodies, and circulating notes of banking institutions; the former, by general usage, have acquired the character of, and are treated as, property *in the place where they are found*, though removed from the domicile of the owner; the latter are treated and pass as money wherever they are. But other personal property, consisting of bonds, mortgages, and debts generally, has no situs independent of the domicile of the owner."

We do not understand what is meant by the words that state bonds, and bonds of municipal bodies, by general usage, "have acquired the character of, and are treated as property, in the place

where they are found, though removed from the domicile of the owner."

It will be observed that the Supreme Court does not say that such bonds are not to be treated as property, at the domicile of their owner, *when they are found at such domicile*. It certainly did not mean to say that they could be treated as property *only* in the state or municipality by which such bonds were issued; for while in *Murray v. Charleston*, 96 U. S. 445, it decided that the promise of a state or municipality *was* property, it held on page 440, *that non-resident holder of such state or municipal promises, was not a holder of property within such state or city*. If such non-resident holder of state or city bonds is not a holder of property in the state or city issuing such bonds, he must certainly be accounted the holder of such property at his domicile in the state in which he resides. And, as the Supreme Court, in its opinion in *Murray v. Charleston, supra*, expressly limits the taxing power of a state or city over debts due by such state or city, *to creditors within their respective jurisdictions*, it must certainly be understood to have meant that the taxing power of other states, and of municipalities in other states, extended to such properties, when owned by creditors residing within *their* respective jurisdictions. In such cases the property is found at the domiciles of the owners of the particular properties.

As a question of strict law, it is immaterial whether bonds, issued by one state, or by a municipality incorporated by one state, and owned by a resident of another state, were or were not exempted from taxation by the state which authorized the issue of such bonds. Such exemption can have no extra-territorial operation, except by general usage, or by a comity, which has attained the force of general usage.

There is, of course, no need of any argument to show that the bonds of other states, or of municipal or other corporations incorporated by other states, owned by residents of one state, are not exempted from taxation by such state, because such bonds are not taxed by the states which authorize their issue, when owned by residents of such states. Each state is free, in the absence of a constitutional provision to the contrary, to exempt from taxation any class of property belonging to residents of such state to which it may see proper to grant such immunity. The power thus exercised can never operate beyond the jurisdiction of the state exer-

cising it. No state can protect from taxation property within the jurisdiction of another state, owned by a resident of such other state.

II. Are shares of stock in corporations, other than municipal corporations, not incorporated by the state in which the holder of such shares resides, subject to valuation and assessment by the state of which such holder is a resident ?

A corporation, incorporated by another state, is a resident of such state only: *Bank of Augusta v. Earle*, 13 Peters 588; *Ohio and Mississippi Railroad Co. v. Wheeler*, 1 Black 295-297; and must be treated as a natural person would be, who resided in such state: *Louisville Railroad Co. v. Letson*, 2 How. 555.

It is the sole owner of the franchises and capital of the corporation, and of the property, real, personal and mixed, in which that capital is invested, and which are held in its corporate name and by its corporate title; and such property, according to its nature, may be valued and assessed to the corporation owning it, in the state in which such corporation resides, in the same manner in which such particular properties would be assessed to individuals, if they were the owners thereof: *Gordon v. Appeal Tax Court*, 3 How. 150; *Calcutta Jute Mills Co. v. Nicholson*, Law Rep. 1 Ex. Div. 444, 448; *Cesena Sulphur Co. v. Nicholson*, Law Rep. 1 Ex. Div. 453, 454.

If such corporation has a capital stock, divided into shares, owned by individuals, such individual shareholders are not the owners of any portion of the corporate property or franchise: *Regina v. Arnaud*, 9 Ad. & E. N. S. 806, 817 (58 E. C. L. R. 816); *Watson v. Spratley*, 10 Exch. 35, 238; *Cesena Sulphur Co. v. Nicholson*, Law Rep. 1 Exch. Div. 451; and certainly the corporation is not the owner of the shares belonging to the individual shareholders.

The shareholders have a right to participate in the net profits of the corporation, as ascertained from time to time, in proportion to the number of their shares in the corporate stock. They have a right, in case of the dissolution of the corporation, to a share in its assets remaining after payment of its debts, proportioned to their ownership of its shares of stock. But, while the corporation remains in being, they are not owners of any part of the corporate franchises or property: *McCulloch v. Maryland*, 4 Wheat. 436; *Dartmouth College v. Woodward*, 4 Wheat. 700, 701; *Gordon*

v. *Appeal Tax Court*, 3 Howard 150; *Van Allen v. Assessors*, 3 Wall. 584; *Delaware Railroad Tax Case*, 18 Wall. 229, 231; *Farrington v. Tennessee*, 95 U. S. 686, 687, 691; *Dewing v. Perdicaries*, 96 U. S. 196; *Regina v. Arnaud*, 9 Ad. & E. N. S. 806, 817 (58 E. C. L. R. 816); *Watson v. Spratley*, 10 Exch. 235, 238. The right, while the corporation remains in being, to receive their proportionate share of the net profits of such corporation, is their sole and exclusive right. It is not shared with the corporation. It belongs to the stockholders as stockholders only. This right is an actual property, having a market value, which, whether it is to be termed a chose in action or not, is as much the exclusive property of the shareholders as any other property belonging to him. *Ex parte Union Bank of Manchester*, 12 Eq. Cas. 357; Williams on Personal Property, 4th Am. ed. 6.

The property, owned by a shareholder in a corporation, is so different and distinct from the property owned by the corporation, that its distinctive character is not affected by the nature of the property of the corporation. The property of the corporation may be wholly real estate. The shares of its stock are personal property only: *Ex parte Union Bank of Manchester*, 12 Equity Cases 357; Shelford on Joint Stock Companies, 2 Eng. ed. 147; *Myers v. Peregall*, 2 De Gex, Mac. & Gord. 618, 621; *Hilton v. Giraud*, 1 De Gex & Smale 83; *Ashton v. Lord Langdale*, 4 De Gex & Smale 402; *Taylor v. Linley*, 2 De Gex, Fisher & Jones 84; *Hayter v. Tucker*, 4 Kay & Johnson 243; *Sparling v. Parker*, 9 Beav. 450; *Walker v. Milne*, 11 Beav. 507.

The necessary conclusion would seem to be that shares in a corporation, incorporated by one state, owned by residents of another state, constitute a separate and special property, belonging to the respective shareholders, wholly distinct from the capital of the corporation, and from the property in which that capital is invested: *Emory v. State*, 41 Md. 58.

The most complete proof that the property belonging to the corporation, and the shares in such corporation in the hands of the holders of such shares, are distinct and separate properties, is the conclusion reached by the Supreme Court of the United States in the recent case of *Farrington v. Tennessee*, 95 U. S. 687, that the property of a corporation and the shares of a corporation may both be taxed in the hands of their respective owners, by the state in which such corporation has its situs, and in which also such

shareholders reside, and that such taxation is not double. In that case it was declared to be "settled beyond doubt," that a tax upon a corporation was a different thing from a tax upon the individual shareholders of stock in the corporation; that the property of the corporation, and the shares of stock of that corporation in the hands of stockholders, were different properties, and were consequently distinct subjects for taxation; and that an exemption of the one was not of itself an exemption of the other, nor the taxation of the one a tax upon the other in such a sense as to interfere with any exemption the latter might have from taxation.

The ruling, thus made, has been affirmed in the recent case of *Dewing v. Perdicaries*, 96 U. S. 196.

If shares of stock in a corporation, incorporated by a state, owned by a shareholder residing in the same state, constitute a property separate from that owned by the corporation, and are liable to taxation as the property of such shareholder, whether the property of the corporation be taxed by such state, or not, it certainly follows that shares of stock in a corporation incorporated by one state, are, when owned by a resident of another state, liable to taxation by the state in which he resides, whether the property of such non-resident corporation be taxed by the state in which it has its situs, or not: *Keyser v. Rice*, 47 Md. 211, 212; *Latrobe v. Mayor and City Council of Baltimore*, 19 Md. 13; *Farrington v. Tennessee*, 95 U. S. 686, 687, 691, 692; *Dewing v. Perdicaries*, 96 U. S. 196; *Van Allen v. Assessors*, 3 Wall. 584; 1 Redf. Am. R. W. Cases, Sup. 503, 504; *State v. Branin*, 3 Zab. 507; *State v. Bentley*, 3 Zab. 341; *Newark City Bank v. Assessors*, 30 N. J. 20; Cooley on Taxation 15, 16, 274; Burroughs on Taxation 188; *Dwight v. Mayor of Boston*, 12 Allen 316, 322; *Howell v. Cassapolis*, 35 Mich. 472; *City of Evansville v. Hall*, 14 Indiana 27; *Angel & Ames on Corp.*, 8th ed., sections 560-564.

When a corporation has its situs in one state, and the shareholders of such corporation reside in another state, the taxation by the one state of the corporate property, and by the other state of the shares in that corporation, owned by persons residing in such other state, is not a circumstance upon which the courts of either state can found an objection. Such taxation cannot be objected to as double taxation. The theory that taxation of the property of a corporation, and also of its shares, is double taxation, has no application except to a case where the situs of the property of such cor-

poration, and the situs of the ownership of its shares of stock, are both in one state, and both properties are taxed for the same object and by the same authority in such state. Taxes, which are imposed by different authorities, are not objectionable upon any theory of double taxation, even if the taxes thus imposed affect the same property. Municipal taxes are not unconstitutional, because they affect property already taxed for state purposes. Federal direct taxes, laid under article 1, section 8, of the Constitution of the United States, would not be unconstitutional, although they would certainly be imposed upon property already subject to state and municipal taxation. Taxes imposed by different states, upon the same property, could not be accounted double taxation. And certainly taxes imposed by different states upon properties different in nature, however connected by relation to each other, cannot be accounted double taxation.

The situs of the corporation does not determine the situs of the shares of such corporation for the purposes of taxation. Such shares represent only the right of the shareholder to receive an aliquot portion of the net profits of the corporation; and being rights of property wholly personal to the shareholder, can have, as property, no situs except the residence of such shareholder. See cases last cited.

The register of shares in the principal office of a corporation does not create a situs for such shares as taxable property. That book is only a record, kept for the security of the corporation, to afford evidence of the ownership of such shares. A transfer upon the registry is not necessary to divest the title of the owner of shares of corporate stock. The property in such shares is so completely vested in the owner, that his transfer of them, by a proper instrument, operates of itself to divest his title and to give to his transferee a right to demand a new certificate: *Bank v. Zacharie*, 3 How. 513; *Farmers' Bank v. Iglehart*, 6 Gill 56; *Baltimore City Passenger Railway Co. v. Sewell*, 35 Md. 252, 253; *Agricultural Bank v. Burr*, 24 Maine 254; Angell & Ames on Corp., 8th ed., sect. 565. The register is only one of the *indicia* of title: *Dewing v. Perdicaries*, 96 U. S. 196.

C. J. M. G