TAXATION

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A relatively large number of cases were decided during the survey period but production of any significant legislation was negligible.

INCOME TAX

The case of *Oxford v. Nehi Corporation*,[1] involved construction of Georgia Code Ann. § 92-3113 pertaining to the percentage of gross receipts to be attributed to business done in Georgia. The specific wording at issue was

> for the purposes of this section receipts shall be deemed to have been derived from business done within this state only if received from products shipped to customers in this state, or delivered within this state to customers, and in determining the gross receipts within Georgia, receipts from sales negotiated or effected through offices of the taxpayer outside the state and delivered from storage in the state to customers outside the state shall be excluded.

The majority of the court gave literal effect to the language and held that only receipts from products shipped to customers in Georgia or delivered within Georgia to customers could be counted in ascertaining the percentage of gross receipts attributable to the corporation for purposes of Georgia income tax. In a strong dissent Chief Justice Duckworth pointed out that the primary intent of the law was to tax the entire net income "reasonably attributable to the property owned and business done within the state." The wording construed only applies if the taxpayer conducts some portion of its business outside of Georgia and Justice Duckworth fortified his dissent with the illustration that if Corporation A operated only in Georgia it would have to pay tax on one hundred percent of its receipts whereas Corporation B doing one percent of its business in Alabama but deriving only ten percent of its receipts from products shipped to customers in this state or delivered within this state to customers would only pay Georgia taxes on the ten percent of its receipts. It seems to the writer that corrective legislation is indicated to prevent such an unfair result.

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1. 215 Ga. 74, 109 S.E.2d 329 (1959).

In *Superior Pine Products v. Williams*[2] the Supreme Court affirmed the ruling of the Court of Appeals[3] that proceeds of a 60 year timber contract between the parties were to be treated as ordinary income rather than capital gain. Although the sale of standing timber has been held to result in a capital gain, the instant contract was held to be for the sale of pulpwood at an agreed price per cord after it was cut and stacked and thus a sale of personal property. In addition, the period of time for which the contract extended, together with the provisions for replacement of timber cut by limiting the amount of pulpwood to be removed annually to the average annual growth, aided the court in arriving at the decision that the contract was in fact a lease of the lands involved and that the proceeds of the lease were rent or in the nature of rent and hence ordinary income.

Oxford v. Generator Exchange, Inc.[4] involved an attempt by the Revenue Commissioner to revive income tax fi. fas. The Commissioner contended that the provisions of chapter 110-10 of the Code relating to dormant judgements and their revival were applicable to "dormant tax executions." The court pointed out that "judgment" and "execution" are not synonymous and that accordingly, the provisions of chapter 110-10 have no application to fi. fas. Unless the fi. fa. is entered on the general execution docket within seven years from the date of the assessment and kept alive by proper entries thereafter, it becomes not merely dormant but completely dead and nothing more can be done to enforce it by the taxing authority.

Sales and Use Tax

Upon receiving an "official notice of fi. fa. to be issued" with regard to allegedly delinquent sales and use taxes, E. W. Farr filed an appeal to the Superior Court of Warren County, as provided in section 19 of the act.[5] The Court of Appeals[6] held that the section was in pari materia with section 30 of an act[7] providing for an integrated tax administration and that appeal to the Superior Court could only be availed of from a final assessment. On appeal to the Supreme Court, held, reversed. Section 19 of the Sales and Use Tax Act is not in pari materia with section 30 of the 1938 act and taxpayer's appeal was proper.

Williams v. General Finance Corporation of Atlanta[8] involved a

2. 214 Ga. 485, 106 S.E.2d 6 (1958).
3. Williams v. Superior Pine Products Co., 97 Ga. App. 414, 103 S.E.2d 587 (1958)
4. 99 Ga. App. 290, 108 S.E.2d 174 (1959).
5. Ga. Laws 1951, p. 360.
6. Williams v. Farr, 97 Ga. App. 881, 104 S.E.2d 713 (1958).
7. Ga. Laws 1937-38, p. 77.
8. 98 Ga. App. 31, 104 S.E.2d 649 (1958).

dispute between the holder of bills of sale to secure debt on three automobiles and the Revenue Commissioner who had a lien for sales taxes entered on the general execution docket. The taxes were levied against the automobile dealer which gave the bills of sale to secure debt. General Finance Corporation of Atlanta subsequently foreclosed the bills of sale but did not record them prior to the entry of the tax lien on the execution docket. Under the specific wording of Georgia Code Ann. § 92-8444 it was held that the foreclosure did not divest the tax lien since the tax lien is subordinated only when the security instrument has been recorded prior to the time the tax lien is placed on the execution docket.

Whether sales tax was properly charged for metal plates used in reproducing copy for customers was at issue in *Superior Type, Inc. v. Williams*[9], decided by the Court of Appeals. The court held that only personal services were involved in cases where the typesetter either was furnished with the metal by the commercial printer or used its own metal which was subsequently replaced by metal of equal weight by the commercial printer. Hence, these transactions were held not subject to sales tax. Where the commercial printer purchased the metal plate from a lithographer or photoengraver in order to reproduce copies for its customer and passed the charge for same on to the customer it was held that the printer purchased these plates for resale since it used the plates solely for the benefit of the customer who ultimately receives both title and right of possession of the plates and pays the sales tax thereon. There was thus no taxable sale of tangible personal property to the printer.

The well established principle that a casual and isolated sale is not subject to sales or use tax was reiterated in the case of *Oxford v. Camilla Cotton Oil Co.*[10] The sale took place within the state and the court held that the case of *Williams v. Suwanee Longleaf Manufacturing Co.*[11] was controlling on the question of whether use tax was owing as a result of the transaction.

Ad Valorem Taxes

Mandamus was sought to compel a change in procedure by the County Tax Commissioner in *State v. Johnson*.[12] It was alleged that the law requires the tax authorities to submit a list of questions to each taxpayer reflecting the kind, character and fair market value of all taxable property owned and that the law also requires that an oath be administered to each person making a return. The petition set out

9. 98 Ga. App. 89, 105 S.E.2d 14 (1958).
10. 99 Ga. App. 126, 107 S.E.2d 854 (1959).
11. 97 Ga. App. 431, 103 S.E.2d 123 (1958).
12. 214 Ga. 607, 106 S.E.2d 353 (1958).

that in Chatham County the property owner is presented with a return previously prepared and instructed to "sign here." It was also alleged that the two thousand dollar homestead exemption was applied to a reduced value rather than to the true value as required by law. The Supreme Court, Head, J., ruled that mandamus will not lie to compel a general course of official conduct for a long series of acts to be performed under varying conditions. The court also stated that entries made on the return by the tax authorities would not relieve the taxpayer of his responsibility to return his property and hence, such previous entries would not in themselves invalidate the return.

Barrett v. Slagle[13] was an action to enjoin the levy and collection of taxes on the ground that the tax assessors were acting illegally because no order making their appointment to such office had been entered on the minutes of the Clerk of Superior Court nor was there any record of their having taken the oath of office. It was further alleged that one of the assessors had been employed on a full time basis to assist the board in determining the tax assessments for the county and that he was receiving greater compensation than the other members of the board. It was alleged that as a result of this fact the assessor could not act faithfully and impartially. Pointing out that there was no allegation that the members of the board had not been properly appointed but merely that no record of same appeared on the minutes of the Clerk of the Superior Court, the Court of Appeals concluded that the assessors would be at least de facto officers, thereby making their official actions prima facie valid and not subject to collateral attack. In addition the court found no rule of public policy requiring all members of a board of tax assessors to receive the same compensation regardless of the amount of time and work devoted to the job. The action of the Superior Court sustaining general demurrers to the petition was affirmed.

Denial of a temporary injunction to restrain the defendants from carrying tax assessments into effect was upheld by the Supreme Court in *Kight v. Gilliard*[14] since the evidence failed to support the allegation of an illegal scheme to raise assessments without regard for any fair valuation of property and without attempt to equalize assessments. It was again observed that tax assessors are not required to use any particular system or method of determining just and fair valuations.

City of Carrollton v. Word[15] was an equitable action to enjoin tax assessments and executions of the City of Carrollton. The Supreme

13. 214 Ga. 650, 106 S.E.2d 908 (1959).
14. 214 Ga. 445, 105 S.E.2d 333 (1958).
15. 215 Ga. 104, 109 S.E.2d 37 (1959).

Court held it was error to overrule the general demurrers to the petition since the charter of the City of Carrollton provided an adequate remedy at law by affidavit of illegality to test the validity of city tax executions and hence equity was without jurisdiction.

Tax Exemption

The construction of port facilities at Brunswick came under fire in *Sigman v. Brunswick Port Authority*.[16] In this action, it was sought to restrain the Port Authority from proceeding with the issuance and sale of revenue bonds and to stop the Authority from building facilities to be leased to Bestwall Gypsum Co. The petition charged that the act creating the authority as applied in the case at hand would exempt from taxation property not specifically authorized by the Constitution of the State of Georgia in that the property concerned would not be public property. The court held that the property "is in the aid of commerce, and is for the promotion of public transportation, public commerce, and general welfare, and may properly be classified as public property and therefore exempt from taxation." The lessee's rental, over a period of twenty five years, included all costs of construction and operation of the facilities plus twelve thousand dollars per year. It was pointed out that no private interest existed in the property of the Authority and that the Authority holds title only for the benefit of the state and the public. Chief Justice Duckworth dissented, asserting that port facilities do not include the construction of a manufacturing plant such as the one involved in the case under review. It seems to the writer that the majority employed extremely liberal reasoning in order to uphold what they felt to be a desirable result.

A dwelling house occupied by the manager of Flint Electric Membership Corporation but also used to facilitate around the clock service and provide a stopping place for visiting businessmen was held exempt from taxation[17] on the ground that it was convenient and useful to the purpose of the Electric Membership Corporation.

Statutes

The only statutory enactment of general interest was Act No. 3[18] providing for a credit against taxes for contributions to educational organizations which have a certificate issued by the Revenue Commissioner in full force and effect at the time the contribution is made. Other measures enacted were concerned largely with business and license taxes.

16. 214 Ga. 280, 104 S.E.2d 431 (1958).
17. 214 Ga. 332, 104 S.E.2d 467 (1958).
18. Ga. Laws 1959, p. 3027.