Recent Cases: Taxation — Constitutional Law — Ad Valorem Personal Property Tax On Flight Equipment Used in Interstate Commerce

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Taxation—Constitutional Law—Ad Valorem Personal Property Tax
On Flight Equipment Used in Interstate Commerce

Plaintiff airline, incorporated in Delaware, with its executive offices in Texas, and its home port in Minnesota, brought action for a declaratory judgment to test the validity of a Nebraska statute authorizing the imposition of an ad valorem personal property tax on flight equipment used in interstate commerce.\(^1\) The tax in question was not based on the full value of the equipment but on the percentage of flight equipment used in Nebraska.\(^2\) Plaintiff contended that taxation of its


equipment by Nebraska in any amount was prohibited by the "Commerce Clause" of the Federal Constitution.\(^3\) Held: Nebraska has the power to impose this tax upon flight equipment engaged in interstate commerce temporarily in Nebraska, so long as such equipment has remained wholly and continuously outside the state of incorporation.\(^4\)

This case is the first appellate court decision upon the precise issue of the power of a state to impose a proportionate ad valorum personal property tax upon aircraft moving in interstate commerce. However, the particular form of taxation has been practiced in the United States for some time,\(^5\) the rationale being derived by analogy to decisions of the United States Supreme Court in regard to inland waterways and railroads.\(^6\)

The power of a state to subject waterways and railroads to ad valorum property taxes is subject to definite limitations. When a corporation is organized under the laws of one state and its tangible personal property is permanently located in other states, the state of organization may not impose a tax on that property.\(^7\) A state may tax railroad cars running through the state, so long as the basis for assessment is the ratio of the number of cars in the taxing state to the total number of cars employed by the railroad.\(^8\) A state may not, however, impose a tax upon an entire fleet of cars when they are habitually employed in several states, even though the cars consistently run into and out of the taxing state.\(^9\) It would appear that the law as applied to railroads would be equally satisfactory if applied to airlines. The Supreme Court of Nebraska made this transition in the instant decision.

However, the instant case must be viewed in the light of the United States Supreme Court decision in *Northwest Airlines v. Minnesota*,\(^10\) which held that Minnesota could tax the full value of Northwest's aircraft and equipment, even though the scheduled route mileage in Minnesota was only fourteen per cent of the total and the scheduled plane mileage in Minnesota was only sixteen per cent of the total. The tax was upheld on the theory that Minnesota was the home port, legal domicile, and principal place of business of the airline.\(^11\) The

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\(^3\) Mid-Continent Airlines v. Nebraska State Board of Equalization, 157 Neb. 425, 59 N.W.2d 746 (1953).


\(^6\) Union Refrigeration Transit Co. v. Kentucky, 199 U.S. 194 (1905).

\(^7\) Pullman's Palace Car Co. v. Pennsylvania, 141 U.S. 18 (1890).

\(^8\) Johnson v. Oklahoma, 290 U.S. 158 (1933).

\(^9\) 322 U.S. 292 (1943).

\(^10\) The Supreme Court based the *Northwest Airlines* decision on the case of New York Central R.R. v. Miller, 202 U.S. 584 (1905), where the state assessed
particular relation between Minnesota and Northwest existed as to those parties alone, and no other state was so closely related for taxation purposes to the airlines as was Minnesota.

The decision in the Northwest Airlines case has met with rather strong opposition because of the implication of judicially approved multiple taxation. Mr. Justice Jackson, although concurring with the result of the case, expressed his dissatisfaction with the failure of the majority opinion to state expressly that, by virtue of the upholding of the Minnesota tax, other states in which Northwest operated aircraft were without right to levy similar taxes against Northwest’s aircraft operating in those states. The majority opinion did state that the taxability of any part of the airline’s fleet by any state other than Minnesota was an issue neither before, nor decided by, the court.

It is apparent that the decision by the Nebraska court in the instant case is not in conflict with the United States Supreme Court’s decision in the Northwest Airlines case. The Nebraska case decided only that, when an airline operating in interstate commerce over Nebraska does not have its home port, domicile and principal place of business all in some other state, Nebraska may levy a proportionate ad valorem personal property tax against the flight equipment.

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a 100% ad valorem tax on railroad cars on the theory that they had not obtained taxable situs elsewhere, even though they passed through other states.

Note, 57 Harv. L. Rev. 1097 (1943); Saxe, Federal Control of the State Taxation of Airlines, 31 Cornell L.Q. 228 (1945); Page, Jurisdiction to Tax Tangible Movable, Wis. L. Rev. 125 (1945); Welch, The Taxation of Air Carriers, 11 Law & Contemp. Prob. 584 (1945).

Justice Jackson noted that if the reasoning of the majority should be extended to support full taxation everywhere, it would offend the commerce clause more seriously than does apportioned taxation everywhere.