



PennState
Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 33
Issue 2 *Dickinson Law Review - Volume 33,*
Issue 2

1-1-1929

Corporate Loans Tax-Foreign Corporations Doing Business in Pennsylvania-Non-Resident Treasurer

Leon Metzger

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

Recommended Citation

Leon Metzger, *Corporate Loans Tax-Foreign Corporations Doing Business in Pennsylvania-Non-Resident Treasurer*, 33 DICK. L. REV. 98 (1929).

Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol33/iss2/7>

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

Pennsylvania in a similar situation that the presumption of the continuance of an illicit relationship gives way to the superior presumption in favor of compliance with the requirements of law, of morality, and of common decency and that marriage may be presumed from cohabitation and reputation after the removal of the impediment.¹² However the cohabitation and reputation subsequent to the removal of the impediment must be of such duration as to justify a presumption of marriage. Accordingly it has been held that cohabitation and reputation for a period of one week,¹³ or two months,¹⁴ after the removal of the impediment was insufficient and the presumption of the continuance of the illicit relationship prevailed.

The principal case would fall under either the second or third class of cases hereinabove discussed and accordingly the Court reached the proper conclusion that marriage could be presumed from the continued cohabitation and reputation of the claimant and decedent after the death of the claimant's first husband.

The Court also sustained the contention that the claimant and decedent were validly married on the ground that there was a presumption of innocence on the part of Eastman in remarrying, that is, it must be presumed that he obtained a divorce from the claimant before his second marriage and that, therefore, the marriage between the claimant and the decedent was valid from its inception. Similar reasoning is to be found in other cases.¹⁵

Fred S. Reese

CORPORATE LOANS TAX—FOREIGN CORPORATION DOING BUSINESS IN PENNSYLVANIA—NON-RESIDENT TREASURER—The decision in *Commonwealth v. Sun Oil Company*¹ shows an important development in the application of Pennsylvania Corporate Loans

¹²Thewlis' Estate, *supra*, note 7; and see 1 Bishop, *Marriage and Divorce*, sec. 970.

¹³Grimm's Estate, *supra*, note 1.

¹⁴Hunt's Appeal, *supra*, note 1.

¹⁵Wiles' Estate, 6 Pa. Super. Ct. 435 (1898); Thewlis' Estate, *supra*, note 7.

¹294 Pa. 99 (1928).

tax legislation² to the case of a foreign corporation which is doing business in Pennsylvania but whose Treasurer maintains a home and voting residence in another state.

The first important case involving the applicability of the Corporate Loans tax to foreign corporations with non-resident treasurers was *N. Y., L. E. & W. R. R. Co. v. Pennsylvania*³. There an attempt was made by the Pennsylvania state taxing officers to impose on non-resident treasurers of foreign corporations doing business in Pennsylvania, *when paying interest outside of Pennsylvania*, on bonds owned by individual residents of Pennsylvania, the duty of assessing and collecting the tax. Mr. Justice Harlan, writing the opinion of the Court, said, on page 639: "The principal question in this case is whether the Commonwealth of Pennsylvania may, consistently with the constitution of the United States, impose upon the New York, Lake Erie and Western Railroad Company the duty—when paying *in the City of New York*⁴ the interest due upon scrip, bonds or certificates of indebtedness held by residents of Pennsylvania—of deducting from the interest so paid the amount assessed upon bonds and moneyed capital in the hands of such residents of Pennsylvania."

²The Act of July 21, 1919, P. L. 1067, Pa. St. 1920, Section 20434, amending Section 4 of the Act of June 30, 1885, P. L. 193, 4 Purdon's 4544, provides that it shall be the duty of the Treasurer of every private corporation, foreign or domestic, which is doing business in Pennsylvania, upon the payment of interest on any scrip, bond, certificate or evidence of indebtedness of such corporation, held by residents of Pennsylvania, to assess and deduct from the interest paid, a tax of four mills upon the face value of the obligation and return it to the Auditor General of Pennsylvania.

The Act of July 15, 1919, P. L. 955, Pa. St. 1920, Section 20420, amending Section 17 of the Act of June 17, 1913, P. L. 507, 7 Purdon's 7618, specifies the corporate obligations subject to the Corporate Loans Tax.

The Tax is not on the corporation, but on the resident owners of the indebtedness. The treasurer of the corporation is made the agent of the State for the assessment and collection of the tax and if he fails in this duty the corporation becomes liable for the tax. *Commonwealth v. Phila. etc. C. & I. Co.* 137 Pa. 481; *Commonwealth v. Del. Div. Canal Co.* 123 Pa. 594.

³153 U. S. 628 (1894).

⁴Italics by U. S. Supreme Court.

And further, on page 645, in making reference to Section 4 of the Act of 1885⁵ Mr. Justice Harlan said: "It assumes to do what the State has no authority to do, to compel a foreign corporation to act, *in the state of its creation*,⁶ as an assessor and collector of taxes due in Pennsylvania from residents of Pennsylvania."

*Commonwealth v. Barrett Manufacturing Company*⁷ reveals the next attempt by the taxing officers to impose upon the non-resident treasurer of a foreign corporation doing business in Pennsylvania, the duty of assessing and collecting the Corporate Loans tax. The Barrett Manufacturing Company was a West Virginia corporation doing business in Pennsylvania. Its treasurer was a non-resident of Pennsylvania and maintained his office for the transaction of corporate business in New York. A week or ten days prior to the regular date for paying interest on corporate obligations held by residents of Pennsylvania, he sent, *from outside of the state*, funds to the Land Title and Trust Company of Philadelphia with which to pay duly presented coupons, which coupons, after being paid by the Land Title and Trust Company, were returned to the treasurer in New York. The treasurer's corporate bank account was carried in a New York depository, and the Land Title and Trust Company did not hold any property of the Barrett Manufacturing Company as collateral security for the payment of the interest. It simply paid the interest from funds forwarded to it.

Justice Moschzisker, writing the opinion for the Court, stated that the cases of *N. Y., L. E., & W. R. R. Company v. Pennsylvania*, supra, and *Delaware and Hudson Canal Company v. Pennsylvania*, supra, controlled, quoting with approval from the opinion in the former case, as follows, page 305: " * * * 'every act he personally did in connection with the payment of the interest was performed in the State of New York, and not within the limits of this State,' * * * ".

⁵P. L. 193, 4 Purdon's 4544.

⁶Italics by U. S. Supreme Court. See also *Delaware & Hudson Canal Co. v. Penna.*, 156 U. S. 200 (1895); *Commonwealth v. N. Y. Central & H. R. R. Co.*, 14 Dauphin 68 (1911).

⁷246 Pa. 301 (1914).

Notwithstanding the foregoing decisions the Legislature of Pennsylvania by the Act of July 15, 1919,⁸ amended Section 18 of the Act of June 17, 1913,⁹ which in effect adopts the provisions of Section 4 of the Act of 1885¹⁰ as to the method of collecting the tax, by adding the following provision: "That the provisions of this section shall apply to all foreign corporations, duly registered and doing business in this State, without regard to whether the treasurers or other fiscal officers of such corporations whose duty it may be to pay the interest on obligations of the character aforesaid may be residents or non-residents of this Commonwealth."

This provision was, of course, promptly held to be unconstitutional as applied to the case of a non-resident treasurer of a foreign corporation who had his official office outside of Pennsylvania.¹¹ This decision, however, had no adverse effect upon the language of the Courts in former opinions where emphasis was laid as heavily upon the fact that the treasurer did not perform the corporate function of paying interest in Pennsylvania, as that he was a non-resident of Pennsylvania. Even as early as 1913, when the case of *Commonwealth v. Welsbach Company*¹² was decided, it should have been rather evident to the taxing officers that for a foreign corporation doing business in

⁸P. L. 958, Pa. St. 1920, Section 20421.

⁹P. L. 507, 7 Purdon's 7618.

¹⁰P. L. 193, 4 Purdon's 4544.

¹¹*Commonwealth v. American Ice Co.*, 24 Dauphin 453 (1921).

¹²16 Dauphin 130 (1913). In this case the Court said, page 134:

"The defendant company came into the state with its fiscal officer, its moneys and property, and there is no substantial reason why the section should be operative on a domestic corporation and not as well upon a foreign corporation (for both are embraced within the terms of the section) which brings into the state its property and its officer upon which the provisions of the section act. Especially is this so, when the act of the officer, with which the duty imposed by the section is connected, was performed by him in this state and the moneys used therewith were in the state. * * * It must be conceded when a foreign corporation comes into the state with its officers and property, it brings itself and them under the law of the state, just as does any person, natural or legal, when he or it comes into the state, and it must be presumed to submit itself and them to the provisions of the law at least to the extent to which domestic corporations are subject."

Pennsylvania to successfully escape the Corporate Loans tax, not only would its treasurer have to be a non-resident of Pennsylvania but he would also have to perform the corporate function of paying interest on indebtedness outside of Pennsylvania.

The case of *Commonwealth v. Sun Oil Company*, supra, shows, therefore, the logical step which the taxing officers might well have been expected to take even sooner. Here the New Jersey corporation had its home office in Camden, but its principal or main office was in Philadelphia. Its treasurer's home and voting residence were in New Jersey; his office as treasurer of the company was in Philadelphia and he performed most of his corporate functions there. Generally speaking, the interest on indebtedness held by Pennsylvania residents was payable in three ways: (1) The treasurer *drew checks in Philadelphia* on depositories in Philadelphia, and the interest was payable at the office of a fiscal agent in Philadelphia; (2) The treasurer *drew checks in Philadelphia* upon depositories in New York and the interest was payable at the office of a fiscal agent in Philadelphia; (3) The treasurer *drew checks in Philadelphia* upon depositories in New York and the interest was payable at the office of a fiscal agent in New York.

Justice Kephart, writing the opinion of the Court, said: "Much stress is laid on the fact that the treasurer of the corporation lives in New Jersey, and is, therefore, a non-resident. A man may have a number of residences. He may have private dwellings in more than one place, and his official residence in another. If he is a member of a corporation as an officer, as part of its official household his official domicile is where he performs the duties of his office. As an executive officer of the corporation, it is his official capacity at which the act of assembly is directed, not his individual capacity. This official residence is customarily where the executive offices are located, and here, Philadelphia, it is admitted, is the place. His official acts were all in the State of Pennsylvania."¹³

Thus the test now seems to be, where does the treasurer carry on his corporate functions, not where does he happen to maintain a home or voting residence.

It was, therefore, sufficient to subject the treasurer of the Sun Oil Company to the duty of assessing and collect-

¹³Citing in support *Travis v. Yale & Towne Mfg. Co.*, 252 U. S. 60, (1920).

ing a Corporate Loans tax on obligations held by individual residents of Pennsylvania, that he had his executive office in Philadelphia and there drew the checks for the payment of interest on such corporate indebtedness.

Leon Metzger