1-1-1940

Review of Pennsylvania Legislation 1939 - Taxation

Leon D. Metzger

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Recommended Citation
Leon D. Metzger, Review of Pennsylvania Legislation 1939 - Taxation, 44 DICK. L. REV. 127 (1940). Available at: https://ideas.dickinsonlaw.psu.edu/dlra/vol44/iss2/22

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The Act of June 19, 1939,1 amended the County Personal Property Tax Act in several respects. The amendment saves some repetition by defining the class of taxables as residents.

**New Exemptions or Exclusions**

There are excluded, from the class of taxables, executors or administrators of the estate of a nonresident decedent and trustees for a resident or nonresident religious, charitable or educational organization, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

The following classes of property are expressly exempted:

Stock issued by building and loan associations.

Accounts in employees' thrift or savings associations, whether operated by employees or the employer.

Personal property held in the commercial department and owned in its own right by a banking institution, savings institution, or trust company, in liquidation by a receiver, trustee, or other fiduciary.

Stocks in any bank and trust company, national banking association, or savings institution which pays a tax to Pennsylvania on its shares.

Personal property held for the use, benefit or advantage of any resident who, in each of ten preceding calendar years, shall have given or contributed all of his net income to any corporation organized or operated exclusively for religious, charitable, scientific, literary, or educational purposes.

Stages, omnibuses, hacks, cabs and vehicles for transporting passengers for hire. This exclusion should have been made long ago, since no other tangibles were subject to the tax.

**New or Enlarged Subjects of Taxation**

The amendment would expressly tax the equitable interest in any personal property of the taxable class, when owned, held or possessed by any resident entitled to receive all or any part of the income therefrom, where the legal title thereto is vested in a trustee, agent, or attorney-in-fact domiciled in another state.

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1See also "Estate Taxes," supra.
1*P. L. 413, 72 PURD. STATS. (Pa.) 4821.
The amendment brings the County Tax Act into accord with a similar provision in the State Act.\textsuperscript{1b}

It should be noted that the attempt is not made to tax the \textit{income} received from such equitable interests, but, rather, the principal itself. This attempt is of doubtful constitutionality.\textsuperscript{2}

Shares of stock in foreign insurance companies are made subject to the tax. Exemption of stock applies only when the corporation which issued the stock pays a tax on shares, a capital stock tax or a franchise tax. Foreign insurance companies pay a gross premiums tax in lieu of a capital stock tax. The amendment would thus appear to have taken away the exemption for shares in foreign insurance companies which was established by the decisions.\textsuperscript{3} Since stocks of domestic insurance companies are exempt, the amendment may be challenged on the ground of discrimination or on the ground that the Legislature has not in sufficiently clear terms provided for what amounts in practical effect to double taxation of stocks of foreign insurance companies.

The basis for taxing annuities is clarified. It is made the "principal value" of all annuities yielding annually over two hundred dollars. The law previously was obscure. Some counties imposed tax on the amount of annual income, rather than upon the principal.

\textbf{Provisions for Taxing Trust Property}

There is introduced a provision that a decedent's intangible property of the taxable class must be returned and taxed in the county where the decedent was domiciled at the time of his death, regardless of the residence of the executor, administrator or beneficiaries, and regardless of the location of the securities. The intention appears to have been to give legislative recognition to the rule adopted in \textit{In re Thompson's Estate}.\textsuperscript{4}

An amendment provocative of immediate controversy is the provision “That whenever any personal property taxable under the provisions of this act is held, owned, or possessed as trustee, agent, attorney-in-fact, or in any other manner . . . by two or more persons . . . not all of which are domiciled in the same county, return of such personal property shall be made in each county . . .” and the tax paid proportionately in each according to the residences of the trustees.

In counties most diligent in administration of the personal property tax law, the practice had prevailed of accepting divided returns where there were cotrustees residing in different counties. In \textit{In re Griscom's Will},\textsuperscript{5} this practice was

\begin{itemize}
  \item \textsuperscript{1b}Act of June 22, 1935, P. L. 414, 72 PURD. STATS. (Pa.) 3242, as amended.
  \item \textsuperscript{2}Appeal of Dixon, C. P. No. 5, Phila. Co. (August 7, 1939); Commonwealth v. Stewart, C. P., Chester Co. (July 31, 1939); Brook v. City of Norfolk, 277 U. S. 27 (1928); Baltimore v. Gibbs, 166 Md. 364, 171 Atl. 37 (1934).
  \item \textsuperscript{3}In \textit{re Estate of Miller}, 330 Pa. 477, 199 Atl. 148 (1938); \textit{In re Personal Property Tax of Girard Trust Co.}, 333 Pa. 129, 5 A. (2d) 252 (1938).
  \item \textsuperscript{4}130 Pa. Super. 263, 197 Atl. 547 (1938).
  \item \textsuperscript{5}333 Pa. 186, 5 A. (2d) 693 (1939).
\end{itemize}
disapproved, to the general advantage of financially distressed Philadelphia County. In re Dorrance's Will, in like manner held that trust property is all taxable in the state where physically located and administered, even though co-trustees live in different states. Other states are divided as to the proper rule in such cases.

The quoted amendment attempts to reestablish the practice which prevailed prior to In re Griscom's Will. It has already been held unconstitutional in Fidelity-Philadelphia Trust Company's Appeal. The securities were located and administered in Philadelphia County and the Philadelphia court held they all were taxable there. The Philadelphia court viewed the amendment a violation of the uniformity clause of the Pennsylvania Constitution.

In exactly the same case, the Montgomery County Court has just held the amendment constitutional. The Supreme Court of Pennsylvania will have to decide the issue for the warring counties.

LEON D. METZGER*

XIII. TEACHERS' TENURE

A major revision of the Teachers' Tenure Act of 1937, was effected by the provisions of the Act of June 20, 1939, by (1) adding to the classification of employes affected by the Act, (2) revising the causes for dismissal and suspension of professional employes, (3) establishing a method for measuring efficiency rank, and (4) changing the procedure relating to appeals from the action of a board of school directors dismissing a professional employe.

(1) The Teachers' Tenure Act of 1937 defined only the "professional employe." The amendment of 1939 adds two new classifications of employes, namely, the "temporary professional employe" and the "substitute." It is interesting to note that the term "substitute," as defined by the 1939 Act, is the first definition of the term that occurs in the school laws of the Commonwealth. The substitute

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6333 Pa. 162, 3 A. (2d) 682 (1939).
10[Since the writing of this comment, the statute has been held constitutional. Appeal of Fidelity Philadelphia Trust Co., Pa. Sup. Ct., December 28, 1939, 1940 C. C. H. Pa. Adv. Dig. 2010. Ed.]

*Assistant Chief, Bureau of Corporations, Secretary of Commonwealth's Department, 1923-1925; Deputy Attorney General, Legal Advisor to Bureau of Corporations, 1925-1929; Deputy, Department of Revenue, 1929-1932; Secretary of Revenue of Pennsylvania, 1932-1935; Professor, Dickinson School of Law, 1928-1938. Member of firm Snyder, Hull, Leiby & Metzger, Harrisburg, Pa.

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