

1963

## State & Local Taxation: Final Examination (June 1963)

William & Mary Law School

---

### Repository Citation

William & Mary Law School, "State & Local Taxation: Final Examination (June 1963)" (1963). *Faculty Exams: 1944-1973*. 119.  
<https://scholarship.law.wm.edu/exams/119>

Copyright c 1963 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.  
<https://scholarship.law.wm.edu/exams>

(Any similarity between the taxes attributed to the States in the questions and those actually existing in those States is purely coincidental)

## GENERAL FACTS FOR QUESTIONS I THROUGH IV

Tractor Company, chartered in Delaware, maintains its production plant and administrative offices in Richmond, Virginia. In Durham, North Carolina it has a sales and service establishment where its tractor models are displayed, and orders are taken from customers for transmission to the Richmond office for approval or rejection. In filling approved orders, tractors are shipped by Tractor's trucks from Richmond to the Durham agency if the customer wishes to accept delivery at that point, or by rail to any railroad depot at which the customer prefers to receive them. If delivered by rail, shipments are made F.O.B. Richmond, title passing to the customer at that point and freight from that point is at customer's expense. Salesmen at the Durham agency also travel throughout the southeastern states, soliciting and processing them in the same manner as the orders taken at the Durham agency. The agency also services tractors in need of repair, but only those of Tractor make. When production of a tractor model is discontinued, such models on hand at the Durham agency are there sold at greatly reduced prices. Occasionally N. C. customers order directly using a Tractor catalog, sending their orders by mail to Richmond, and these orders are filled F.O.B. Durham or F.O.B. Richmond as above.

I. North Carolina has sought to impose upon Tractor an occupation tax for engaging in the business of selling tangible personal property at retail within the State, measured by gross receipts. The Tax Commissioner has included in the base for computation of Tractor's liability the gross receipts from all sales solicited by the Durham agency salesmen, whether at Durham or on the road, whether filled by shipment to Durham or elsewhere within or without North Carolina, as well as the gross receipts from all sales made to North Carolina customers, whether or not solicited by Durham salesmen and whether or not possession is taken by the customer at the agency. Discuss the Constitutional validity of the N. C. Commissioner's determination.

II. In assessing the personal property of Tractor for the N. C. property tax thereon, the Tax Commissioner included all tractors at the Durham agency on assessment day, including those which had been trucked from Richmond and were awaiting pick up by customers, and irrespective of whether the customers were to take them for use in or out of the State; and such fraction of the full value of Tractor's entire truck fleet as the daily average number of such trucks in N. C. over the total number of trucks in Tractor's fleet. Discuss the propriety of the Commissioner's action in the light of commerce clause and due process limitations.

III. Tennessee imposes a tax of 2% of the sales price on all sales of tangible personal property wherein title passes or delivery is made in Tenn., and a tax of 3% of the purchase price on the storage, use or consumption of tangible personal property in Tenn., excepting such as are subject to the Tenn. sales tax of 2%. In both instances, the tax is required to be collected by the seller from the buyer and remitted to the State. The Tenn. Tax Commissioner has determined that all of Tractor's sales to Tenn. customers are subject to the 3% use tax, including those in which the orders were solicited in Tenn. by the Durham home office salesman and F.O.B. Richmond shipments made to a Tenn. depot. Tractor resists the Tenn. tax on the grounds that (1) compelling it to collect the tax is a violation of the due process clause of the Constitution, (2) the 3% use tax is discriminatory against out-of-state sellers, and (3) in any event sales solicited in Tenn. and filled by shipments to Tenn. railroad depots are subject only to the 2% sales tax. Discuss the merits of each of Tractor's contentions.



IV. Tractor sells throughout the United States and many foreign countries. It maintains a distributing warehouse in New York City as a forwarding point for shipments to New York, New England, and foreign ports. A weekly shipment of the total number of tractors needed to fill each week's accumulation of orders from those places is made in Tractor's trucks from the Richmond plant to the New York warehouse. There they are segregated and sent on their way by rail to destinations in New York and New England and by ship to foreign ports as soon as rail and shipping accommodations become available. The New York Tax Com'r has included in the tangible property tax assessment of Tractor the value of the daily average number of Tractors in the New York warehouse. Discuss the propriety of the Tax Com'r's action in the circumstances.

V. Soap Company, chartered in Delaware, has its soap producing plant and executive offices located in Ohio and sells its soap products throughout the United States. One of the by-products in the manufacture of soap is glycerine. Although the glycerine in the by-product form has a saleable market, in order to make a more profitable disposition of it Soap Co. established a plant in Michigan to process the glycerine into a form proper for its use as a medications base. It is then shipped to a Soap Co. distribution warehouse in New York and sold by Soap's sales offices there. The glycerine processing is the only activity in which Soap engages in Michigan.

In the case of a foreign corporation doing business both within and without the State, the Michigan income tax is exacted upon so much of the income of the company as is proportional to sales, payroll and property in Michigan. Applying the formula to Soap's entire net income, the Tax Com'r has included in the sales numerator the gross receipts from all sales, wherever made, of goods processed in Michigan, thus bringing in the New York sales of the processed glycerine, and the gross receipts of all sales made to Michigan buyers, wherever the goods may have been produced and the sales consummated, thus bringing in all sales of soap made by Soap Co. to Michigan located customers. Soap contends that the only income which Michigan may constitutionally tax is that which is attributable to the glycerine processing there; that its books clearly show the market value of the unprocessed glycerine when received at the Michigan plant, the market value of the processed glycerine when shipped to New York, and that the difference between the two, less the direct expense of operating the Michigan plant, is its net income taxable by Michigan; and that the apportionment formula as applied by the Tax Com'r allocates to Michigan New York selling profit and Ohio soap manufacturing profit in violation of due process of law. Discuss Soap Co.'s success potential in contesting the Michigan tax as imposed by the Com'r and assuming that Soap's accounting method is bona fide in all respects.

VI. Artist agreed to paint Dowager's portrait for \$1,000 plus expenses of all materials. He paid \$50 for the frame, \$20 for paints, \$15 for canvas, and \$15 for the brushes which he used. The bill for \$1,100 which he presented to her upon completion set forth each of these items at the cost price. The locale in which he purchased the materials, painted, framed and delivered the portrait, imposes a sales tax measured by the selling price of all tangible personal property not purchased for resale; and a use tax upon the use of all such property within the locale not subjected to the sales tax. In each case the tax is to be collected by the seller from the buyer and the seller may not voluntarily bear the tax burden. What taxes must Artist pay to his vendor, if any, and what taxes must he collect from Dowager, if any?

itemized  
read together



VII. In 1961 when D was a resident of New Jersey, he went to the offices of his New York attorney and there established a trust, the corpus of which comprised bonds of a Pennsylvania Corporation, designating the attorney as trustee and specifying in the trust instrument that it was to be administered under New York law. The terms of trust provided that the income was to be paid to D during his lifetime and the principal to be distributed to his wife, W, at his death, or, if she should predecease him, however he might appoint by his will. Shortly thereafter D and W moved permanently to Virginia and D died there, survived by W, in 1963. Virginia, New York, Pennsylvania and New Jersey, the latter as a transfer in contemplation of death made within 3 years prior thereto, each seek to subject the value of the trust bonds to an inheritance tax at D's death. Briefly discuss the constitutional validity of each.

VIII. Investment Company, chartered in Delaware, has its principal office located in Newark, New Jersey, where it conducts relations with customers. Its business activities consist of investment of funds, and trading of securities on the New York Stock Exchange, owning a seat on the Exchange, and its income is derived from interest and dividends on securities investments, net gains from sales of self-owned securities on the Exchange, and commissions on purchases and sales of securities on the Exchange for its Newark customers. A substantial part of its reserve funds are in the form of U. S. Treasury Bonds which it retains in safe deposit in Newark and resorts to as necessary in furtherance of its trading activities.

New York imposed a franchise tax for the privilege of doing business in that State, measured by net income. Where business is conducted within and without New York and the income is derived principally from dealing in intangibles, the net income is to be apportioned in proportion to the intangibles having a situs in New York with respect to all intangibles owned by the company. In computing Investment's tax liability, the N. Y. Tax Com'r (1) included in the total net income subject to apportionment the interest income on Investment's U. S. Treasury Bonds, and (2) the value of those Bonds he included in the New York numerator of the apportionment fraction, as well as (3) the value of the New York Stock Exchange seat. Investment contests all three of these determinations. Discuss the constitutional validity of each.