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State & Local Taxation: Examination (January 1970)

William & Mary Law School

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EXAMINATION
State & Local Taxation
January, 1970

1. The State of Marshall, which has not heretofore imposed a tax measured by corporate net income, is now considering the adoption of such a tax. The basic structure of the tax could take the form of a tax on the privilege of engaging in business in Marshall, or it could take the form of a direct tax on net income. Under the U. S. Constitution, and from a revenue standpoint, which alternative would be best for the state of Marshall? Would your answer change if the State of Marshall desired to include interest from U. S. bonds in the tax base?
2. Amalgamated Mfg. Co. (AMC) is a Georgia Corporation that produces widgets in North Carolina and markets them in North Carolina and Virginia. It has no property or agents in Georgia and is licensed to do business in Virginia and North Carolina. Its real property in North Carolina cost \$400,000 and its tangible property there cost \$100,000. Its real property in Virginia cost \$200,000 and its tangible property there cost \$300,000. Its payroll in North Carolina is \$800,000 and its payroll in Virginia is \$200,000. Its North Carolina sales receipts are \$4,000,000 and its Virginia sales receipts are \$6,000,000. Its net income in 1969 was \$500,000.
 - (a) If North Carolina has adopted the Uniform Division of Income for Tax Purposes Act, what portion of the income is taxable in North Carolina? (The answer can be shown by formula.)
 - (b) Can Georgia, with a proper statute, tax any or all of the income of the corporation under the U. S. Constitution?
 - (c) Assume that AMC wishes to do business in South Carolina. South Carolina statutes require it to pay a non-recurring business license tax of \$5,000 for the privilege of coming into the state. South Carolina domestic corporations are not required to pay such a fee. Is the \$5,000 fee or tax valid?
 - (d) Do the "Massachusetts Formula" and the allocation formula in the Multistate Tax Compact differ materially from the formula in Uniform Division of Income for Tax Purposes Act?
3. Wondrous Wood Works, Inc. (WWWI) is a multistate manufacturer and distributor of furniture, lumber and other wood products. It is incorporated under the laws of the State of Delaware, has its principal business office in Wheeling, West Virginia, and has manufacturing plants in North Carolina and Georgia. All sales orders are accepted in Wheeling, all management and policy decisions are made in Wheeling, and all purchases of equipment and supplies are made in Wheeling. Sales are made either by traveling salesmen who solicit offers for acceptance in Wheeling, or by commission brokers who, as

independent contractors, place orders for clients with the Wheeling office. 1969 was a profitable year. Some tax problems have developed, including the following:

- (a) At the end of 1969 WWWI had accounts receivables of \$2,000,000, and owned U. S. Government bonds having a value of \$500,000. Delaware and West Virginia, each of which have direct personal property taxes, claim jurisdiction to tax these intangibles. Also, Georgia, which has a capital stock tax applicable to corporations doing business in Georgia, has allocated to Georgia an apportioned part of the net worth of the company. The net worth of the company, against which the apportionment formula was applied, was determined by including the above intangibles as assets. Assuming the applicable statutes purport to affect WWWI, are the claims of Delaware, West Virginia, and Georgia valid?
- (b) Although WWWI has no sales office or property in Tennessee, it does have traveling salesmen there who solicited \$200,000 worth of business which was accepted by the Wheeling office. Deliveries were made from the Georgia plant by common carrier. Tennessee, which has no use tax, is attempting to collect sales taxes from WWWI under the literal wording of the Tennessee Statute. Also, Tennessee, which has a direct income tax purporting to apply to WWWI, which tax uses the two factor formula of payroll and sales, is attempting to collect income tax from WWWI. What defenses, if any, does WWWI have against the Tennessee tax claims?
- (c) WWWI owns a warehouse in Atlanta, Georgia, 20 miles from its Georgia plant. In the warehouse on the tax date were 1,000,000 board feet of mahogany which had just been imported from Brazil and was needed immediately by the Georgia plant, and 500,000 board feet of walnut. WWWI had never used walnut in its business and had purchased it only because the price was good. It had no immediate plans for the use of the walnut, but most likely would resell it as raw lumber. Georgia assessed a tax based on the value of the entire stored contents of the warehouse. Is the tax valid?
- (d) Although WWWI has no sales force in New York, and no property, it does do extensive business there through commission brokers, who also represent other manufacturers and who are assisted by extensive advertising efforts on the part of WWWI in New York. New York claims that under its use tax statute WWWI is liable for the collection of use taxes from New York purchasers. New York also claims jurisdiction to tax the net income of WWWI under a typical three factor apportionment formula. Are the New York claims valid?

4. Richard Roe, in his later years, lived at various times in Virginia, Texas and Arizona. He retired in 1965 owning homes in Virginia and Texas and has, since 1965, spent several months of each year in these homes. He has, however, spent the bulk of his time in a rented apartment in Arizona near where his only living son resides, and it is from Arizona that he has managed most of his business affairs. Roe died on January 5, 1970, while in Arizona. In December of 1969 he transferred \$100,000 worth of stock in a Massachusetts corporation to Joe Doe, a resident of Oregon, in trust for the sole benefit of his son, apparently in contemplation of death. At his death, Roe owned, in addition to his residences in Texas and Virginia, \$500,000 on deposit in a Missouri Savings and Loan Association. Assume that all states mentioned have death tax laws of the widest scope, that each state that can make a domiciliary claim has done so, and that Roe's estate is adequate to cover all claims. Discuss the tax liability of Roe's estate with particular reference to each state's possible claims.
5. In one sentence answer, identify or give the significance of:
- (a) Resale exemption certificates
 - (b) Capitalization of earnings
 - (c) Jerome Hellerstein
 - (d) "New York Rule" in valuing rental property for inclusion in the three factor allocation formula
 - (e) Public law 86-272
6. How could the Virginia sales tax be modified to make it less regressive?
7. A recent Congressional study resulted in a proposal for extensive Federal regulation of state taxation of interstate commerce. The proposal utilized a two factor allocation formula.
- (a) What was the major criticism of the proposal from the standpoint of non-manufacturing states? Why?
 - (b) What was the popular name of the committee which made the study?
 - (c) What are three arguments that have been presented in favor of Federal regulation of state taxation of interstate commerce. Answer briefly.
8. Indicate the major variations in the "measures" used in capital stock taxes. Answer briefly.