

Ohio Vs. Helvering

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Court : US Supreme Court

Decided On : May-21-1934

Appeal No. : 292 U.S. 360

Appellant : Ohio

Respondent : Helvering

Judgement :

Ohio v. Helvering - 292 U.S. 360 (1934)

U.S. Supreme Court Ohio v. Helvering, 292 U.S. 360 (1934)

Ohio v. Helvering

No. _____, original

Return to Rule to Show Cause Presented April 30, 1934

Decided May 21, 1934

292 U.S. 360

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

SYLLABUS

1. The instrumentalities, means, and operations whereby the states exert the governmental powers belonging to them are exempt from taxation by the United States. P. [292 U. S. 368](#) .

Page 292 U. S. 361

2. The immunity of the states from federal taxation under the above-stated rule is limited to those agencies which are of a governmental character. P. [292 U. S. 368](#) .

3. Whenever a state engages in a business of a private nature, it exercises nongovernmental functions, and the business, though conducted by the state, is not immune from the federal taxing power. P. [292 U. S. 368](#) .

4. Where a state engages in the business of distributing and selling intoxicating liquors, though pursuant to a legislative enactment providing a system of liquor control, it is not immune from the federal tax imposed on liquor dealers by R.S., 3244. Following *South Carolina v. United States*, [199 U. S. 437](#) . P. [292 U. S. 368](#) .

5. Though the Eighteenth Amendment outlawed the liquor traffic, it did not have the effect of converting what had always been a private activity into a governmental function. P. [292 U. S. 369](#) .

6. As applied to business activities, the police power is the power to regulate those activities, not to engage in carrying them on. P. [292 U. S. 369](#) .

7. Whether the word "person" or "corporation," as used in a statute, includes a state or the United States depends upon the connection in which the word is found. P. 292 U. S. 370 .

8. As used in 26 U.S.C. 205, which imposes a tax upon every person who deals in intoxicating liquors, the word " person " is held to include a state, either under the statutory extension of the word to include a corporation (26 U.S.C. 11) or without regard to such extension. P. [292 U. S. 371](#) .

Motion denied.

This was a motion by the State of Ohio for leave to file a bill of complaint invoking the original jurisdiction of this Court. The state was seeking to enjoin the enforcement against it of federal statutes imposing taxes upon dealers in intoxicating liquors.

Page 292 U. S. 366

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

Upon the motion of complainant for leave to file a bill of complaint invoking the original jurisdiction of this Court, a rule was issued directing the defendants to show cause why such leave should not be granted. Defendants, by their return to the rule, oppose the motion upon the ground, among others, that the merits have been conclusively settled against complainant by prior decision of this Court.

The bill alleges that the defendant Helvering is Commissioner of Internal Revenue, and that the other defendants are collectors of internal revenue in the several internal revenue districts in the State of Ohio; that, on December 22, 1933 (Gen.Code Ohio, 6064-1 *et seq.*), the state legislature passed an act providing a system of control for the manufacture, sale, and importation of, and traffic in, beer and intoxicating liquors within the state, and creating a state monopoly for the distribution and sale of all spirituous liquors under a department of liquor control; that the state has purchased intoxicating liquors at a cost of more than \$4,500,000 for sale to permit holders and to the public through its state stores, each of which will be entirely and exclusively state owned, managed, and controlled; that the state is about to open in the various counties

Page 292 U. S. 367

one hundred and eighty-seven such state liquor stores; that defendants have threatened to, and unless enjoined by this Court will, levy and collect excise taxes on the agencies and operations of the state in the conduct of its department of liquor control, and enforce against the state, its officers, agents, and employees,

penalties for nonpayment of taxes imposed by 3244, R.S., as amended (U.S.C. Tit. 26, 205), and other designated statutes of the United States; that complainant is not subject to these statutes, and is immune from any tax imposed thereby, and that the acts of Congress which impose such taxes do not, by their terms, include a state or its officers or employees, and were not intended to do so. It is further alleged that the circumstances of the case are extraordinary and exceptional in several respects, among them being that the attempt is to tax a sovereign state, and it therefore is contended that the equity power of the court is properly invoked under the principles stated in *Hill v. Wallace*, [259 U. S. 44](#) , [259 U. S. 62](#) .

The state act deals with the subject in great detail, but, for present purposes, the provisions set forth in the bill to which we have just referred are all that require consideration.

The provisions of the federal statutes, so far as necessary to be stated, follow:

U.S.C. Tit. 26, 205 (R.S., 3244, as amended):

"(a) *Retail liquor dealers.* -- Retail dealers in liquor shall pay \$25. Every person who sells or offers for sale foreign or domestic distilled spirits, wines or malt liquors otherwise than as hereinafter provided in less quantities than five wine gallons at the same time shall be regarded as a retail dealer in liquors."

"(b) *Wholesale liquor dealers.* -- Wholesale liquor dealers shall each pay \$100. Every person who sells, or offers for sale foreign or domestic distilled spirits, wines or malt liquors, otherwise than as hereinafter provided in quantities

Page 292 U. S. 368

of not less than five wine gallons at the same time shall be regarded as a wholesale liquor dealer."

U.S.C. Tit. 26, 11 (R.S. 3140, as amended):

". . . Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the word 'person,' as used in this title, shall be construed to mean

and include a partnership association, company, or corporation, as well as a natural person."

Putting aside various preliminary questions raised by defendants (*compare Ex parte Bakelite Corp.*, [279 U. S. 438](#) , [279 U. S. 448](#) ; *Charles River Bridge v. Warren Bridge*, 11 Pet. 420, [36 U. S. 553](#)), we pass at once to the fundamental question involved in the state's challenge to the validity of the tax. That challenge seeks to invoke a principle, resulting from our dual system of government, which frequently has been announced by this Court and is now firmly established, that

"the instrumentalities, means and operations whereby the states exert the governmental powers belonging to them are . . . exempt from taxation by the United States."

Indian Motorcycle Co. v. United States, [283 U. S. 570](#) , [283 U. S. 575](#) ; *McCulloch v. Maryland*, 4 Wheat. 316, [17 U. S. 436](#) ; *Collector v. Day*, 11 Wall. 113, and other cases cited in *Trinityfarm Construction Co. v. Grosjean*, [291 U. S. 466](#) . But, by the very terms of the rule, the immunity of the states from federal taxation is limited to those agencies which are of a governmental character. Whenever a state engages in a business of a private nature, it exercises nongovernmental functions, and the business, though conducted by the state, is not immune from the exercise of the power of taxation which the Constitution vests in the Congress. This Court, in *South Carolina v. United States*, [199 U. S. 437](#) , a case in no substantial respect distinguishable from the present one, definitely so held. *Compare Board of Trustees v. United States*, [289 U. S. 48](#) , [289 U. S. 59](#) .

The South Carolina case arose under a state statute which, like the one at bar, created a monopoly and prohibited the sale of intoxicating liquors except at dispensaries

Page 292 U. S. 369

to be operated by the state. This Court, while sustaining the validity of the statute and fully accepting the rule that the national government was without power to impose a tax in any form which had the effect of prohibiting the full discharge by

the state of its governmental functions, held that "whenever a state engages in a business which is of a private nature, that business is not withdrawn from the taxing power of the Nation." The decision sustained the identical tax provisions involved in the present case, and therefore we follow it as controlling.

A distinction is sought in the fact that, after that case was decided, the Eighteenth Amendment was passed, and thereby, it is contended, the traffic in intoxicating liquors ceased to be private business, and then, with the repeal of the amendment, assumed a status which enables a state to carry it on under the police power. The point seems to us altogether fanciful. The Eighteenth Amendment outlawed the traffic, but certainly it did not have the effect of converting what had always been a private activity into a governmental function. The argument seems to be that the police power is elastic, and capable of development and change to meet changing conditions. Nevertheless, the police power is and remains a governmental power, and, applied to business activities, is the power to regulate those activities, not to engage in carrying them on. *Rippe v. Becker*, 56 Minn. 100, 111, 112, 57 N.W. 331. If a state chooses to go into the business of buying and selling commodities, its right to do so may be conceded so far as the Federal Constitution is concerned; but the exercise of the right is not the performance of a governmental function, and must find its support in some authority apart from the police power. When a state enters the market place seeking customers, it divests itself of its *quasi* - sovereignty *pro tanto*, and takes on the character of a trader, so far at least, as the taxing power of the federal government is concerned. Compare *Georgia v. Chattanooga*, [264 U. S. 472](#) , [264 U. S. 480](#) -483; [U.S. Bank v. Planters'](#)

Page 292 U. S. 370

Bank, 9 Wheat. 904, [22 U. S. 907](#) ; [Bank of Kentucky v. Wister](#), 2 Pet. 318, [27 U. S. 323](#) ; [Briscoe v. Bank of Kentucky](#), 11 Pet. 257, [36 U. S. 323](#) -325; [Curran v. Arkansas](#), 15 How. 304, [56 U. S. 309](#) .

We find no merit in the further contention that a state is not embraced within the meaning of the word "person," as used in U.S.C. Tit. 26, 205, and defined in 11, *supra*. By 205, the tax is levied upon every "person who sells, etc.," and by 11,

the word "person" is to be construed as meaning and including a partnership, association, company, or corporation, as well as a natural person. Whether the word "person" or "corporation" includes a state or the United States depends upon the connection in which the word is found. Thus, in *Stanley v. Schwalby*, [147 U. S. 508](#) , [147 U. S. 517](#) , it is said that the word "person" in the statute there under consideration would include the United States as a body politic and corporate. See also *Giddings v. Holter*, 19 Mont. 263, 266, 48 P. 8; *State v. Herold*, 9 Kan.194, 199. A state is a person within the meaning of a statute punishing the false making or fraudulent alteration of a public record "with intent that any person may be defrauded." *Martin v. State*, 24 Tex. 61, 68. Under a statute defining a negotiable note as a note made by one person whereby he promises to pay money to another person, and providing that the word "person" should be construed to extend to every corporation capable by law of making contracts, it was held that the word included a state. *Indiana v. Woram*, 6 Hill 33, 38. And a state is a person or a corporation within the purview of the priority provisions of the Bankruptcy Act. [*](#) *In re Western Implement Co.*, 166 F. 576, 582.

Page 292 U. S. 371

Compare Matter of Jensen, 28 Misc. 378, 59 N.Y.S. 653, 655; *Bray v. Wallingford*, 20 Conn. 416, 418; *County of Lancaster v. Trimble*, 34 Neb. 752, 756, 52 N.W. 711; *Rains v. City of Oshkosh*, 14 Wis. 372, 374; 1 Black.Comm. 123.

In the South Carolina case, this Court disposed of the question by holding that, since the state was not exempt from the tax, the statute reached the individual sellers who acted as dispensers for the state. While not rejecting that view, we prefer, in the light of the foregoing examples, to place our ruling upon the broader ground that the state itself, when it becomes a dealer in intoxicating liquors, falls within the reach of the tax either as a "person" under the statutory extension of that word to include a corporation, or as a "person" without regard to such extension.

The motion for leave to file the bill of complaint accordingly is denied.

MR. JUSTICE STONE concurs in the result.

* U.S.C. Tit. 11, 104(b)(5), "debts owing to any person who by the laws of the states or the United States is entitled to priority." This construction is explicitly adopted by the amendment of May 27, 1926, c. 406, 15, 44 Stat. 666, U.S.C. Supp. VII, Tit. 11, 104(b)(7).

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