CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

Steward Mach. Co. v. Collector, 301 U.S. 548 (1937)

"We are told that the relation of employment is one so essential to the pursuit of happiness that it may not be burdened with a tax." ***301 U.S. 548, 579 (1937) Emphasis added***

"Every rebate from a tax, when conditioned upon conduct, is in some measure a temptation; but motive or temptation is not equivalent to coercion. P. 301 U. S. 589."

"If it be true to say that a power akin to undue influence may be exerted by the national Government on the States, the location of the point at which pressure turns into compulsion, and ceases to be inducement, would be a question of degree -- at times, perhaps, of fact"

1. The tax imposed by Title IX of the Social Security Act of August 14, 1935, upon the employer of labor, described as "an excise tax with respect to having individuals in his employ," and which is measured by prescribed percentages of the total wages payable by the employer during the calendar year, is either an "excise," a "duty," or an "impost," within the intent of Art. I, Sec. 8, of the Constitution, and complies with the requirement of uniformity throughout the United States. Pp. 301 U. S. 578, 301 U. S. 583.

2. The enjoyment of common rights, such as the right to employ labor, may constitutionally be taxed. P. 301 U. S. 578.

Such taxation was practiced in England and among the Colonies before the adoption of the Constitution. P. 301 U. S. 579.

3. The fact that the Social Security Act, Title IX, supra, exempts from the tax employers of less than eight, and does not apply in respect of agricultural labor, domestic service in private homes,

and some other classes of employment does not render it obnoxious to the Fifth Amendment. P. 301 U. S. 584.

A classification supported by considerations of public policy and practical convenience, which would be valid under the equal protection clause of the Fourteenth Amendment if adopted by a State, is lawful, a fortiori, in the legislation of Congress, since the Fifth Amendment contains no equal protection clause.

4. The proceeds of the tax imposed on employers by Title IX of the Social Security Act, supra, go into the Treasury of the United States without earmark, like internal revenue collections generally. The taxpayer is entitled to credit against the federal tax (up to 90% thereof) what he has contributed during the tax year under a state unemployment law, provided that the state law shall have been certified by the Federal Social Security Board to the Secretary of the Treasury as satisfying certain conditions designed to assure that the state law is genuinely an unemployment compensation law and that contributions will

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be used solely in the payment of compensation and be protected against loss after the payment to the State. To these ends, Title IX provides, among other things, that, to be approved by the federal Commission, the state law shall direct that all money received in the state unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of an "Unemployment Trust Fund," and that all money withdrawn from the Unemployment Trust Fund by the state agency shall be used solely in the payment of compensation, exclusive of expenses of administration. The Secretary is empowered to invest in Government securities any portion of this fund which, in his judgment, is not required to meet current withdrawals, and out of it he is directed to pay to any competent state agency such sums as it may duly requisition from the amount standing to its credit. The taxpayer's credit against the federal tax depends on compliance with these statutory conditions; the State, however, is under no contractual obligation to comply, but, at its pleasure, may repeal its unemployment law, and withdraw its deposit from the federal Treasury.

It is one thing to impose a federal tax dependent upon the conduct of the taxpayers, or of the State in which they live, where the conduct to be stimulated or discouraged is unrelated to the fiscal need subserved by the tax in its normal operation, or to any other end legitimately national. It is quite another thing to say that a tax will be abated upon the doing of an act that will satisfy the fiscal need, the tax and the alternative being approximate equivalents. In such circumstances, if in no others, inducement or persuasion does not go beyond the bounds of power. P. 301 U. S. 591.

First. The tax, which is described in the statute as an excise, is laid with uniformity throughout the United States as a duty, an impost or an excise upon the relation of employment.

We are told that the relation of employment is one so essential to the pursuit of happiness that it may not be burdened with a tax. Appeal is made to history. From the precedents of colonial days, we are supplied with

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illustrations of excises common in the colonies. They are said to have been bound up with the enjoyment of particular commodities. Appeal is also made to principle or the analysis of concepts. ***An excise, we are told, imports a tax upon a privilege; employment, it is said, is a right, not a privilege, from which it follows that employment is not subject to an excise.*** Neither the one appeal nor the other leads to the desired goal.

The subject matter of taxation open to the power of the Congress is as comprehensive as that open to the power of the states, though the method of apportionment may at times be different. "The Congress shall have power to lay and collect taxes, duties, imposts and excises." Art. 1, § 8. If the tax is a direct one, it shall be apportioned according to the census or enumeration. If it is a duty, impost, or excise, it shall be uniform throughout the United States. Together, these classes include every form of tax appropriate to sovereignty. Cf. Burnet v. Brooks, 288 U. S. 378, 288 U. S. 403, 288 U. S. 405; Brushaber v. Union Pacific R. Co., 240 U. S. 1, 240 U. S. 12. Whether the tax is to be

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classified as an "excise" is in truth not of critical importance. If not that, it is an "impost" (Pollock v. Farmers' Loan & Trust Co., 158 U. S. 601, 158 U. S. 622, 158 U. S. 625; Pacific Insurance Co. v. Soble, 7 Wall. 433, 74 U. S. 445), or a "duty" (Veazie Bank v. Fenno, 8 Wall. 533, 75 U. S. 546, 75 U. S. 547; Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, 157 U. S. 570; Knowlton v. Moore, 178 U. S. 41, 178 U. S. 46). A capitation or other "direct" tax it certainly is not.

"Every tax is in some measure regulatory. To some extent, it interposes an economic impediment to the activity taxed as compared with others not taxed."

Sonzinsky v. United States, supra. ***In like manner, every rebate from a tax when conditioned upon conduct is in some measure a temptation.*** But to hold that motive

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or temptation is equivalent to coercion is to plunge the law in endless difficulties. The outcome of such a doctrine is the acceptance of a philosophical determinism by which choice becomes impossible. Till now, the law has been guided by a robust common sense which assumes the freedom of the will as a working hypothesis in the solution of its problems. The wisdom of the hypothesis has illustration in this case.

Nor may the constitutional objection suggested be overcome by the expectation of public benefit resulting from the federal participation authorized by the act. Such expectation, if voiced in support of a proposed constitutional enactment, would be quite proper for the consideration of the legislative body. But, as we said in the Carter case, supra, p. 298 U. S. 291 -- "nothing is more certain than that beneficent aims, however great or well directed, can never serve in lieu of constitutional power." Moreover, everything which the act seeks to do for the relief of unemployment might have been accomplished, as is done by this same act for the relief of the misfortunes of old age, without

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obliging the state to surrender, or share with another government, any of its powers.

If we are to survive as the United States, the balance between the powers of the nation and those of the states must be maintained. There is grave danger in permitting it to dip in either direction, danger -- if there were no other -- in the precedent thereby set for further departures from the equipoise. The threat implicit in the present encroachment upon the administrative functions of the states is that greater encroachments, and encroachments upon other functions, will follow.

For the foregoing reasons, I think the judgment below should be reversed.

MR. JUSTICE VAN DEVANTER joins in this opinion.