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# FLORIDA TAXATION

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## INTRODUCTION

It is easy to become federal tax conscious to the point of showing a phlegmatic concern for state taxes. On a revenue basis, however, state taxes still account for a sizable portion of the total collections. Thus, the national total of state tax receipts for the fiscal year 1953 amounted to $10.5 billion. This represented a $700 million increase over the previous year,[1] and about twice the receipts of a decade ago.[2] These amounts, of course, represent national totals; and collectively, they emphasize the growing practical importance of taxation at the state level.

As far as Florida itself is concerned, both the courts and the legislature have shown a lively interest in the state's tax matters. In many situations, new jurisprudence has been created both by the judiciary and the legislature. For example, Florida's popular homestead exemption has been the target of such joint consideration.

In order to present a balanced portrayal of these developments, the suceeding sections have been divided into the two basic sources of tax jurisprudence: judicial and legislative developments.

## JUDICIAL DEVELOPMENTS

*Homestead exemption.*—Some interesting questions were presented in the application of the Florida homestead exemption provisions.[3]

Thus, in *Overstreet v. Tubin*,[4] it was held that a duplex was entitled only to the single $5,000 exemption—in spite of the fact that the structure was jointly owned by two separate parties. It had been the contention of the taxpayer that each of the occupants was entitled to the full $5,000. This theory was rejected by the court. It was held immaterial that each unit of the building was separately owned in fee simple by its occupant; and that each unit contained distinct plumbing, wiring, entrances, and walkways. Likewise, by the applicable zoning ordinance, only a two-family dwelling was permitted; but this prerequisite was likewise regarded as unimportant insofar as the exemption itself was concerned.

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1. 96 J. ACCOUNTANCY 587 (1953).
2. HELLERSTEIN, STATE AND LOCAL TAXATION, 5 (1952).
3. See FLA. CONST. Art. X, § 7; FLA. STAT. § 192.12 (1951).
4. 53 So.2d 913 (Fla. 1951).

The case,[5] however, did announce that the individual owners could split the $5,000 allowance among themselves. It would appear that this decision operates against those who, for reasons of either preference or economic necessity, seek a duplex living arrangement—if such persons qualify for the homestead exemption. It would likewise appear that the decision might seriously inhibit this form of architecture in Florida. Here, as elsewhere, one may find technology shaping itself to the practicalities of law. Still, in full fairness to the situation, the decision is in accord with earlier cases.[6] For this reason, it appears on sound judicial grounds—irrespective of its inhibition of duplex development in the state.

Where a homestead claimant challenged the validity of a statute[7] requiring one year's residence before one would be permitted to apply for an exemption,[8] the court in its opinion, sustained the claimant's contention; and accordingly, the statute was declared unconstitutional.[9] Thus, the Constitution provides that, "The Legislature may prescribe appropriate and reasonable laws regulating the manner of establishing the right to said exemption."[10] Nevertheless, it was held that such a discretionary grant did not include the prerogative to specify an antecedent residence period. In this decision, the court accordingly applied a broad construction to the Constitutional exemption grant, as it had also done on previous occasions.[11] The liberal construction extended in that situation should be contrasted with the narrow administrative application applied in the *Overstreet Case*.[12] "The immunity from forced sale for the debts of the family which the homestead enjoyed during the decedent's lifetime continues to exist for the benefit of the widow and lineal decedents."[13] In rendering the decision, the court also held that the exemption applied to a total of forty acres, which consisted of a five-acre tract (on which the major portion of the house was located) held as an estate by entirety, and an adjoining thirty-five acres held by the husband in his own name.[14] Here, in this probate situation, the claimant was brought within the purview of the exemption.

These cases above are illustrative of the interesting situations that continue to arise because of the homestead exemption dispensation. Exemptions have an affinity for both unique situations and litigation in any tax statute, so that these developments in the Florida law should not represent a surprise.

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5. *Ibid.*
6. For example, the court stated that exemptions were to be construed against the claimant, Steuart v. State, 119 Fla. 117, 161 So. 378 (1935). See also Smith v. Guckenheimer, 42 Fla. 1, 27 So. 900 (1900) for an early viewpoint of this matter.
7. FLA. STAT. § 191.12(1) (1951).
8. Sparkman v. State, 58 So.2d 431 (Fla. 1952).
9. FLA. CONST. Art. X, § 7.
10. *Ibid.*
11. Jacksonville v. Bailey, 159 Fla. 11, 30 So.2d 529 (1947); Smith v. Voight, 158 Fla. 366, 28 So.2d 426 (1946).
12. 53 So.2d 913 (Fla. 1951).
13. Wilson v. Florida Nat. Bank and Trust Co., 64 So.2d 309, 313 (Fla. 1953).
14. *Ibid.*

*Other exemptions.*—An interesting question was presented when Charlotte County attempted to collect taxes for state lands situated within the county borders.[15] The specific land was held by the Game and Fresh Water Fish Commission in the name of the State of Florida, and the county accordingly sought to levy a debt service and general county operating tax on these properties. The court held that the land was entitled to an exemption.[16] It would appear, in this connection, that the effect of the case is to preserve carefully the sovereignty and immunity of the state—even against encroachments by a county government.[17] Where the legislature had granted an exemption from "state, county, municipal, and all other *ad valorem* taxes on real and personal property owned, controlled or used by the county of Escambia or the Santa Rosa Island Authority,"[18] it was contended that this provision violated the Florida Constitutional provision[19] prohibiting non-uniformity of taxes.[20] In refusing to sustain this contention, the court said that the legislature had the prerogative of classifying property as a "county purpose"; and hence, the power to grant an exemption because of such a public purpose.[21] However, the court still reserved its right of judicial review to such classifications.[22] The classificatory review right, of course, is a traditional constitutional feature.[23]

A question of both local and national importance was presented to the Florida Supreme Court.[24] The plaintiff corporation had leased land from the United States Government (for $100 a year for 75 years) for the purpose of constructing about 450 family dwelling units for military personnel. The plaintiff contended, on this basis, that it was exempt from taxes levied on materials used in the construction of this project. The court rejected this contention, noting that the federal laws themselves

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15. State v. Webb, 49 So.2d 93 (Fla. 1950).

16. The basis of this conclusion was founded on a decision that FLA. STAT. §§ 192.06 and 192.08 (1951) were controlling; that they prevailed over §§ 372.12 and 372.18 enacted at an earlier date.

17. In an interesting dissenting opinion written by Justice Roberts, a concern is expressed for a surrender of taxing power. The opinion, in part, states:

> We do not think, however, that because the Legislature and the people determined to divest themselves in this instance of their power to control game and fish in this state it necessarily follows that they intended, at the same time, to divest themselves of their sovereign power of taxation.

Justice Adams concurred in the dissent. It would appear that the dissent raises the interesting question of limiting a state's power to encroach on the taxing prerogatives of the county, even though the latter is a creature of the former.

18. State v. Escambia County, 52 So.2d 125, 130 (Fla. 1951); see also Spec. Laws 1949, c. 25810.

19. Art. IX, § 1.

20. State v. Escambia County, 52 So.2d 125 (Fla. 1951).

21. FLA. CONST. Art. IX, § 1 (provides that the legislature may grant exemptions to property used for "municipal, education, literary, scientific, religious, or charitable purposes").

22. See note 18 *supra.*

23. See City of Lakeland v. Amos, 106 Fla. 873, 143 So. 744 (1932); *cf.* Harper v. McDavid, 45 Fla. 605, 200 So. 100 (1941).

24. Gay v. Jemison, 52 So.2d 137 (Fla. 1951).

do not necessarily prohibit the collection of sales taxes simply because a transaction occurs on a United States' reservation.[25] Also, although bare title to the property remained with the U. S. Government, its effective enjoyment and pecuniary profit vested in the plaintiff corporation. The Supreme Court said:

> It is true that the government, through its military, retains a certain supervision over the area where the project is located and has a preference with reference to accommodations for its personnel, but taken as a whole, the arrangement is in reality one affording a source of income to the lessee, and we think it is obvious that any money withheld from the state by applying the exemption would not benefit the national exchequer but would reach the pockets of private citizens. The corporation borrows the money, takes the risks, bears the cost of maintenance and insurance, receives the income from rentals, and in case of total destruction of a building by fire, keeps if it chooses, the money paid by the insurance company to cover the loss. The corporation must pay the debt it incurs to finance the installation, and certainly any profit for a period of seventy-five years belongs to it. Meanwhile, as a part of its expenses, there is a nominal payment of $100 a year to the government as lessor.
>
> We believe the comptroller's position is correct and that the materials furnished by the contractor will not become a part of a government work but of buildings of a private enterprise and therefore are subject to state tax.[26]

The opinion of the court appears clearly within an established concept of examining the substance and managerial effect of tax transactions, rather than being completely bound by legal mechanics. A similar view was expressed rather recently by the Court of Appeals of Kentucky[27] when it refused a tax exemption for property owned in fee by a seminary, where the seminary had leased such property on a 99 year lease, and a bus depot and garage was erected thereon. In reaching its conclusion denying the tax exemption, the Kentucky court said:

> It can readily be foreseen that tax exempt organizations might be extensively used by commercial organizations to evade payment of taxes on real estate improvements through the medium of long term leases, if we should deny the right of a taxing authority to make separate assessments of buildings and of lands in cases of this kind.[28]

It would appear, at least, that both Florida and Kentucky have followed the same school of thought in denying exemptions on these long-term leasing arrangements.

A hospital does not lose its charitable character (and hence, its

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25. 61 STAT. 641 (1947); 4 U.S.C. § 105 (Supp. V).
26. Gay v. Jemison, 52 So.2d 137, 138 (Fla. 1951).
27. Broadway and Fourth Avenue Realty Co. v. Louisville, 303 Ky. 202, 197 S.W.2d 238 (1946).
28. *Id.* at 240.

exemption privilege)[29] simply because patients able to pay were required to pay in order to finance facilities for charitable cases.[30] As long as the ultimte effect was to operate on a non-profit basis, a tax exemption was justified.[31] The view of the court is easily understood. Its viewpoint represents a practical realization that hospitals must receive revenues from some patients in order to meet basic administrative costs; that professional responsibility demands that there be a rendition of charitable services; and, a fortiori, those patients able to pay can properly be expected to do so while charitable cases are naturally treated without cost. The importance of non-profitability of the organization's entire activities, of course, was recognized in the court's opinion.

*Venue.*—The question of venue arose in a case litigated before the Florida Supreme Court.[32] The court reaffirmed its rule:

> . . . when the legislature has fixed the residence of a government agency . . . , a suit primarily affecting the construction of the rules or regulations of the agency must be brought in the county of its headquarters if the defendant claims that privilege, while suits for protection against constitutional rights of the plaintiff within the county where the suit is instituted, the validity of such rules being only secondary, may be entertained in the county where the invasion is threatened or has occurred.[33]

The opinion recapitulated earlier views of the court under varying circumstances where the question of "venue" compared with "jurisdiction" had arisen.[34]

*Documentary stamps.*—This tax also experienced judicial constructions. On one occasion,[35] the court recited that the Florida statute[36] was similar to the federal enactment;[37] therefore the Florida statute would be given the same construction in the state courts as the federal statute was given in federal courts.[38] In another case,[39] the court held that the documentary stamp tax applied only to transfers made in exchange of a monetary consideration. The court noted again that it was not departing from the federal viewpoint.[40]

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29. FLA. CONST. Art. IX, § 1 (authorizes exemptions from charitable organizations).
30. Orange County v. Orlando Osteopathic Hospital, 66 So.2d 285 (Fla. 1953).
31. The court also noted that the hospital had been exempt from Federal income taxes since its incorporation.
32. Henderson v. Gay, 49 So.2d 325 (Fla. 1950).
33. *Id.* at 326.
34. Gaulden v. Gay, 47 So.2d 580 (Fla. 1950); See Gay v. Ogilvie, 47 So.2d 525 (Fla. 1950); Smith v. Williams, 160 Fla. 580, 35 So.2d 844 (Fla. 1948).
35. Gay v. Inter-County Tel. & Tel. Co., 60 So.2d 22 (Fla. 1952).
36. FLA. STAT. c. 201 (1951).
37. INT. REV. CODE § 1800.
38. See State v. Cook, 108 Fla. 157, 146 So. 223 (1933).
39. Culbreath v. Reid, 65 So.2d 556 (Fla. 1953).
40. *Id.* at 557.
41. Fla. Laws 1953, c. 27989.

LEGISLATIVE DEVELOPMENTS

The bevy of legislative enactments in 1953 covered a wide area. They included certain credits allowed against premium receipts[41]; chain store exemptions under prescribed circumstances[42]; revised the license tax on retail stores[43]; changed the inheritance and estate taxes[44]; changed the the taxes on cigarette monies[45]; provided that possession of a federal wagering occupational tax stamp would be prima facie regarded as violation of the state gambling laws[46]; increased the tax on dog tracks[47]; provided exemptions on certain described athletic contests[48]; modified the gross receipts tax on public service corporations where the resale is made to a municipality[49]; authorized the refunding of motor fuel taxes for fuels used solely for agricultural and fishing purposes[50]; modified the provisions of the homestead exemption allowance and the penalties appertaining thereto[51]; increased the excise tax on grapefruit[52]; enacted a provision relating to an excise tax on wines[53]; enacted a provision relating to tax exemptions on petroleum sales to the United States[54]; modified the provisions on payments of the documentary stamp tax[55]; enacted some general changes relative to the cigarette tax collection and administration[56]; modified the provisions of the corporation capital stock tax[57]; modified the occupational stamp tax exemption for deaf and dumb persons[58]; changed the provision for interest on delinquent taxes[59]; changed the collection of intangible tax collections[60]; amended the provisions relative to hotels, restaurants, etc.[61]; changed the filing tax provisions applicable to foreign and domestic corporations[62]; changed the sales tax exemption provisions for sales of livestock[63]; modified the tax exemptions on non-profit corporations[64]; and modified the provisions applicable to tax sale certificates[65].

42. Fla. Laws 1953, c. 28008.
43. Fla. Laws 1953, c. 28028.
44. Fla. Laws 1953, c. 28031.
45. Fla. Lews 1953, c. 28039.
46. Fla. Laws 1953, c. 28057.
47. Fla. Laws 1953, c. 28058.
48. Fla. Laws 1953, c. 28082.
49. Fla. Laws 1953, c. 28091.
50. Fla. Laws 1953, c. 28098.
51. Fla. Laws 1953, c. 28105 & 28199.
52. Fla. Laws 1953, c. 28130.
53. Fla. Laws 1953, c. 28177.
54. Fla. Laws 1953, c. 28191.
55. Fla. Laws 1953, c. 28216.
56. Fla. Laws 1953, c. 28227.
57. Fla. Laws 1953, c. 28248.
58. Fla. Laws 1953, c. 28251.
59. Fla. Laws 1953, c. 28254.
60. Fla. Laws 1953, c. 28272 & 28302.
61. Fla. Laws 1953, c. 28276.
62. Fla. Laws 1953, c. 28285.
63. Fla. Laws 1953, c. 28297.
64. Fla. Laws 1953, c. 28307.
65. Fla. Laws 1953, c. 28316 & 28317.

## Distant Vistas

State and local taxation are assuming an increasing importance. In this age of high federal expenditures, one might understandably forget that state and local expenditures have likewise increased. Therefore, it is reasonable to assume that activity in the state and local tax level will continue; and increasingly, thought will be given to periodical examinations and revisions of entire features of the tax structures at these levels.