TAXATION

By CARROLL SIERK*

Developments were substantial in volume, if not in importance, during the period under review.[1]

PROPERTY TAXES

Determining just how much of an interest in real property one must have in order to have a taxable interest was the task of the court in *Henson v. Airways Serv., Inc.*[2] Here the City of Atlanta agreed to permit the taxpayer to use certain premises at the city airport for a covered parking garage, service station, and repair shop, the taxpayer agreeing to construct such facilities in accordance with plans to be approved by the city and agreeing that such structures would become the property of the city upon completion. Under the agreement, the city reserved the right to set prices to be charged, hours of business, procedure for ticketing cars, bookkeeping methods to be used, and other details of the business operation. In view of the substantial reservations, limitations, and restrictions on the taxpayer's use of the property, the court found that the taxpayer did not have a taxable leasehold, but only a nontaxable license or usufruct within the meaning of GA. CODE section 61-101 (1933).[3]

In *Camp v. Fulton County Medical Soc'y*,[4] an opinion which might be described as not very charitable to the medical profession, the Supreme Court gave a rather strict interpretation to the statute[5] exempting from taxation all institutions of purely public charity. The court held that for

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1. Matters believed not to be of sufficient general interest to require comment include: (a) several statutes designed to improve tax collection procedures in Cobb County GA. LAWS, 1965, p. 236; GA. LAWS, 1965, p. 258; GA. LAWS, 1965, p. 274; and GA. LAWS, 1965, p. 435; (b) GA. LAWS, 1965, p. 2514, relating to tax collection in Brooks County; (c) GA. LAWS, 1965, p. 343, providing an exceptional rule for the filing of motor vehicle returns in DeKalb County; (d) GA. LAWS, 1965, p. 182, amending the property tax exemption statute to make it clear that laying hens are exempt during the first six months following the date they are hatched; and (e) cases which do little more than restate well known principles such as Walker v. Burns, 139 S.E.2d 389, 220 Ga. 467 (1964), which reminds us that a taxpayer is not entitled to equitable relief with regard to his tax liabilities where he has failed to pay taxes admittedly due.
2. 220 Ga. 44, 136 S.E.2d 747 (1964).
3. A similar issue was presented to the Supreme Court fifteen years ago in Whitehead v. Kennedy, 206 Ga. 760, 58 S.E.2d 832 (1950). See Wilson, *Taxation*, 2 MERCER L. REV. 220, at 233 (1950).
4. 219 Ga. 602, 135 S.E.2d 277 (1964).
5. GA. CODE ANN. §92-201 (1961 Rev.).

this exemption to apply, the institution "must have the sole purpose and activity of dispensing public charity." Here the court noted that the building in question was "used by some organizations which would classify as charitable organizations." The opinion continues, "but it cannot be overlooked that one of the purposes of the petitioner is the advancement of the medical profession. . . . It, therefore, cannot be said that the building of the petitioner is used for 'purely public charity'. . . . "

Sales and Use Tax

In *Undercofler v. VFW Post* 4625,[6] the Court of Appeals held that the "all-inclusive" sales and use taxes extend to proceeds derived from the illegal operation of gaming devices commonly known as slot machines or one-armed bandits.

A new act[7] provides for an exemption where property manufactured or assembled in Georgia is not intended for use in Georgia. Doubtless this is intended to relieve the consumer of a double sales-tax burden.

Occupational Taxes

In City of Atlanta v. Georgia Soc'y of Professional Eng'rs,[8] the statute authorizing cities to impose a license tax on engineers and architects[9] was interpreted as not applying to engineers and architects who are in an employee rather than a principal status, since the statute requires that the professional be taxed only where he maintains his principal office and employees do not maintain offices within the meaning of the statute.

Turning from the professions to the business of selling liquor, we find that the Supreme Court in *City of Atlanta v. Henry Grady Hotel Corp.*[10] held invalid a City of Atlanta special license tax of $1.44 per case payable on delivery. The special license tax was found invalid because the statute[11] empowers a municipal corporation to impose upon liquor retailers *only* an annual license fee payable in advance and the special license tax was not such. The court upheld the validity of the city's annual license tax even though the amount of the tax was based in part on each retailer's gross sales of the preceding year since such "plus 1 per cent of the gross sales of the previous year in excess of $100,000" factor did not make the tax something other than the authorized annual license fee payable in advance.

The preceding case would seem to be related to, and perhaps the cause

6. 110 Ga. App. 711, 139 S.E.2d 776 (1964).
7. Ga. Laws, 1965, p. 13.
8. 220 Ga. 62, 137 S.E.2d 41 (1964).
9. Ga. Code Ann. §92-307 (1961 Rev.).
10. 220 Ga. 249, 138 S.E.2d 362 (1964).
11. Ga. Code Ann. §§58-1001 to -1083 (Supp. 1964).

of, an act[12] which sets a maximum limit of $5,000 per year on municipal alcoholic beverage license fees.

PERSONAL INCOME TAXES

The only significant developments in the area of Georgia personal income taxes appear to be legislative.[13] One act[14] amends the Georgia income tax statutes so as to provide for a personal exemption deduction for each dependent child even though such child has gross income of $600 or more if such child is under nineteen years of age or a "student," thus eliminating a difference which formerly existed between the state and federal income tax laws regarding the personal-exemption deduction for children as dependents.[15]

CORPORATE INCOME TAXES

Perhaps the major problem area, at least the area getting the most attention, in the field of state and local taxation today is that of the proper scope of state taxation of interstate income.[16] The Georgia courts faced some aspects of this problem in *United States Steel Corp. v. Undercofler.*[17] The basic issue in this case was whether or not the gross receipts ratio part of the three factor ratio income allocation formula[18] as applied in this case violated the due process clauses of either the federal or Georgia constitutions[19] or the commerce clause of the federal constitution.[20] Here United States Steel Corporation through its various divisions carried on a number of activities in Georgia. The particular activity which produced the controversy was the delivery of goods in Georgia as the result of either un-

12. GA. LAWS, 1965, p. 451.
13. The case of Brosnan v. Undercofler, 111 Ga. App. 95, 140 S.E.2d 517 (1965), seems to stand for the not at all surprising or unusual proposition that one may not properly claim a deduction for the loss of income items when such items have never been reported as taxable income.
14. GA. LAWS, 1965, p. 260.
15. The general tendency to conform our state income tax laws to the federal has often been noted in the *Mercer Law Review*. For example, see: 4 MERCER L. REV. 169, at 170 (1952); 6 MERCER L. REV. 152, at 154 (1954); 7 MERCER L. REV. 180 (1955); 9 MERCER L. REV. 163, at 164 (1957); and 15 MERCER L. REV. 196 (1963).
16. Articles on this subject appearing during the period under review include: Cook, *State Net Income Taxation of Interstate Commerce,* 42 TAXES 512 (1964); Cox, *The NCCUSL Uniform Apportionment Formula,* 42 TAXES 530 (1964); Herrold, *Current Developments in State Taxation of Interstate Commerce,* 47 MARQ. L. REV. 441 (1964); Holbrook, *The Status of P.L. 86-272 Litigation,* 42 TAXES 536 (1964); Johnson, *Taxing Interstate Commerce: A New Experience in Indiana,* 39 NOTRE DAME LAW. 557 (1963); *State Taxation of Corporate Income Derived From Interstate Commerce: Public Law 86-272 and Its Alternatives,* 1964 DUKE L. J. 580; *State Taxation of Interstate Commerce,* 19 SW. L. J. 170 (1965).
17. 220 Ga. 553, 140 S.E.2d 269 (1965).
18. GA. CODE ANN. §92-3113(4) (1961 Rev.).
19. U. S. CONST. amend. XIV, §1; GA. CONST. art I, §1, para. 3 (1945).
20. U. S. CONST. art. I, §8, cl. 3.

solicited orders received and accepted outside the state of Georgia or orders solicited from multi-state customers outside the state of Georgia. U. S. Steel contended that here Georgia was taxing activities taking place beyond its boundaries by application of the gross receipts ratio, resulting in an unreasonable application of the three factor ratio. After a thorough review of the statute and relevant cases, the Supreme Court of Georgia concluded that the gross receipts ratio was not unreasonable, either in general or as applied to U. S. Steel, and not violative of the due process clauses of the Georgia and federal constitutions or of the commerce clause of the federal constitution. Finding that Georgia had a sufficient relationship to U. S. Steel's activities to satisfy due process requirements, the court observed:

> The State of Georgia not only provided the taxpayer's customers, it also provided the railroads and highways for the shipment of the products to the Georgia customers. The taxpayer maintained offices in Georgia for the promotion of its business, the sale of its products, and assistance to its customers. If the customers failed or refused to pay for its products, the courts of Georgia would be open and available to the taxpayer to enforce payment. . . .[21]

It should be noted that Pub. L. No. 86-272,[22] the much publicized federal statute limiting state taxation of interstate income, was not involved in this case. It could have no application because U. S. Steel's activities in Georgia went beyond the mere solicitation of orders.

The Court of Appeals dealt with an unusual type of ordinary and necessary business expense deduction in *Bessemer Auto Parts, Inc. v. State Revenue Comm'r.*[23] The taxpayer was a non-resident corporation which was a member of a Georgia partnership. The questioned deduction was a rebate to the partners of a percentage of the price they paid for goods purchased from the partnership. The court held that the rebate was really a discount on the purchase price of goods and not a distribution of profits. Being in effect a discount granted, the rebate was deductible as an ordinary and necessary business expense.

On the legislative front, steps were taken to provide in the Georgia statutes an equivalent to the federal income tax provision of an additional twenty per cent first-year depreciation allowance for small business.[24]

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21. 220 Ga. at 565, 140 S.E.2d at 277.
22. 73 Stat. 556, 15 U. S. C. §§381-84 (1964).
23. 110 Ga. App. 500, 139 S.E.2d 157 (1964), *aff'd*, 221 Ga. 61, 142 S.E.2d 912 (1965). The Supreme Court in affirming used slightly different reasoning than that employed by the Court of Appeals. The lower court opinion referred to the rebates as "a fixed liability of the partnership at the time of purchase." The Supreme Court disagreed with this statement, but went on to say:
    > However, as we view the situation alleged, fixed liability of the partnership to make the rebates is not controlling.
    >
    > To us what is decisive is that the rebates were the return to the taxpayer of its own money, as the facts here show. . . .
24. GA. LAWS, 1965, p. 323.

INHERITANCE, ESTATE, AND GIFT TAXES

The only significant development in this area was an act[25] which exempts from estate or inheritance taxes the intangible personal property comprising a part of the estate of a non-resident if the decedent is a resident of a state which grants like exemptions to residents of the State of Georgia.

MISCELLANEOUS TAXES

Worthy of mention under this heading are legislative acts repealing the oleomargarine tax[26] and extending the act providing for issue of motor vehicle license tags at no cost to certain classes of disabled veterans to additional classes of such veterans.[27]

25. GA. LAWS, 1965, p. 547.
26. GA. LAWS, 1965, p. 373. This action put Georgia on the select list of seven states decreasing or repealing taxes this year. 36 TAX REV. 35 (1965).
27. GA. LAWS, 1965, p. 325.