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Income Taxation and Preemption

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fits of the legislation so evident that all doubts should be resolved in favor of the bill, leaving to the courts, in an orderly fashion, the ultimate question of constitutionality. A decision by the Supreme Court relative to this measure would be helpful as indicating, with increasing clarity, the constitutional limits within which this government must operate.⁷¹

Conclusion

The purpose of education in a democratic society is to prepare the child for responsible citizenship. In the words of the New York Commissioner's Advisory Committee on Human Relations and Community Tensions, "The presence in a single school of children from varied racial, cultural, socio-economic, and religious backgrounds is an important element in the preparation of young people for active participation in the social and political affairs of our democracy."⁷²

The neighborhood school is a result of a long-established and basically sound educational policy. But its concept is not sacrosanct, and there is no reason why it should not be subject to reevaluation and revision in light of current social conditions. In the reapportionment cases the citizen is deprived of his right to equal representation in the casting of his ballot. In the school cases, the child of the racial minority is not only deprived of his right to equal educational opportunity, but he has the added burden of being forced to attend school under these unequal conditions until he reaches a specified age.⁷³ It would seem, then, that legislatures and courts should utilize whatever analogies may be helpful in solving the *de facto* problem, especially in view of what is at stake—the adequate education of a substantial number of citizens.

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⁷¹ 4 THE PUBLIC PAPERS AND ADDRESS OF FRANKLIN D. ROOSEVELT 297, 298 (ed. Rosenman 1938). The Bituminous Coal Act was declared unconstitutional in *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936).

⁷² Statement proposed by the State Education Commissioner's Advisory Committee, *supra* n.60 at 740.

⁷³ In *Branche v. Board of Educ.*, 204 F. Supp. 150 (S.D.N.Y. 1962) the court found that the requirement of school attendance was sufficient state action under the *Brown* doctrine to require that the school district be rezoned.

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INCOME TAXATION AND PREEMPTION

The power to tax is essential to effective government. Chartered cities in California have long been held to have the power to tax for revenue purposes.¹ The existence of this power, however, was drawn in question by the California Legislature in 1963, when it enacted a statute that purports to preempt the entire field of income taxation.² This statute expressly states that no city, including a chartered

¹ *City of Glendale v. Trondsen*, 48 Cal. 2d 93, 308 P.2d 1 (1957); *Ex parte Braun*, 141 Cal. 204, 74 Pac. 780 (1903).

² CAL. REV. & TAX. CODE § 17041.5, which provides in part: "Notwithstanding any

city, shall have the power to impose a personal income tax.³ It is the purpose of this note to examine the validity of this purported preemption and to present its possible long-range effect on the general powers of chartered cities to tax for revenue purposes.

Municipal Affairs

All cities are able to engage in some degree of self-regulation, but chartered cities have a greater measure of autonomy than general-law cities. The California constitution specifically provides that chartered cities have the power to make and enforce all laws regarding municipal affairs, subject only to whatever restrictions are contained in their charters.⁴ In terms of the validity of an income tax levied by a chartered city, the crucial question becomes whether or not a given area of activity can be termed a municipal affair. If not, it is regulated by the general State law, and if the State has preempted the area, no city, including a chartered city, can subject it to municipal control.⁵ But if the area is held to be a municipal affair, it is then exclusively within the control of the chartered city and the chartered city is exempt from all general State laws concerning that area of activity.⁶ Municipal affairs are beyond the reach of State legislative enactment as far as chartered cities are concerned.⁷ If general law and local law are in conflict in this area, local law controls.⁸

A chartered city may restrict its own right to control a particular municipal affairs area. This can be done by placing terms of express curtailment of the city's power in the charter itself.⁹ Since the power of a chartered city to control its municipal affairs flows from the California constitution,¹⁰ this power may also be expressly curtailed in that instrument.¹¹ Thus a provision in the constitution itself may put a given topic within the control of the State, even though it would normally be considered a municipal affair.¹² The basic principle, then, of the chartered city's autonomy is this: a chartered city has full control over its municipal affairs except as this control is clearly and explicitly curtailed by the California constitution or the local charter itself.¹³

statute, ordinance, regulation, rule or decision to the contrary, no city, county, city and county, governmental subdivision, district, public and quasi-public corporation, municipal corporation whether chartered or not, shall levy or collect or cause to be levied or collected any tax upon the income, or any part thereof, of any person, resident or nonresident

³ *Ibid.*

⁴ CAL. CONST. art. XI, § 6. See also CAL. CONST. art. XI, § 8(j).

⁵ *Professional Fire Fighters, Inc. v. City of Los Angeles*, 60 Cal. 2d 276, 32 Cal. Rptr. 830, 384 P.2d 158 (1963); *Wilson v. Beville*, 47 Cal. 2d 852, 308 P.2d 789 (1957).

⁶ *City of Glendale v. Trondsen*, 48 Cal. 2d 93, 308 P.2d 1 (1957); *City of Pasadena v. Charleville*, 215 Cal. 384, 10 P.2d 745 (1932).

⁷ *Ex parte Braun*, 141 Cal. 204, 207, 74 Pac. 780, 781 (1903).

⁸ *Heilbron v. Sumner*, 186 Cal. 648, 651, 200 Pac. 409, 410 (1921); *Ex parte Braun*, 141 Cal. 204, 74 Pac. 780 (1903).

⁹ *City of Glendale v. Trondsen*, 48 Cal. 2d 93, 98, 308 P.2d 1, 3 (1957); *Muhleisen v. Forward*, 4 Cal. 2d 17, 46 P.2d 969 (1935).

¹⁰ CAL. CONST. art. XI, § 6. See also CAL. CONST. art. XI, § 8(j).

¹¹ *Ex parte Braun*, 141 Cal. 204, 211, 74 Pac. 780, 783 (1903).

¹² *In re Redevelopment Plan for Bunker Hill*, 61 Cal. 2d 21, 74, 37 Cal. Rptr. 74, 108, 389 P.2d 538, 572 (1964).

¹³ *Ibid.*, *City of Glendale v. Trondsen*, 48 Cal. 2d 93, 98, 308 P.2d 1, 3 (1957).

Revenue Taxation as a Municipal Affair

In light of the rule that a chartered city has control over its municipal affairs, the next consideration is whether the term "municipal affairs" includes the power to tax for revenue purposes. There is no precise definition of "municipal affairs." The term is not a fixed concept; it changes as conditions change.¹⁴ The standard label used by the courts is that the term "municipal affairs" refers to the "internal business affairs of the municipality,"¹⁵ and nothing that is a matter of general statewide concern can be a municipal affair.¹⁶ It can readily be seen that this definition does not provide a very specific guide for determining whether or not a given topic is entitled to be classified as a municipal affair.

For the purposes of this note, however, it is sufficient to ascertain whether or not the power of a chartered city to tax for *revenue purposes*¹⁷ is a municipal affair. A chartered city's power of taxation, like all local powers, must have its origin in a grant from the State and it may therefore at all times be controlled by the State.¹⁸ But it does not follow that this local power of taxation can be controlled by the legislative department of the State.¹⁹ If this local power originated in a grant from the legislature it could be controlled by the legislature.²⁰ The power of chartered cities to tax for municipal revenue purposes, however, does not find its source in any grant from the California Legislature.²¹ This power has been granted directly by the people of California in the State constitution²² and therefore cannot be controlled by the legislature.²³ The courts have firmly placed a chartered city's power to tax for revenue purposes in this category of constitutionally granted taxation power in numerous decisions holding that such taxation power is strictly a municipal affair.²⁴ Applying the principle previously

¹⁴ Courts often hold that changed conditions have turned what was once a municipal affair into a matter of general statewide concern. *Pacific Tel. & Tel. Co. v. City & County of San Francisco*, 51 Cal. 2d 766, 336 P.2d 514 (1959), held that changed conditions had turned the construction and maintenance of telephone lines into a matter of general statewide concern even with respect to lines on a particular city street. *Helmer v. Superior Court*, 48 Cal. App. 140, 191 Pac. 1001 (1920), held that the regulation of motor vehicle traffic had become a matter of general statewide concern and was no longer a municipal affair even within a particular municipality.

¹⁵ *City of Walnut Creek v. Silveira*, 47 Cal. 2d 804, 811, 306 P.2d 453, 456 (1957); *Fragley v. Phelan*, 126 Cal. 383, 58 Pac. 923 (1899). See generally Note, 16 *HASTINGS L.J.* 265 (1964) for a discussion of the nature of the municipal affairs concept.

¹⁶ *City of Pasadena v. Charleville*, 215 Cal. 384, 10 P.2d 745 (1932); *Horwith v. City of Fresno*, 74 Cal. App. 2d 443, 168 P.2d 767 (1946).

¹⁷ Taxes are imposed for one of two different purposes, or both. One purpose is to raise revenue; the other is to regulate that which is taxed. It is beyond the scope of this note to consider the problems that arise if a tax is held to be regulatory instead of imposed for revenue purposes; suffice it to say that a Pandora's box is opened concerning intra-state preemption.

¹⁸ *Ex parte Braun*, 141 Cal. 204, 211, 74 Pac. 780, 783 (1903). *Braun* is quoted and followed on this point in *West Coast Advertising Co. v. City & County of San Francisco*, 14 Cal. 2d 516, 524, 95 P.2d 138, 143 (1939).

¹⁹ Authorities cited note 18 *supra*.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Ex parte Braun*, 141 Cal. 204, 207, 74 Pac. 780, 781 (1903).

²⁴ *City of Glendale v. Trondsen*, 48 Cal. 2d 93, 98, 308 P.2d 1, 3-4 (1957); *Ams-*

stated, it follows that the power of a chartered city to tax for revenue purposes is limited only by express provisions of curtailment found in the California constitution or the particular city charter.²⁵

It has been held that a tax on income is a tax for revenue purposes.²⁶ Since revenue taxation is a municipal affair²⁷ and income taxation is revenue taxation, it would seem logically to follow that income taxation is a municipal affair. As indicated above, if income taxation by a chartered city is a municipal affair it is not subject to general law and can be curtailed only by the California constitution or the local charter. This proposition, however, has not been accepted by the legislature.²⁸

Income Taxes and Revenue Taxes

The California Legislature, in the face of the above decisions holding revenue taxation to be a municipal affair, has enacted legislation that purports to preempt the entire field of income taxation.²⁹ As a result, one is led inescapably to one of two possible conclusions: Either 1) the statute is not effective, at least insofar as it purports to occupy completely the field of personal income taxation in California, or 2) income taxation is not, or at least is no longer, a municipal affair. It appears that the legislature may also have realized that there was some conflict in this area. For example, the statute itself says that it is effective "notwithstanding any decisions to the contrary"³⁰

Since the adoption of the statute the court has continued to indicate that city revenue taxation is a municipal affair³¹ and therefore beyond the reach of legislative enactment. Income taxation is revenue taxation.³² On its face it would therefore appear that the statute is not effective in its attempt to occupy completely the field of income taxation.

The conclusion that the statute is invalid, however, is not necessarily the present state of the law. If income taxation were to be held not to be a municipal affair the statute would, of course, be valid, since a topic that is not a municipal

worth v. Bryant, 34 Cal. 2d 465, 469, 211 P.2d 564, 566 (1949); West Coast Advertising Co. v. City & County of San Francisco, 14 Cal. 2d 516, 524, 95 P.2d 138, 143 (1939); *In re* Norwak, 184 Cal. 701, 704, 195 Pac. 402, 403 (1921); *Ex parte* Jackson, 143 Cal. 564, 572, 77 Pac. 457, 460 (1904); *Ex parte* Braun, *supra* note 23, at 213, 74 Pac. at 783-84.

²⁵ *City of Glendale v. Trondsen*, *supra* note 24, at 98, 308 P.2d at 3; *Amsworth v. Bryant*, *supra* note 24, at 469, 211 P.2d at 566; *West Coast Advertising Co. v. City & County of San Francisco*, *supra* note 24, at 526, 95 P.2d at 144.

²⁶ *Sims v. Aherns*, 167 Ark. 557, 271 S.W. 720 (1925); *California Employment Comm'n v. Black-Foxe Military Institute*, 43 Cal. App. 2d 868, 110 P.2d 729 (1941); *Carter Carburetor Corp. v. City of St. Louis*, 356 Mo. 646, 203 S.W.2d 438 (1947); *Alaska v. Baker*, 64 Wash. 2d 207, 390 P.2d 1009 (1964).

²⁷ *City of Glendale v. Trondsen*, 48 Cal. 2d 93, 98, 308 P.2d 1, 3-4 (1957); *Amsworth v. Bryant*, 34 Cal. 2d 465, 469, 211 P.2d 564, 566 (1949).

²⁸ CAL. REV. & TAX. CODE § 17041.5.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *In re* Redevelopment Plan for Bunker Hill, 61 Cal. 2d 21, 74, 37 Cal. Rptr. 74, 108, 389 P.2d 538, 572 (1964) (dictum).

³² *Sims v. Aherns*, 167 Ark. 557, 271 S.W. 720 (1925); *California Employment Comm'n v. Black-Foxe Military Institute*, 43 Cal. App. 2d 868, 110 P.2d 729 (1941).

affair is subject to general law.³³ As conditions throughout the State change, the constitutional concept of municipal affairs also changes,³⁴ as has been indicated. The term "municipal affairs" does not have a fixed or static definition. What at one time was a municipal affair may later become a matter of general statewide concern and hence lose its municipal affairs status.³⁵ Thus, if the question of the validity of the statute were put squarely before the court, all the court would have to do to sustain it is hold that city income taxation is, or through changed conditions has become, a matter of general statewide concern.³⁶ Such a holding would make the legislative preemption of the field unquestionably valid. This appears to be a likely result in view of analogous situations where the courts continually redefine municipal affairs, particularly in the field of taxation and licensing.³⁷ The question of the validity of the income tax statute was not before the court in the case, decided since the enactment of the statute, that indicated that revenue taxation is still a municipal affair.³⁸ Had this question been before the court there may have been a different outcome.

Assuming, for the purpose of argument, that the conclusion that city income taxation is not a municipal affair is correct, where does this leave revenue taxation in general? If city income taxation is revenue taxation³⁹ and if city income taxation is not a municipal affair, can it logically be argued that city revenue taxation is a municipal affair? Aside from policy considerations to be discussed below, it would seem that there is no logical basis for singling out income taxation and holding it to be a matter of general statewide concern and at the same time holding other forms of revenue taxation to be municipal affairs. A tax levied on the income a person receives by working within a community, and therefore usually receives as a result of the community's economic activity, appears to be every bit as much of an "internal business affair of the municipality"⁴⁰ as does any revenue

³³ *Wilson v. Beville*, 47 Cal. 2d 852, 306 P.2d 789 (1957); *Eastlick v. City of Los Angeles*, 29 Cal. 2d 661, 177 P.2d 558 (1947).

³⁴ *Pacific Tel. & Tel. Co. v. City & County of San Francisco*, 51 Cal. 2d 766, 336 P.2d 514 (1959).

³⁵ *Ibid.*

³⁶ See note 14 *supra*.

³⁷ The power of chartered cities to license for purposes of revenue and regulation has become less and less a municipal affair and more and more a matter of general statewide concern through a number of decisions in the past twenty years. See *Agnew v. City of Culver City*, 51 Cal. 2d 474, 334 P.2d 571 (1959); *Agnew v. City of Los Angeles*, 51 Cal. 2d 1, 330 P.2d 385 (1958); *Horwith v. City of Fresno*, 74 Cal. App. 2d 443, 168 P.2d 767 (1946).

³⁸ *In re Redevelopment Plan for Bunker Hill*, 61 Cal. 2d 21, 37 Cal. Rptr. 74, 389 P.2d 538 (1964), stated in general terms that the levy and collection of taxes by a chartered city is a municipal affair. The question considered in the case, however, involved the validity of certain tax allocation provisions of a city ordinance. The court decided this question on the basis of CAL. CONST. art. XIII, § 19, which has removed various tax allocation problems from the municipal affairs field. Since the court was not really concerned with the specific question of whether the levy of a revenue tax is a municipal affair, it would appear that the possible impact of the income tax statute is yet to be felt.

³⁹ *Sims v. Aherns*, 167 Ark. 557, 271 S.W. 720 (1925); *California Employment Comm'n v. Black-Foxe Military Institute*, 43 Cal. App. 2d 868, 110 P.2d 729 (1941).

⁴⁰ It has been pointed out that this is the prevailing definition of municipal affairs.

tax levied on local business and its activities. Following this reasoning, it would seem that if city income taxes are not municipal affairs, then neither are other forms of city revenue taxation.

The courts, however, do not have to accept the proposition that if city income taxation is not a municipal affair then neither are other forms of city revenue taxation. The reasoning that there is no logical basis for distinguishing between income taxation and other forms of revenue taxation overlooks the fact that the State may justifiably have a larger interest in personal income taxation than in other forms of taxation. Since income taxation is a major source of state revenue, a prohibition of city income taxation may serve to protect this source for the State. Income taxation can also be a larger and more apparent burden on the taxpayer than other forms of taxation and the State may wish to assure its citizens that such taxation will be kept to a minimum. Thus, it would seem, realistically, that the State would have a greater degree of concern with personal income taxation than with, say, a local garbage collection fee. For these reasons, it is clearly possible for the courts to hold city income taxation to be a matter of general statewide concern and at the same time hold other forms of city revenue taxation to be a municipal affair. But the question is, even though the courts may continue to say that revenue taxation is a municipal affair, is this actually true? By analogy to the situation with the income tax statute, it would seem that, if the legislature wishes to preempt the field concerning another type of city revenue taxation, it need only pass a statute to that effect. All the courts have to do is ratify the legislative determination that the particular revenue tax is of general statewide concern and therefore not a municipal affair, and the statute becomes completely valid.⁴¹ If this procedure be followed, is there any real basis for a continuance of the holding that revenue taxation in general is a municipal affair? Can it truly be said that the power of a chartered city to tax for revenue purposes is limited only by the constitution and the local charter? It appears that, if the income tax statute is valid, the purported municipal affairs nature of city revenue taxation has been seriously undermined, even if the courts do distinguish between income taxation and other forms of revenue taxation.

The above considerations have brought to the fore the fact that the two possible alternative conclusions as to the effect of the statute present a readily apparent dilemma. On the one hand, if the statute were to be held invalid, such a holding would be in line with existing authority concerning the municipal affairs nature of city revenue taxation,⁴² but would thwart a clearly expressed legislative

City of Walnut Creek v. *Silveira*, 47 Cal. 2d 804, 811, 306 P.2d 453, 456 (1957); *Fragley v. Phelan*, 126 Cal. 383, 58 Pac. 923 (1899).

⁴¹ It was held in *Professional Fire Fighters, Inc. v. City of Los Angeles*, 60 Cal. 2d 276, 384 P.2d 158, 32 Cal. Rptr. 830 (1963), that the legislative purpose in each instance is the test of whether or not a given area of activity is a municipal affair. If this test were applied here, there would be no question as to the validity of the statute under consideration since its purpose is clear. This test, however, presents a fundamental anomaly. What is the value to chartered cities of the existence of constitutional autonomy in the regulation of municipal affairs if the legislature can take away this autonomy by the simple act of defining the field of activity as not being a municipal affair because it is a matter of statewide concern?

⁴² *City of Glendale v. Trondsen*, 48 Cal. 2d 93, 98, 308 P.2d 1, 3-4 (1957); *Amsworth v. Bryant*, 34 Cal. 2d 465, 469, 211 P.2d 564, 566 (1949).

intent to preempt the field of income taxation.⁴³ On the other hand, if city income taxation is held not to be a municipal affair, the statute would be valid and the legislative intent enforced, but a serious doubt would be raised as to whether city revenue taxation is truly a municipal affair. The desirability of this latter alternative is left to the judgment of the reader, but it might be advisable to keep in mind the words of the United States Supreme Court that a "municipality without the power of taxation would be a body without life, incapable of acting and serving no useful purpose."⁴⁴

It is important to point out that there is a method by which city income taxation can be effectively prohibited and at the same time leave the municipal affairs quality of city revenue taxation intact, thus solving the dilemma. This method is constitutional amendment. If a constitutional amendment prohibiting city personal income taxes were adopted, it would be unquestionably valid because municipal affairs are subject to restrictions appearing in the constitution.⁴⁵ Such an amendment would coincide, rather than conflict, with existing authority concerning the municipal affairs nature of city revenue taxation for the same reason.⁴⁶ The constitution has been used in the past to regulate other areas of taxation;⁴⁷ why not use it for income taxes? It would seem that there is no apparent reason for not using this method to regulate the field. Such an amendment would certainly be less troublesome than a statute that says it is effective, "notwithstanding any decisions to the contrary"⁴⁸

Conclusion

The California Legislature's purported prohibition of all city personal income taxation presents a dilemma, in view of its conflict with existing authority as to the municipal affairs nature of city revenue taxation. Assuming the validity of the statute, although the assumption is somewhat questionable, the statute seriously undermines the chartered city's power to tax for revenue purposes. Powers of taxation are extremely important to every municipality. If the State wishes to prohibit city personal income taxation, it should do so by constitutional amendment. Such an amendment would provide effective prohibition and at the same time preserve the municipal affairs nature of revenue taxation to the chartered cities of the State.

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⁴³ CAL. REV. & TAX. CODE § 17041.5.

⁴⁴ United States v. New Orleans, 98 U.S. 381, 393 (1878).

⁴⁵ *Ex parte Braun*, 141 Cal. 204, 74 Pac. 780 (1903).

⁴⁶ It should be noted, however, that this suggested solution, while solving this revenue taxation dilemma, still leaves a wider problem raised by *Professional Fire Fighters*: Would not the same dilemma arise if the legislature prohibited some other kind of municipal revenue taxation? In this regard see note 41 *supra*.

⁴⁷ CAL. CONST. art. XIII, § 14 4/5(f) expressly regulates certain types of insurance taxation by providing that the tax imposed by this section is "in lieu of all other taxes and licenses, state, county, and municipal." By similar provisions the constitution regulates the fields of taxation of banks (CAL. CONST. art. XIII, § 16(1)(a)) and certain allocations of municipal taxes (CAL. CONST. art. XIII, § 19).

⁴⁸ CAL. REV. & TAX. CODE § 17041.5.

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