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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 478.

MARK GRAVES, JOHN J. MERRILL and JOHN P. HENNESSY, as Commissioners constituting the State Tax Commission of the State of New York,

Petitioners,

vs.

THE PEOPLE OF THE STATE OF NEW YORK, upon the Relation of JAMES B. O'KEEFE.

BRIEF FOR PETITIONERS.

The Decisions of the Courts Below.

The decision of the Appellate Division of the Supreme Court, Third Judicial Department, is reported in 253 App. Div. (N. Y.) 91. The memorandum decision and dissenting opinion of Crapser, J. appears at pp. 45-50 of the Record.

The decision of the Court of Appeals is reported in 278 N. Y. 221 and appears in the Record at page 1, [fol. b.] No opinion was written other than the memorandum citing the authority of *Rogers v. Graves,* (299 U. S. 401) as the basis for the decision.

Statement.

1. The appeal herein comes to this Court by certiorari granted December 19, 1938, and issuing to the Supreme Court of the State of New York to review the judgment of that Court under date of August 19, 1938. That judgment was entered upon the affirmance of the final order by the Court of Appeals, directing the refund to the relator O'Keefe of his personal State income tax for the year 1934 in the sum of $57.28. With the costs and disbursements the judgment for $257.08 was entered (R. pp. 2-3).

2. This Court has jurisdiction under §237 (b) of the Judicial Code (28 U. S. C. A. §344).

3. Relator was employed in the calendar year 1934 as an attorney at law at a fixed salary by the Home Owners' Loan Corporation. He received as such salary in the year 1934 the sum of $2246.66 on which he paid a tax of $57.28 for which refund was sought by him (fol. 57). The Tax Commission of New York State denied the refund (fols. 8-9) and the taxpayer sought a review by certiorari in the Appellate Division of the Supreme Court, Third Judicial Department (fols. 6-7). That Court reversed the determination of the Tax Commission and directed a refund, holding the Relator's salary immune on the authority of *People ex rel. Rogers v. Graves,* (299 U. S. 401) (fol. 63). There were two dissents expressed in the opinion of Crapser, J. (fols. 66-72 inc.). The Court of Appeals affirmed on the express authority of *People ex rel. Rogers v. Graves* (299 U. S. 401) (fols. a-b).

Facts.

Relator O'Keefe, an attorney, was employed by the Home Owners' Loan Corporation, a public corporation created under the Home Owners' Loan Act of 1933 (48 U. S. Stat. at Large, 128), Sec. 4-a thereof (fol. 12). He was not in the Civil Service, received his appointment orally; was paid by check of the Home Owners' Loan Corporation (fols. 11, 43). The Home Owners' Loan Corporation[1] "was created to meet an emergency" in aid of distressed home owners (fol. 31). It was empowered for three years of activity (1) to acquire mortgages and liens secured by real estate in exchange for its bonds; (2) to make cash advances for taxes, assessments and repairs in connection with such transactions; (3) to make cash loans on unencumbered property to 50 percentum thereof, secured by interest-bearing mortgage; (4) to advance in cash up to 40 percentum of the value of property where the holder of a home mortgage does not accept bonds in exchange (fol. 13).

The stock of the H.O.L.C. is owned by the United States, subscribed for by the Secretary of the Treasury, and its bonds are guaranteed by the United States as to principal and interest (fol. 13). The corporation dealt with corporate as well as individual owners of houses, the sole requirement being that the property be in distress and without refunding means (fol. 37). Loans were made for installation of heating system or other repairs (fols. 38-40), and were permitted up to 80% of the appraised value of the property with a

[1]Hereinafter designated as the H. O. L. C.

maximum loan of $14,000 (fol. 41). Relator O'Keefe was an examining and supervising attorney, on full time and at a stated salary (fols. 22-4). The checks for his salary were drawn on the Treasury of the United States, signed by the Treasurer of the corporation (fol. 35).

The Tax Commission held that the salary of relator O'Keefe was taxable under the State Tax Law; that he was not an employee or official of the United States, nor was his compensation received from the United States, but from a separate corporate entity; that the functions of the H. O. L. C. were not essential or usual governmental functions, referring specifically to *People ex rel. Rogers v. Graves* (*supra*); *Ohio v. Helvering,* 292 U. S. 360; *Flint v. Stone Tracy,* 220 U. S. 108; *Helvering v. Powers,* 293 U. S. 214 (fol. 16). As above indicated, the reversal and judgment sought herein to be reviewed were based on the *Rogers* case (*supra*).

Statutes.

The State Tax Law is set forth at "Appendix A" to the Petition for Certiorari herein. So far as pertinent §359-par. 2-f excludes from gross income for State income tax purposes:

> "Salaries, wages and other compensation received from the United States of officials or employees thereof, including persons in the military or naval forces of the United States." (fol. 10.)

The Home Owners' Loan Act of 1933 appears in full as "Appendix B" to the Petition for Certiorari herein.

Specifications of Errors.

The errors relied upon are set forth at length in the Petition for Certiorari. Petitioners submit that the Court of Appeals of New York State erroneously believed itself bound, by reason of this Court's decision in *Rogers v. Graves,* 299 U. S. 401, to hold the taxpayer exempt from the State income tax. The full purport of this Court's determination in *Helvering v. Gerhardt,* 304 U. S. 405, it is respectfully submitted, was not accepted by the Court of Appeals, the said Court of Appeals erring in not holding:

(a) The functions of the Home Owners' Loan Corporation were not essential to the preservation or functioning of the Government of the United States.

(b) The taxpayer herein was not an official or employee of the United States to warrant exemption on such basis.

(c) The burden of the personal income tax of the State in this case upon the Government of the United States was clearly speculative and uncertain, being wholly or substantially absorbed by the individual.

(d) The doctrine of governmental constitutional immunity did not apply to the taxpayer herein.*

Issue.

Is the salary of relator O'Keefe, an employee or officer of the Home Owners' Loan Corporation, exempt

*These state the substance of the errors relied upon.

from non-discriminatory personal income taxes imposed by the State of New York?

Summary of Argument.

1. There is no constitutional or statutory immunity which protects the officers or employees of the Home Owners' Loan Corporation from a non-discriminatory State income tax. The functions of the H. O. L. C. are not such that the preservation of the Government of the United States depends upon them. The business of the H. O. L. C. differs in no substantial respect from private mortgage financing. The rule laid down in *Helvering v. Gerhardt,* 304 U. S. 405, makes it clear in the instant case that the burden of the tax herein is entirely absorbed by the taxpayer, and so far as the Federal government is concerned, is speculative. The Home Owners' Loan Act of 1933 furnishes no basis for, nor evidence of any intention to grant the immunity sought by O'Keefe.

2. Under any reasonable test, whether of the functions of the agency, or of the individual, the taxpayer herein is not entitled to immunity.

I.

EMPLOYEES AND OFFICERS OF THE HOME OWNERS' LOAN CORPORATION ENJOY NO CONSTITUTIONAL OR STATUTORY IMMUNITY FROM NON-DISCRIMINATORY STATE TAXATION OF THEIR SALARIES.

(A) *On Constitutional Immunity.*

Protection of both national and State governments, one from the destruction by the other, is a *sine qua non* of a truly Federal system.

> "This principle has arisen out of what the Court says is necessity—the necessity of preserving such governments' separate and sovereign existences. * * * The effect of such taxation on the individual has not been the activating cause of the decisions."
>
> *Gutkin—Taxing Tax-Immune Income,* 26 Cal. Law R. 579/585 (1938).

The compromises which result from the necessary consequences of such preservation of governments may at times be arbitrary. Their purpose is to maintain the interests of the nation and yet not restrict the States unduly. It is the States that are sovereign in origin. The sovereignty of the national government, if such it be termed, arises from a delegation of express powers and their necessary implications. Hence the sovereignty of the State cannot be carried to where it would impinge upon those "means which are employed by Congress to carry into execution powers conferred on that body by the People of the United States."[2] Aside from that limitation the sovereign State might

[2]McCulloch v. Maryland, 4 Wheat 316/429.

tax "all subjects over which the sovereign power of the State extends."[3] Only through the discovery of a constitutional immunity will the Court not be driven "to the perplexing inquiry, so unfit for the judicial department, what degree of taxation is the legitimate use and what degree may amount to an abuse of power."[4]

It has never heretofore been doubted that the doctrine of immunity of Federal instrumentalities from State taxation and of State instrumentalities from Federal taxation is reciprocal. Whatever has been of such character and relationship to the one as to warrant immunity, has brought similar immunity to the other.

Collector v. Day, 11 Wall. 113/127.
Ambrosini v. U. S., 187 U. S. 1/7.
So. Carolina v. U. S., 199 U. S. 437/451-2.
Indian Motocycle Co. v. U. S., 283 U. S. 570/579.
Trinityfarm Construction Co. v. Grosjean, 291 U. S. 471.
Metcalf & Eddy v. Mitchell, 269 U. S. 514/522.

In *Metcalf & Eddy v. Mitchell* this Court took some pains to enumerate the character of functions or instances coming within the immunity, such as obligations sold to raise public funds, agencies through which direct sovereign functions are exercised, investments of public funds for public purposes, etc. (p. 522).

The Chief Justice in *Helvering v. Powers,* 293 U. S. 214, marked a like distinction in the character of trans-

[3]Ibid.
[4]Ibid at 430.

actions or functions performed, using as examples of sources of revenue that might not be withdrawn from Federal taxation, the cases of *So. Carolina v. U. S.* (*supra*) and *Ohio v. Helvering,* 292 U. S. 360. We cannot believe that the reciprocal rule will now be cast aside and different standards be set up for Federal and State agencies. Nor do we observe any necessity for a rule that will disregard the functions performed by individuals in determining their taxability. This Court is not here called on to pass upon the taxability of the salaries of officers of government, like the Governor of a State or those immediately concerned with its direct functioning, like judges of the courts. *Collector v. Day* (*supra*) does not necessarily rest upon the precedent of *McCulloch v. Maryland* (*supra*), but upon its own original and independent reasoning, with citation of the latter case by way of analogy. We doubt that this Court will abandon the rule of reciprocal immunity of such long and established standing. The present or like cases furnish no reason for such departure.

In the long line of cases deriving from *McCulloch v. Maryland* (4 Wheat. 316); *Dobbins v. Erie County* (16 Pet. 435); *Collector v. Day* (11 Wall. 113) and down through *Indian Motocycle Co. v. U. S.* (283 U. S. 570); *Helvering v. Powers* (293 U. S. 214); *Rogers v. Graves* (299 U. S. 401); *Brush v. Commissioner* (300 U. S. 352) one can discern the reasoning upon which has been built a thesis of constitutional immunity. In the case of the Federal government the immunity is founded on the powers granted and implied; in the case of the State it is based on their original and continued sovereignty and "reserved powers." Where

the agency, instrumentality or function was a proper part of the government thus functioning, it was immune from taxation by the other sovereign. This immunity was carried through to protect the salaries of the officers and employees.

Brush v. Commissioner (supra);
Rogers v. Graves (supra);
Dobbins v. Erie County (supra).[5]

By the above process the question whether a given tax would impede or burden a Federal agency or State instrumentality became a question of degree. "The question of interference with government, I repeat, is one of reasonableness and degree * * *."

Holmes, J.—dissenting in *Panhandle Oil Co. v. Knox,* 277 U. S. 218/225.

Until the determination of *Helvering v. Gerhardt* (304 U. S. 405) this Court proceeded to mark out the immunity from the functions performed and their relationship to the government involved. Mr. Justice Stone in *Indian Motocycle Co. v. U. S.* (283 U. S. 570/580) in a dissent strongly urged limiting rather than enlarging the "implied immunity of one government, either national or state, from taxation by the other." But there is no doubt that the reciprocal immunity is there recognized. The sole problem is the extent to which taxation would be regarded as infringing on the said immunity.

The courts below rested their decisions in the case at bar solely on the authority of *Rogers v. Graves,* 299 U. S. 401. Unanimously this court there determined

[5]In **Dobbins v. Erie Co.** there was the added ground expressly stated by the Court, that Congress had fixed the compensation. p. 449.

that New York State might not tax the income of Rogers, an officer of the Panama Railroad Company, a New York corporation, because the company was performing a function whose primary purpose was "legitimately governmental." The immunity of the instrumentality of the Federal government covered the officers and the company itself. The Court of Appeals of New York State presumably felt that any modification or limitation of the doctrine of the *Rogers* case should come from this Court.

In *Helvering v. Gerhardt (supra)* we find what appears to be a fundamental departure from the decisions on the rule of immunity from taxation. The necessity of inquiry into the nature of the governmental function performed is abandoned in that case. In argument and brief in the *Gerhardt* case the Attorney General of the United States conceded that if the function were properly governmental then salary immunity from taxation followed.[6] Both sides rested their arguments on the nature of the functions. This Court, however, announced a new rule. Employee implied immunity as formerly pronounced is questioned. Two guiding principles are now stated: (1) Implied immunity cannot be recognized where the function is not essential to the preservation of the government itself. (2) The burden of the tax (on employees) on the government irrespective of the function itself, is speculative because it is "substantially or entirely absorbed by private persons."[7]

How will a Federal tax be absorbed by the person, but a like State tax burden the Federal government?

[6]Minutes of Argument—pp. 8, 32—Brief of Petitioner—Gerhardt case—pp. 30-31.

[7]The effect of a tax on a salary directly fixed by or paid directly to an official of the governmental unit (State or Federal) is left open.

Why is a tax on the salary of a Judge or Governor less speculative than that on a policeman, clerk or tunnel engineer? Can it be contended that the burden, although "speculative", shifts or differs with the function?

It would seem fairly clear that if the burden of the employee's salary is speculative or uncertain, it is the same whether the taxpayer be Federal or State employee.[7a] Both come within Justice Stone's precept of "a duty to support" the governments under which they live. The quality of relationship of *O'Keefe* in the instant case to New York State is no different from that of *Gerhardt* to the United States. In both cases human beings serve as instruments of government at an agreed salary; both receive the benefits and protection of the governments which sought to impose the tax; in both cases the taxpayer's income is diminished by the tax. This reasoning parallels that of Mr. Justice Roberts in his dissent in *Brush v. Commissioner,* 300 U. S. 352.

In respect of the functions performed by the H.O.L.C. extended argument can add little to the review of its purposes and transactions outlined above (pp. 3-4). We find in such activities no such direct or tangible connection with the powers expressly delegated to the United States in the Constitution as to warrant the conclusion that complete immunity should flow therefrom. Any private banking or lending corporation indulges in like activities. Any mortgage loan corporation covers most of the gamut of the H.O.L.C. activi-

7a Indian Motocycle Co. v. U. S., 283 U. S. 570/579.
"Under the constitutional principle the exertion of such a function by a state or a state agency has the same immunity from Federal taxation that like exertions by the United States or its agencies have from state taxation."

ties. Whether they are termed "proprietary" in the sense of *Helvering v. Powers* (293 U. S. 214) or not, they certainly are not so closely bound up with necessary governmental functions as those of the Port of New York Authority are with the States of New York and New Jersey. We observe no sound reason why the principle, that governmental immunity shall not be applied so as cripple the taxing power of the other sovereignty, should not be enforced in the instant case. The Federal government has engaged in activities of an ordinary character not inherent in our governmental system. A source of revenue otherwise available to New York State should not thereby be taken away. *Willcuts v. Bunn,* 282 U. S. 216/225; *James v. Dravo Contracting Co.,* 302 U. S. 134.

If the liability to tax is incompatible with the concept of sovereignty, no distinction can be made between the States and the Government of the United States. Certainly no such distinction may be based upon the suggestion that the States are represented in Congress and may therefore protect their reserved rights or powers in the Houses of Congress. We are dealing with reserved sovereignty with which representation has nothing to do. This Court has always been alert to defend both the delegated powers of the Federal Government and the reserved powers of the States. Majorities in Congress are not a proper substitute for constitutional amendments. We doubt that this Court will surrender the reserved sovereignty of the States to the tender mercies of a Congressional majority.

In the light of the obvious movement of the law to restrict immunities from taxation, we find no constitu-

tional basis for exemption of the employees of the H.O.L.C. from non-discriminatory State income taxes. The test being that of a burden on the government whose functions are being performed, there is here no such burden, direct or even indirect, as to warrant the exemption granted below on the authority of *Rogers v. Graves* (*supra*).

B. *On Statutory Immunity.*

It has been argued at times that the immunity of Federal agencies is frequently a matter of statutory—*i. e.,* Congressional—intent.[8] Where such immunity is not expressed in explicit exemption, it has been said that it will not be implied. Thus, it is often urged, you can avoid entirely the necessity of maintaining a doctrine of so-called constitutional immunity.

King County v. U. S. Shipping Board, 282 Fed. 950/952;

Federal Land Bank v. Priddy, 295 U. S. 229/231, 235;

Dobbins v. Erie County, 16 Pet. 435/449.

No necessity exists in the instant case for resort to such reasoning. No implied immunity should be read into a statute which expressly declared the exemptions that were effective. Section 1463 (c) of the Home Owners' Loan Act reads:

> "The bonds issued by the Corporation under this subsection shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any District, Territory, dependency, or possession

[8] "Thus the immunity doctrine seems to be losing its constitutional significance. It is becoming a question of 'Congressional Intent'," Dowling, Cheatham and Hall, 36 Col. L. Rev. 351/357.

> thereof, or by any State, county, municipality, or local taxing authority. The Corporation, including its franchise, its capital, reserves and surplus, and its loans and income, shall likewise be exempt from such taxation; except that any real property of the Corporation shall be subject to taxation to the same extent, according to its value, as other real property is taxed."

The enumeration of exemptions is too carefully drawn to permit of any implied exemption to employees' or officers' salaries. Implied immunity in a like statutory provision was denied by this Court in *Baltimore National Bank v. State Tax Commission of Maryland,* 297 U. S. 209/214. It may also be argued that Congress had impliedly consented to such taxation, either where no exemption is expressed, or where it appears that the burden on the Federal government will be found to be too remote. If the burden be of such weight or significance, Congress can protect itself by an express exemption.

> *James v. Dravo Contracting Co.,* 302 U. S. 134;
>
> *Dual Federalism Today,* 38 Col. L. Rev. 142;
>
> *The Silence of Congress,* 41 Harvard L. Rev. 200.

Applying the test laid down by Mr. Justice Stone in *Helvering v. Gerhardt,* 304 U. S. 405, 411:

> "Since the acts of Congress within its constitutional powers are supreme, the validity of state taxation of federal instrumentalities must depend (a) on the power of Congress to create the instrumentality and (b) its intent to protect it from state taxation."

No intent is observed in the language or substance of the Home Owners' Loan Act of 1933 to furnish immunity from State taxation to the employees of the corporation.

II.

INTERFERENCE WITH THE OPERATION OF GOVERNMENT FURNISHES AN APPROPRIATE TEST FOR IMMUNITY FROM TAXATION. BY SUCH TEST NO IMMUNITY SHOULD BE ACCORDED THE TAXPAYER HEREIN.

It may be safely assumed that where Congress has expressly granted an exemption from taxation, the operations so guarded are deemed to be of a degree of importance to the government that taxation would be an interference. So, too, where Congress has expressly waived what might otherwise have been held to be an immune operation, we may reason that the particular function so permitted to be burdened is not vital to the operation of government. While Congress may be permitted to consent to taxation of functions of the Federal government, it does not necessarily follow that Congress may impose taxes on a State's functions of government. The limitation inherent in this last situation is the effect of the tax on the operations of the government of the State. This latter problem is not present in the instant case, but is found in the peripheral of issues arising from the mistaken theory that there is an entirely different basis for immunity of Federal instrumentalities from a State's government and its activities.[9]

We suggest that immunity from taxation, where Congress has not acted by affirmative exemption, even where implied consent may be observed, should be tested by the directness of the relationship to, or the na-

[9]Brief of Respondent O'Keefe on Petition for Writ—Point VII; Study by Department of Justice, June 24, 1938—"Taxation of Government Bondholders and Employees."

ture of the interference with the operations of the government.

(a) The taxation of normal functions performed by government, be it of State or nation, by levying upon the revenues would seem to be so clear an interference with sovereignty or independence as to carry its own conviction of constitutional invalidity.

McCulloch v. Maryland, 4 Wheat. 316.
Clallam Co. v. U. S., 263 U. S. 341.

(b) The taxation of the securities themselves (by stamp, document tax or otherwise) or of their income would likewise appear to impose a direct burden upon governmental functioning not contemplated in our Federal system. The resultant effect on the fiscal problems of State, county, city, town and village would be possibly so destructive as to derange to a point of chaos their budgetary systems. These two would constitute categories not yet presented for decision by this Court on the basis of any so-called changing theory of constitutional immunities. As to them we trust no tax burden without consent will be sought to be imposed unless and until constitutional amendment shall have opened the way.

Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429.

(c) Of a similar character, too, may be salaries of employees and officers, individual persons, whose property otherwise than in such respect has always been taxable as generally as other persons. With respect to the salaries of employees and officers of government, who are directly employed in its essential

operations; whose salaries are directly paid out of the treasury (be it nation, state, county, city, town or village); for which salaries, whether in lump sums or in budgetary line items the legislative bodies make appropriations out of government funds—as to these the directness of their relationship to the operation of normal governmental machinery is a vital consideration. In such category would fall the officers and employees of the United States government itself in its direct operation of the functions of its several departments; the officers and employees of the constitutional departments of government of States for whose salaries we find provisions made in normal State budgets; the officers and employees of accepted and normally direct operations of the governments of counties, cities, towns and villages, our traditional and historic units of local representative government. *Brush v. Commissioner* (*supra*) might be sustained on the basis of this last classification. Closely akin, would be *Rogers v. Graves* (*supra*) where the employer corporation was so closely knit with the operation of the national defense as to constitute its operations a function of the War Department of the United States. *Collector v. Day* (*supra*) also would serve as an example.

(d) Finally we come to employees and officers of agencies or instrumentalities of the governments of nation, state, counties, cities, etc. These may be considered by this Court as removed from direct and normally vital operations of the functions of government. We do not think it necessary at this time, for the purposes of this case, to attempt a classification of such functions. The extent to which

public officers and employees perform what this Court may decide to be services *essential* to the existence of government will, of course, depend on the evidence in each case. To generalize in this field from the single decision in the *Gerhardt* case would be, we submit, unfair to this Court as it might well be unwise in policy. In the *Gerhardt* case the functions of the Port Authority were not passed upon. On the record of that case this Court concluded that the individual taxpayer did not differ from an employee of a private corporation. Employee immunity, if it is to be established or recognized, must depend on a showing of the nature and character of his services and their relationship to the functioning of the State (or Federal government).

III.

THE TAXPAYER O'KEEFE IS NOT AN EMPLOYEE OF THE UNITED STATES.

O'Keefe, the taxpayer herein, was no employee or officer of the United States, nor was he paid a salary by the United States. It is significant that the Court of Appeals and the Appellate Division of the Supreme Court below did not consider the **taxpayer** as entitled to exemption under §359, Par. 2-f of Article 16 of the Tax Law of New York State (p. 4 *supra*). He is the employee of a corporation created by the Home Loan Bank Board. Nor was any such basis given for the exemption of Mr. Rogers, General Counsel of the Panama Rail Road Company in *Rogers v. Graves* (*supra*), either by the Courts below or by this Court. The powers of the Federal government acting for national defense may furnish a ground for distinguishing

the *Rogers* case from the instant case in respect of the function performed. To the extent that it may be said that Mr. Rogers and Mr. O'Keefe occupy similar positions, it must be answered that the rule enunciated in *Helvering v. Gerhardt* (*supra*) has modified the principle of taxability of employees and officers of such instrumentalities of government. The delineation of cases we leave to this Court.[10]

See:

Pomeroy v. State Board of Equalization of Montana, 45 P. (2nd) 316 (Mont.).

U. S. Walter, 263 U. S. 15.

Parker v. Miss. State Tax Commissioner, 170 So. 567 (certiorari denied 302 U. S. 742).

The taxpayer O'Keefe, therefore, may not seek immunity from non-discriminatory State personal income tax as an officer or employee of the United States.

Conclusion.

Considerations of statesmanship and policy as well as judicial uniformity favor the taxability of O'Keefe. Sources of revenue for the States will not be curtailed. Harmonious relationships between States and nation will be fostered. A uniform and reciprocal judicial attitude on perplexing problems of taxation, national, state and local will be furthered. The non-discriminatory personal income tax levied by New York State upon its citizen and resident O'Keefe is

[10]The function of the H. O. L. C. would appear clearly "proprietary" as that term has been used judicially in tax cases (see pp. 3, 12 herein).

not of such character as to be burdensome or dangerous to the Federal Union or any of its functions.

THE DETERMINATION OF THE COURT OF APPEALS AND THE JUDGMENT ENTERED THEREON SHOULD BE REVERSED.

Respectfully submitted,

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