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Recent Decisions

FEDERAL PROCEDURE—JURISDICTION—UNCONSTITUTIONAL ADMINISTRATION OF STATE TAX LAWS—TAX INJUNCTION ACT—The United States Court of Appeals for the Third Circuit has held that a state remedy designed to provide relief for aggrieved taxpayers on an individual basis is not "plain, speedy and efficient" within the meaning of the Tax Injunction Act when plaintiffs need and seek class-wide relief from racially discriminatory assessment of property taxes.

Garrett v. Bamford, 538 F.2d 63 (3d Cir.), *cert. denied*, 97 S. Ct. 485 (1976).

In 1975, Donald Garrett and two other property owners filed a class action in federal district court seeking injunctive relief against the Board of Assessment Appeals of Berks County, Pennsylvania.[1] They alleged that the Board was intentionally using a racially discriminatory method of property assessment in violation of the fourteenth amendment.[2] The United States District Court for the Eastern District of Pennsylvania dismissed the case, holding that the plaintiffs' available state remedies were "plain, speedy and efficient" within the meaning of the Tax Injunction Act,[3] and a federal court was therefore barred from asserting jurisdiction over the dispute.[4]

The plaintiffs appealed to the United States Court of Appeals for

1. Garrett v. Bamford, 394 F. Supp. 902 (E.D. Pa. 1975), *rev'd*, 538 F.2d 63 (3d Cir.), *cert. denied*, 97 S. Ct. 485 (1976). The individual members of the Board of Assessment Appeals were also named as defendants in the suit.

2. The plaintiffs alleged: (1) their properties were assessed at values higher than values assigned to similar properties in predominantly or exclusively white areas of Berks County, and (2) their assessments represented a greater percentage of their properties' actual value than did the assessments in white areas. The plaintiffs claimed this was the result of the Board's failure to assess the properties on an annual basis as required by state law, combined with an alleged increase in property values in white neighborhoods. 394 F. Supp. at 903-04.

3. The Act provides that the district courts "shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341 (1970) [hereinafter cited as § 1341].

4. 394 F. Supp. at 908.

the Third Circuit.[5] They conceded that both statutory[6] and equitable[7] remedies were theoretically available to them in Pennsylvania state courts. They contended, however, that the statutory remedy would provide only piecemeal relief which would be neither plain, speedy nor efficient and that the availability of an equitable remedy was, in practice, uncertain. Thus, the sole issue before the court of appeals was whether either of the plaintiffs' state remedies were adequate in the context of class-wide relief from the alleged discriminatory assessment of state taxes. The circuit court determined that neither remedy was adequate, and unanimously reversed and remanded the case for a judgment on the merits by the district court.[8] The court's construction of the Tax Injunction Act and its familiar language, "plain, speedy and efficient," disposed of the issue.[9] Construing those words to have the same meaning as "adequate," the court reviewed the Act's legislative history and was convinced that challenges to state tax assessments were not barred from federal equity courts when the challenges were based on federal law and when the available state remedies were "inadequate to the task."[10]

The Third Circuit first discussed Pennsylvania's equitable remedy and began with the premise that to prove the inadequacy of a state equitable remedy, a plaintiff need only show that its availability is uncertain.[11] The court reviewed recent Pennsylvania Supreme Court decisions on the scope of equity jurisdiction in tax matters.[12] Its survey revealed a pattern of changing standards used by the Pennsylvania Supreme Court for determining when equity courts

5. Garrett v. Bamford, 538 F.2d 63 (3d Cir.), *cert. denied*, 97 S. Ct. 485 (1976).

6. The applicable Pennsylvania statutory remedy is contained in PA. STAT. ANN. tit. 72, §§ 5342-50 (Supp. 1976). The statute establishes a Board of Assessments and provides that the Board shall annually assess properties. *Id.* §§ 5342, 5344. It further provides that aggrieved taxpayers may appeal to the Board for relief and authorizes judicial review of the Board's decision. *Id.* §§ 5349, 5350.

7. *See* note 13 *infra* for a discussion of the availability of Pennsylvania's equitable remedies.

8. 538 F.2d at 72-73.

9. *See* note 3 *supra* for the full text of the Act.

10. 538 F.2d at 67.

11. *Id. See* Township of Hillsborough v. Cromwell, 326 U.S. 620, 624, 626 (1946) (uncertainty surrounding taxpayer's state remedy justified federal jurisdiction); Spector Motor Serv., Inc. v. McLaughlin, 323 U.S. 101, 105-06 (1944) (uncertainty of an adequate state remedy justified federal jurisdiction). *See also* H.M. HART & H. WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 979 (2d ed. 1973) [hereinafter cited as HART & WECHSLER].

12. *See* 538 F.2d at 68-70.

should intervene; the Pennsylvania justices were in substantial disagreement on the issue.[13] The court of appeals concluded that had *Garrett* been brought in a Pennsylvania court, *Rochester & Pittsburgh Coal Co. v. Board of Assessment*[14] should have controlled, and under the *Rochester* standards[15] a state equity court would have been denied jurisdiction. Yet Pennsylvania cases decided after *Rochester* made it questionable whether the Pennsylvania courts also would have considered *Rochester* to be controlling. Rather than rely on its choice of controlling state precedent, the circuit court determined that the availability of the equitable remedy was uncertain and this alone was sufficient to demonstrate inadequacy under the Tax Injunction Act.[16]

The court next analyzed the adequacy of the state's statutory remedy—appeal to an administrative board followed by judicial review.[17] Since Pennsylvania's administrative remedy for aggrieved taxpayers was statutorily prescribed,[18] any conclusion of inadequacy

13. As recently as 1965, the Pennsylvania Supreme Court had held that where a controversy involves a challenge to the constitutionality of a taxing statute or ordinance, equity has jurisdiction despite the availability of an adequate remedy at law. Studio Theatres, Inc. v. City of Washington, 418 Pa. 73, 209 A.2d 802 (1965) (suit to enjoin enforcement of local privilege tax). *Studio Theatres* was upheld in Lynch v. Owen J. Roberts School Dist., 430 Pa. 461, 244 A.2d 1 (1968) (suit to enjoin school district from collecting occupational taxes). Justice Cohen dissented in both decisions, arguing that where a remedy is statutorily provided, that remedy should be pursued exclusively, without interference from courts of equity. 418 Pa. at 80, 209 A.2d at 806; 430 Pa. at 471, 244 A.2d at 6. His view was adopted by a court majority two years later in Rochester & Pgh Coal Co. v. Board of Assessment, 438 Pa. 506, 266 A.2d 78 (1970). *Rochester* held that equity would have no jurisdiction in tax cases unless (1) the case involved a substantial constitutional question, and (2) there was no adequate statutory remedy. *Id.* at 508, 266 A.2d at 79. In 1974, the Pennsylvania Supreme Court made an effort to reconcile these opinions by affirming *Rochester* but adding that when the question raised is one directly involving the constitutional validity of a taxing statute, equity could intervene. Borough of Greentree v. Board of Property Assessments, 459 Pa. 268, 328 A.2d 819 (1974). The Third Circuit considered these conflicting opinions and concluded that the availability of an equitable remedy to the *Garrett* plaintiffs was uncertain. The court stated that such uncertainty was sufficient to render the remedy inadequate. *See* note 11 and accompanying text *supra*.

14. 438 Pa. 506, 266 A.2d 78 (1970).

15. *See* note 13 *supra*.

16. 538 F.2d at 70. *See* note 11 *supra* and authorities cited therein. *Cf.* Tully v. Griffin, 97 S. Ct. 219 (1976) (Supreme Court vacated district court's grant of preliminary injunction which restrained collection of New York taxes on grounds that there was no state authority to support the district court's conclusion that availability of state equitable remedy was uncertain).

17. 538 F.2d at 70-72.

18. *See* note 6 *supra*.

could not be based upon the *uncertainty* of an available remedy. The court instead based its determination upon a practical examination of the consequences facing the appellants were they left to seek this remedy. In its view, the administrative remedy was clearly designed to enable an individual taxpayer to appeal his particular assessment; it was not designed for class-wide relief.[19] Pennsylvania's lack of a class mechanism would force the appellants to incur individual expenses which would in all likelihood be prohibitive to persons of their economic status.[20] Furthermore, the statutory remedy would necessitate an inefficient multiplicity of suits; each taxpayer would have to make an individual appeal of his assessment to obtain relief, both initially and again in future years if the discriminatory assessments were repeated.[21] The court reasoned that since these problems could be effectively avoided only through a class action,[22] the plaintiffs' administrative remedy in Pennsylvania was also inadequate.[23] It was therefore proper for a federal court of equity to entertain the suit.

The significance of *Garrett* lies in the Third Circuit's interpretation of the words "plain, speedy and efficient" as they appear in the Tax Injunction Act. That language is an outgrowth of a basic principle of federal equity practice, articulated by the Supreme Court in *Matthews v. Rodgers*[24] several years prior to passage of the Act. In dictum, the *Matthews* Court stated that federal courts should refrain from asserting equitable jurisdiction in state tax cases when the remedy at law was "plain, adequate and complete."[25]

Prior to *Matthews,* federal courts were deprived of equitable jurisdiction only where there was an adequate *federal* remedy at law; an

19. 538 F.2d at 70.

20. The court interpreted the Pennsylvania statute as requiring that each plaintiff bring a separate action for review of his assessment. Although the costs of gathering the necessary evidence probably could have been shared, each plaintiff would have to pay his own filing fees and expenses for attorneys and expert witnesses. A class action would permit consolidation of these costs. *See generally* C.A. WRIGHT & A.R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1751 (1969).

21. The plaintiffs would be entitled to bring a class action in federal court since their case meets the prerequisites listed in FED. R. CIV. P. 23(b)(2).

22. 538 F.2d at 72, *citing* Graves v. Texas Co., 298 U.S. 393 (1936) (equity has jurisdiction to allow complainant to avoid a multiplicity of suits).

23. 538 F.2d at 72.

24. 284 U.S. 521 (1932) (attacking constitutionality of Mississippi statute which allegedly violated the commerce clause).

25. *Id.* at 525.

adequate state legal remedy would not of itself bar federal equity jurisdiction.[26] The Supreme Court in *Matthews,* however, indicated that the lower federal courts should withhold equitable relief in state tax cases when an adequate legal remedy was available in the federal *or state* courts.[27] The decision did relatively little to deter federal intervention. Federal courts were easily persuaded that state remedies were inadequate where relief was uncertain, expensive or would require a multiplicity of suits.[28] In addition, after *Matthews,* some courts continued to apply the earlier equity doctrine, requiring only the absence of an adequate federal legal remedy before equity jurisdiction would obtain.[29] Thus, the exercise of federal equity jurisdiction remained largely unrestrained despite *Matthews*—a situation which Congress considered deplorable due to its disruptive effects on state and local revenues.[30]

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26. *See, e.g.,* Chicago, B. & Q.R.R. v. Osborne, 265 U.S. 14, 16 (1924) (adequate remedy in the state courts not sufficient in itself to bar federal equity jurisdiction). *See also* 37 YALE L.J. 378 (1928).

Application of this doctrine enabled foreign corporations to seek federal injunctions and withhold needed revenues from the taxing state during the course of the federal litigation. This was due to the fact that the federal remedy at law was a suit for refund, which was necessarily inadequate as to foreign corporations due to the eleventh amendment's bar against suit of a state in federal court by a citizen of another state. *See* Note, *Federal Declaratory Judgments on the Validity of State Taxes,* 50 YALE L.J. 927, 928 n.4 (1941). For a discussion of congressional disapproval of this practice see note 30 and accompanying text *infra.*

27. *See* Note, *Jurisdiction to Enforce Federal Statutes Regulating State Taxation: The Eleventh Amendment—Section 1341 Imbroglio,* 70 YALE L.J. 636, 642 (1961) [hereinafter cited as *Jurisdiction*]. *See also* 1A J. MOORE, FEDERAL PRACTICE ¶ 0.207 (2d ed. 1948). The *Matthews* Court stated:

> The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it.

284 U.S. at 525.

28. *See* Grosjean v. American Press Co., 297 U.S. 233 (1936) (state remedy uncertain). *See also* Note, *Federal Court Interference with the Assessment and Collection of State Taxes,* 59 HARV. L. REV. 780, 782-83 (1946) [hereinafter cited as *Federal Interference*]; *Jurisdiction, supra* note 27, at 642 n.44.

29. *See, e.g.,* Southern Pac. Co. v. Corbett, 20 F. Supp. 940, 944 (N.D. Cal. 1937), *aff'd sub nom.* Southern Pac. Co. v. Gallagher, 306 U.S. 167 (1939) (test for adequacy of remedy at law is the legal remedy afforded in the federal forum); Fort Worth v. Southwestern Bell Tel. Co., 80 F.2d 972, 973 (5th Cir. 1936) (there must be an adequate federal remedy at law to bar federal equity jurisdiction). *See also Jurisdiction, supra* note 27, at 642 n.44.

30. *See Federal Interference, supra* note 28, at 783. Congressional concern centered around the federal courts' practice of entertaining injunction suits brought by foreign corpora-

The Tax Injunction Act was passed to remedy this situation.[31] The Act made it clear that an adequate state remedy would be sufficient to bar federal jurisdiction.[32] It also required that both the state's legal *and equitable* remedies be found inadequate before federal equity courts could intervene.[33] Not only did the Tax Injunction Act by its own force restrict federal intervention in state tax matters, but the words "plain, speedy and efficient" were initially interpreted as establishing a more lenient standard to be met by state remedies in order to foreclose federal jurisdiction.[34] Lower federal courts began to reject undue expense, multiplicity of suits, and uncertainty of the state remedy as sufficient grounds to support a finding of inadequacy of state remedies under the Act.[35]

In 1944, however, the Supreme Court indicated that such a restrictive interpretation of the Tax Injunction Act was unintended. In *Spector Motor Service, Inc. v. McLaughlin,*[36] a case involving a constitutional challenge to a state privilege tax, the Court used the words "plain, speedy and efficient" and "adequate" interchangeably. Justice Frankfurter stated that if the adequacy of a state's remedy was uncertain, the federal courts were permitted to exercise jurisdiction despite the language of the Act.[37] Since the

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tions against state officers. This practice made it possible for large corporations to withhold taxes during the course of the federal litigation, disrupting the fiscal affairs of the states involved. In a Senate Judiciary Committee report recommending the Act's passage it was observed:

> The pressing needs of these States for this tax money is so great that in many instances they have been compelled to compromise these suits, as a result of which substantial portions of the tax have been lost . . . without a judicial examination into the real merits of the controversy.

S. REP. No. 1035, 75th Cong., 1st Sess. 2 (1937) (remarks of Senator Connally).

31. *See* note 3 *supra* for the text of the Act.

32. *See* Norton v. Cass County, 115 F.2d 884, 885-86 (5th Cir. 1940) (test for federal equity jurisdiction is adequacy of the state remedy rather than an adequate legal remedy in federal court).

33. *Id.* at 886; Mid-Continent Airlines, Inc. v. Nebraska Bd. of Equalization & Assessment, 105 F. Supp. 188, 194 (D. Neb. 1952) (state remedy providing for injunctive or declaratory relief held to be "plain, speedy and efficient").

34. For a discussion of the merits of this interpretation *see generally Federal Interference, supra* note 28.

35. For cases decided after the Act's passage, in which federal courts rejected prior elements of inadequacy such as uncertainty, expense, and multiplicity of suits see *id.* at 784 n.19.

36. 323 U.S. 101 (1944).

37. *Id.* at 105-06. *See also* Township of Hillsborough v. Cromwell, 326 U.S. 620 (1946) (uncertainty of an adequate state remedy justified federal jurisdiction).

uncertainty of a state's remedy had also warranted a finding of inadequacy under the standard used *prior* to the Act's passage, the Third Circuit in *Garrett* viewed *Spector* as equating "plain, speedy and efficient" to the prior equity standard of "adequate."[38] This equation of the two standards is fundamental to the *Garrett* rationale. Just as prohibitive costs of individual suits or the likelihood of a multiplicity of suits were sufficient bases for rendering state remedies inadequate prior to 1937, the *Garrett* court reasoned that they were sufficient to support a conclusion of inadequacy under the Tax Injunction Act's standard.

Although other federal courts have rejected the argument that prohibitive costs or a multiplicity of suits should preclude a finding that a state remedy is "plain, speedy and efficient,"[39] the *Garrett* holding is supported by precedent. *Georgia Railroad & Banking Co. v. Redwine,*[40] a Supreme Court case decided 15 years after passage of the Tax Injunction Act, involved a corporation's suit to enjoin collection of state ad valorem taxes. The Supreme Court held the state's legal remedy inadequate for two reasons: (1) a suit for a refund of taxes paid under protest would have been applicable to less than 15 percent of the taxes paid; and (2) the remedy provided

38. 538 F.2d at 67. *See* HART & WECHSLER, *supra* note 11, at 979.

39. In Bland v. McHann, 463 F.2d 21 (5th Cir. 1972), *cert. denied,* 410 U.S. 966 (1973), state remedies similar to those of Pennsylvania were found adequate under § 1341. *Bland,* like *Garrett,* involved a suit for class-wide relief and the availability of a state equitable remedy was arguably uncertain. *See* 51 TEX. L. REV. 999, 1008 (1973). *Bland* therefore presented the same issues which faced the court in *Garrett.* Although the Fifth Circuit rejected the allegation that the state's equitable remedy was uncertain and could have rested its finding of adequacy on that basis alone, it indicated that the state's statutory scheme was also adequate. The court did not acknowledge that the expense and multiplicity of suits created by the lack of a class action might render the statutory remedy inadequate. *See id.* at 1009. *Bland* cited Charles R. Shepherd, Inc. v. Monaghan, 256 F.2d 882 (5th Cir. 1958) as support for its finding of adequacy. In *Monaghan,* however, the adequacy of the state's remedy was never contested. That case only considered whether the state's sales and use taxes should be characterized as "taxes" within the meaning of § 1341, or as merely an arbitrary and unlawful demand made by the state upon the plaintiff corporation. Despite its arguable misapplication of precedent, *Bland* was cited with approval in Miller v. Bauer, 517 F.2d 27, 32 (7th Cir. 1975) (lack of class action at administrative appeal level held not to render state remedy inadequate where consolidation of suits was allowed upon judicial review). Other courts have also rejected the argument that multiplicity of suits or prohibitive costs are sufficient bases for a finding of inadequacy. *See* Bussie v. Long, 383 F.2d 766, 770 (5th Cir. 1967) (federal jurisdiction denied despite plaintiff's argument that state remedy was inadequate because it only afforded relief to individual taxpayers); Chicago & N.W. Ry. v. Lyons, 148 F. Supp. 787, 791-92 (S.D. Ill. 1957) (state remedy held adequate despite fact it would necessitate instituting suits in 24 counties).

40. 342 U.S. 299 (1952).

for arresting tax executions by filing affidavits of illegality and would have required the plaintiffs to file over 300 separate claims in 14 counties.[41] In *Husbands v. Commonwealth,*[42] parents of Pennsylvania school children brought an action in federal court challenging the constitutionality of a school reorganization plan. The parents sought an injunction to prevent the levy of school taxes without prior equalization of assessment ratios among the component school districts within each unit. The district court held that although Pennsylvania provided an administrative remedy followed by judicial review, this procedure was intended to allow appeal of alleged discrepancies in individual assessments; it would provide only a piecemeal solution to the problem.[43] The court found the Pennsylvania remedy inadequate under the Tax Injunction Act's standards.

Both the *Redwine* and *Husbands* courts based their findings of inadequacy on the fact that application of the state remedy would have led to a multiplicity of suits. However, neither the Supreme Court nor the district court explicitly weighed the merits of its position against the countervailing reasons for denying federal jurisdiction. Tax policy is a matter of crucial state importance, affecting such matters as the location of new industries and commercial enterprises. Resolution of cases involving state taxes should generally be left to the state courts, which are likely to be better attuned to the needs of the communities whose revenues might be reduced if injunctive relief were granted.[44] By failing to show why the concern over a multiplicity of suits should outweigh these considerations, the *Redwine* and *Husbands* decisions left uncertain when federal courts should scrutinize state taxing schemes to insure that they comply with the Federal Constitution.

The *Garrett* decision is more illuminating. It addressed the argu-

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41. *Id.* at 303.

42. 359 F. Supp. 925 (E.D. Pa. 1973).

43. *Id.* at 935-36.

44. *See* Clement, *Discrimination in Real Property Tax Assessment: A Litigation Strategy for Pennsylvania,* 36 U. PITT. L. REV. 285, 296 & n.53 (1974) [hereinafter cited as Clement], *citing* Horn v. O'Cheskey, 378 F. Supp. 1280 (D.N.M. 1974). In outlining the argument for federal nonintervention, the *Horn* court observed:

> [A] state's taxing scheme often involves highly complex administrative procedures intertwined in the linguistic peculiarities of state statutes quite familiar to the state administrators who constantly apply them, but similarly foreign to federal courts who apply them on an intermittent ad hoc basis.

Id. at 1284.

ments behind the federal doctrine of nonintervention underlying the Tax Injunction Act[45] and determined that, under the facts in this case, federal intervention would not necessarily result in a subversion of the state's interest. The plaintiffs sought no more than equality in taxing rates. Since a decision in their favor might involve an upward revision of the assessments of other property owners in the taxing district, thereby increasing the county's revenues,[46] interference with state and local revenue collection was less significant. Furthermore, the court indicated that even though the interests of comity and federalism in some cases might be better served by withholding federal equity jurisdiction, those interests are outweighed by the need to provide a forum for the presentation of legitimate claims.[47] To deny these plaintiffs access to a federal court would have been to deny them any remedy whatsoever, since they could not afford the expense of pursuing individual appeals in the Pennsylvania courts.

Garrett's approach to the application of the Tax Injunction Act seems sensible. It accords with the interpretation given the words "plain, speedy and efficient" by the Supreme Court in *Spector Motor Service, Inc. v. McLaughlin.*[48] Moreover, federal courts should be hesitant to deny federal jurisdiction when the state procedure allegedly denies persons equal protection of the law. Yet the impact of the decision is uncertain. If, for example, it were apparent that federal intervention in a particular case would result in a reduction of state revenues, *Garrett*'s precedential value might be lessened. The decision may prompt legislative revision of the existing Pennsylvania statutory scheme to provide a class remedy for plain-

45. The court discussed the primary purpose behind the Act's passage. *See* note 30 *supra* for an explanation of the congressional concern which led to passage of the Act.

46. If discriminatory assessment practices were proven, the county might decide to correct the situation by raising the rate of assessments in the predominantly white sections of the county, thereby increasing the county's tax revenues. 538 F.2d at 73.

47. Although the existence of the constitutional issue appeared to make more critical the need for close scrutiny of the Pennsylvania remedies, the *Garrett* court did not intimate that the existence of a constitutional claim would itself justify federal intervention; a showing that the state remedy is inadequate is still essential to the proper exercise of federal equity jurisdiction. Other cases have explicitly rejected the notion that the desirability of a federal forum in cases brought under 42 U.S.C. § 1983 (1970) should be sufficient to exclude such cases from the prohibition of § 1341. *See, e.g.*, American Commuters Assoc. v. Levitt, 405 F.2d 1148, 1150-51 (2d Cir. 1969) (bar of § 1341 applies to civil rights actions brought under § 1983). *See also* Clement, *supra* note 44, at 287-88.

48. 323 U.S. 101 (1944). *See* text accompanying notes 36 & 37 *supra*.

tiffs who need one to avoid prohibitive costs and wasteful multiplicity of suits in challenging a particular tax measure or method of assessment. Regardless of whether such a legislative change is forthcoming, the decision represents an expansion of federal jurisdiction in the area of equitable relief from unconstitutional state taxes, a result of particular importance to persons whose income prevents them from pursuing individual appeals in the state courts.

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