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Sales Tax—Applicability to Conditional Sales

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therefore should have the supremacy afforded Federal law.[6] Realizing the difficulties which will arise in a confusion of state decisions on the problem, the Federal government has intervened in the *Karlinski* case.[7]

The confusion in Washington as to government savings bonds has now fortunately been clarified by the legislature. An act affirming the beneficiary's rights was passed in the 1943 session. It provides:

> "§ 1: If either co-owner of United States Savings Bonds registered in two names as co-owners (in the alternative) dies without having presented and surrendered the bond for payment to a Federal Reserve Bank or the Treasury Department, the surviving co-owner will be the sole and absolute owner of the bond.
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> "§ 2: If the registered owner of United States Savings Bonds registered in the name of one person payable on death to another dies without having presented and surrendered the bond for payment or authorized re-issue to a Federal Reserve Bank or Treasury Department, and is survived by the beneficiary, the beneficiary will be the sole and absolute owner of the bond."

Although this enactment has solved the problem as to government bonds, the rights of beneficiaries of life insurance policies and savings deposit trusts are still uncertain.[9] It is necessary to recognize a contract relation in the *Decker* case, as the court did in the *Iver* and *Lewis* cases in order to have a clear precedent for further cases involving the rights of contract beneficiaries.[10]

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RECENT CASES

SALES TAX—APPLICABILITY TO CONDITIONAL SALES. *Held*: Where property sold under a conditional sales contract is repossessed by the vendor after part payment, the sales tax is to be computed on the full amount of the sale, and is not limited to the amounts actually collected thereunder. The sales tax is payable on the full consideration, and money, credits, rights or chattel given as part of the purchase price are not exempt from the tax. *Olympic Motors v. McCroskey*, 115 Wash. Dec. 562, 132 P. (2d) 355 (1942).

Plaintiff sold motor vehicles on conditional sales contracts, under which it repossessed a number of them. In making its regular report to the state tax commission, plaintiff paid the sales tax upon the amount of the conditional sales after deducting therefrom the unpaid balances due upon the conditional sales contracts under which it had repossessed vehicles.

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[6] As to the policy favoring supremacy of Federal obligations, see: Franklin Washington Trust Co. v. Beltram, *op. cit. supra*, n. 5; Clearfield Trust Co. v. United States, 63 Sup. Ct. 573 (1943): Federal common law determined liability of endorser of treasury check; Gulf Oil Co. v. Lastrap, 48 F. Supp. 947 (S. D., Tex. 1943): beneficiary allowed to recover in insurance policy though he had no insurable interest by state law.

[7] Rehearing, *In re* Karlinski's Estate, 40 N. Y. S. (2d) 22 (March, 1943).

[8] Ch. 14, SESSION LAWS, 1943.

[9] Vance, INSURANCE (2d ed. 1930), p. 545; 14 WASH. LAW REV. 312, n. 2, *op. cit., supra*, n. 2; 1 Scott, TRUSTS (1939), § 58.3; 56 HARV. LAW REV. 1007 (May, 1943).

[10] *Op. cit., supra*, n. 3.

The tax commission threatened to collect this amount by distraint, under tax commission rule 203, authorized by Laws of 1935, chapter 180, pg. 844, Sec. 208, which reads: . . . "No deduction for credit losses in case of repossession is allowed under the Retail Sales Tax or Compensating Tax." Plaintiff brought this action to restrain the tax commission on the theory that the rule was void, and was not authorized by the provisions of the above law. *McCroskey* case, *supra*.

The court unequivocally rejected plaintiff's theory, and sustained the rule and its application. It held that the statute was clear and unambiguous, and that there was no need for interpretation or construction, as was suggested by the plaintiff. The statute specifically provides that the tax should be collected on the selling price of the article sold without any deductions on account of losses, which would include the repossession of goods sold under conditional sales contracts.

The selling price is the consideration, whether expressed in terms of money or money's worth. The legislature provided that credits and rights also constitute a basis for the computation of the tax if they are a part of the consideration involved in the sale. It was specifically provided that the fact of failure of collection from the vendee is not material, and that the vendor is none the less responsible for the tax. "Conditional sale" was defined in the act to be included in the meaning of "sale".

This decision appears to be the first on this subject in this state. There are few decisions elsewhere on this point, as the sales tax on retail sales has only been used by the majority of states during the past two decades. The decision in the instant case, however, is in line with existing uniform authority on the subject. *In Montgomery Ward & Co. v. Fry*, 277 Mich. 260, 269 N. W. 166 (1936), the court in construing a sales tax statute almost identical to Washington's decided as did our court above. It held that the sales tax enacted for articles sold under conditional sales contracts could not be refunded because of repossession by the vendor of merchandise conditionally sold. This case was sustained by the Michigan court in two subsequent cases, *Wurlitzer v. State Board of Tax Administration*, 281 Mich. 558, 275 N. W. 248 (1937); and *Gardner-White Co. v. Dunckel*, 296 Mich. 225, 295 N. W. 624 (1941).

The Washington court is also supported by virtually uncontested authority in its holding that the sales tax is payable on the consideration, whether it be money, credits, rights or other property. This includes, as in the instant case, a used car turned in by the vendee as part payment on another one. The cases cited above are directly in point and accord with this view.

The Illinois court in interpreting their statute, which is very similar to ours, agrees with the foregoing decisions. It held that the value of property traded in by the purchaser on a reconditioned motor sold by the vendor-taxpayer was part of the selling price within the provisions of the statute. *Warshavsky & Co. v. Dept. of Finance*, 377 Ill. 165, 36 N. E. (2d) 233 (1941). Also in point are *Bigsby v. Johnson*, 99 P. (2d) 268 (1941), on rehearing, 18 Cal. (2d) 860, 118 P. (2d) 289; and *State v. Hallenberg-Wagner Motor Co.*, 341 Mo. 771, 108 S. W. (2d) 398 (1937). The latter case cited the following cases, which support the above. *Thomas Auto Co. v. Wiseman*, 192 Ark. 584, 93 S. W. (2d) 138 (1936); *State v. Bachus Chevrolet Co.*, 170 Md. 309, 184 A. 160 (1936); *McCanless Motor Co. v. Maxwell*, 210 N. C. 725, 188 S. E. 389 (1936). Accord, see an earlier case, *Carter v. Slavik Jewelry Co.*, 26 F. (2d) 571, 58 A. L. R. 1043 (1928).

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