

would be legitimate as an ordinary tax on the property valued as part of a going concern or is relatively higher than taxes on other kinds of property.⁴²⁸

Intangible Personalty.—To determine whether a state may tax intangible personal property, the Court has applied the fiction *mobilia sequuntur personam* (movable property follows the person) and has also recognized that such property may acquire, for tax purposes, a permanent business or commercial situs. The Court, however, has never clearly disposed of the issue whether multiple personal property taxation of intangibles is consistent with due process. In the case of corporate stock, however, the Court has obliquely acknowledged that the owner thereof may be taxed at his own domicile, at the commercial situs of the issuing corporation, and at the latter's domicile. Constitutional lawyers speculated whether the Court would sustain a tax by all three jurisdictions, or by only two of them. If the latter, the question would be which two—the state of the commercial situs and of the issuing corporation's domicile, or the state of the owner's domicile and that of the commercial situs.⁴²⁹

Thus far, the Court has sustained the following personal property taxes on intangibles: (1) a debt held by a resident against a nonresident, evidenced by a bond of the debtor and secured by a mortgage on real estate in the state of the debtor's residence;⁴³⁰ (2) a mortgage owned and kept outside the state by a nonresident but on land within the state;⁴³¹ (3) investments, in the form of loans to a resident, made by a resident agent of a nonresident creditor;⁴³² (4) deposits of a resident in a bank in another state, where he carries on a business and from which these deposits are derived, but belonging absolutely to him and not used in the business;⁴³³ (5) membership owned by a nonresident in a domestic exchange, known as a chamber of commerce;⁴³⁴ (6) membership by a

⁴²⁸ *Great Northern Ry. v. Minnesota*, 278 U.S. 503 (1929). If a tax reaches only revenues derived from local operations, the fact that the apportionment formula does not result in mathematical exactitude is not a constitutional defect. *Illinois Cent. R.R. v. Minnesota*, 309 U.S. 157 (1940).

⁴²⁹ Howard, *State Jurisdiction to Tax Intangibles: A Twelve Year Cycle*, 8 Mo. L. REV. 155, 160–62 (1943); Rawlins, *State Jurisdiction to Tax Intangibles: Some Modern Aspects*, 18 TEX. L. REV. 196, 314–15 (1940).

⁴³⁰ *Kirtland v. Hotchkiss*, 100 U.S. 491, 498 (1879).

⁴³¹ *Savings Society v. Multnomah County*, 169 U.S. 421 (1898).

⁴³² *Bristol v. Washington County*, 177 U.S. 133, 141 (1900).

⁴³³ These deposits were allowed to be subjected to a personal property tax in the city of his residence, regardless of whether or not they are subject to tax in the state where the business is carried on *Fidelity & Columbia Trust Co. v. Louisville*, 245 U.S. 54 (1917). The tax is imposed for the general advantage of living within the jurisdiction (benefit-protection theory), and may be measured by reference to the riches of the person taxed.

⁴³⁴ *Rogers v. Hennepin County*, 240 U.S. 184 (1916).