paid-in capital stock and surplus, less deductions for liabilities, notwithstanding that such domestic corporation concentrates its executive, accounting, and other business offices in New York, and maintains in the domiciliary state only a required registered office at which local claims are handled. Despite "the vicissitudes which the so-called 'jurisdiction-to-tax' doctrine has encountered," the presumption persists that intangible property is taxable by the state of origin.[450]

A property tax on the capital stock of a domestic company, however, the appraisal of which includes the value of coal mined in the taxing state but located in another state awaiting sale, deprives the corporation of its property without due process of law.[451] Also void for the same reason is a state tax on the franchise of a domestic ferry company that includes in the valuation of the tax the worth of a franchise granted to the company by another state.[452]

Transfer (Inheritance, Estate, Gift) Taxes.—As a state has authority to regulate transfer of property by wills or inheritance, it may base its succession taxes upon either the transmission or receipt of property by will or by descent.[453] But whatever may be the justification of their power to levy such taxes, since 1905 the states have consistently found themselves restricted by the rule in *Union Transit Co. v. Kentucky*,[454] which precludes imposition of transfer taxes upon tangible which are permanently located or have an actual *situs* outside the state.

In the case of intangibles, however, the Court has oscillated in upholding, then rejecting, and again sustaining the levy by more than one state of death taxes upon intangibles. Until 1930, transfer taxes upon intangibles by either the domiciliary or the *situs* (but

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done in another State and was there taxable. Moreover, this result follows whether the tax is considered as one on property or on the franchise. Wheeling Steel Corp. v. Fox, 298 U.S. 193 (1936). *See also* Memphis Gas Co. v. Beeler, 315 U.S. 649, 652 (1942).

[450] Newark Fire Ins. Co. v. State Board, 307 U.S. 313, 324 (1939). Although the eight Justices affirming this tax were not in agreement as to the reasons to be assigned in justification of this result, the holding appears to be in line with the dictum uttered by Chief Justice Stone in Curry v. McCanless, 307 U.S. 357, 368 (1939), to the effect that the taxation of a corporation by a state where it does business, measured by the value of the intangibles used in its business there, does not preclude the state of incorporation from imposing a tax measured by all its intangibles.

[451] Delaware, L. & W.P.R.R. v. Pennsylvania, 198 U.S. 341 (1905).

[452] Louisville & Jeffersonville Ferry Co. v. Kentucky, 188 U.S. 385 (1903).

[453] Stebbins v. Riley, 268 U.S. 137, 140–41 (1925).

[454] 199 U.S. 194 (1905) (property taxes). The rule was subsequently reiterated in 1925 in Frick v. Pennsylvania, 268 U.S. 473 (1925). *See also* Treichler v. Wisconsin, 338 U.S. 251 (1949); City Bank Farmers' Trust Co. v. Schnader, 293 U.S. 112 (1934). In State Tax Comm'n v. Aldrich, 316 U.S. 174, 185 (1942), however, Justice Jackson, in dissent, asserted that a reconsideration of this principle had become timely.