Liability for State and Local Taxes and Assessments in Federal Condemnation Proceedings

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Of the many problems raised in the course of the federal condemnation of a vast number of properties during World War II, none proved more troublesome than the problem of the liability of the condemnee for current state and local taxes and assessments. And the present state of the decisions provides a solution of the problem that is something less than satisfactory.

The problem is posed when the real property tax systems of the several states are juxtaposed with the doctrine of reciprocal intergovernmental tax immunity which stems from Marshall's famous *dictum* in *McCulloch v. Maryland*.[1] The real property tax of any of the states is invariably *ad valorem* in form; in a manner of speaking its administration is *continuous* from the time of the assessment or valuation of the realty for tax purposes which occurs early in the "tax year," through the successive steps of "equalization" among individual taxpayers, property classes, and local governmental units, fixing of the tax rates, and billing of the taxpayers, to the ultimate collection of the tax, which generally occurs at or near the end of the "tax year" and may extend in whole or in part into the next succeeding "tax year." The "tax year" may or may not correspond with the "calendar year," and the liens for taxes of the several state and local governments "attach" at different times within the "tax year." Where the time for the "attachment" of the tax lien is not expressly fixed by state statute, the time for its "attachment" depends on the occurrence of varying "events," in the course of the "tax year," as determined by state statutory or decisional law.[2] But, while *ad valorem* in form, the real property tax like every other tax is ultimately payable out of the income from the realty,[3] and thus in an economic sense the real property tax is

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[1] 4 Wheat. 316 (U.S. 1819).

[2] THE TAX RESEARCH FOUNDATION, TAX SYSTEMS OF THE WORLD, (6th ed. 1935).

[3] It is true that the real property tax is not always *in fact* payable out of income from the realty; but, when it is not, such taxes become "delinquent," as in periods of depression or as in urban "blighted" areas, in either of which events legislative relief of one kind or another usually follows.

relatable to the use and occupation of the realty, or the receipt of its rental value, during the course of the "tax year." Hence, it is the almost invariable practice in a voluntary private sale of realty during the course of the "tax year" to adjust the seller's and the buyer's tax liabilities by contract to their *pro rata* use and occupation of the realty, or the receipt of its rental value, during the "tax year."[4] Even in "involuntary" transfers of realty during the course of the "tax year," as when a life tenant (or other life beneficiary) dies within the course of the "tax year," such an adjustment of the tax liabilities of the life tenant and the remainderman (or of the reversioner) to their *pro rata* use and occupation of the realty or the receipt of its rental value during the course of the "tax year" has been recognized.[5] But when the federal government condemns private property during the course of the "tax year" the United States, as the successor in title, is immune alike from taxation and from the operation of the tax lien[6] either in its entirety or as to any proration thereof.[7] Then the problem for determination is whether the state and local governments involved shall lose all or a *pro rata* share of the taxes as the result of the federal government's tax immunity, or whether the condemnee, although deprived of the use and occupation of the realty or the receipt of its rental value for what may be a very large part of the "tax year," shall nevertheless bear the burden of that whole year's taxes.

On any re-examination of the doctrine of reciprocal intergovernmental tax immunity it would be arguable that such immunity should not apply, despite Marshall's *dictum*, where the reciprocal government's tax is neither onerous nor discriminatory, as it was in *McCulloch v. Maryland*; but the extension of the doctrine well beyond these limits is so embedded in our jurisprudence that it is very unlikely that it will be re-examined—or modified to this degree if re-examined.[8] The burden on the condemnee could be lessened by the voluntary assumption by the United States of that share of the tax burden that would be imposed on a voluntary transferee of the realty, in analogy to the provision in some states that the tax exemption of a charitable corporation does not arise until the "tax

[4] *E.g.*, "Closing Practices of St. Louis Real Estate Exchange" provides, " .. taxes . ., if any, are to be adjusted to date of closing on the basis of 30 days to the months,. . " GILL'S MISSOURI REAL ESTATE FORMS 138 (2d ed. 1931) And see U.S. v. Certain Parcels of Land in Philadelphia, Pa., 130 F 2d 782, 784 (C.C.A. 3d 1942).

[5] See Notes, 17 A.L.R. 1384, 1397 (1922); 94 A.L.R. 311, 320 (1935), 126 A.L.R. 862, 865, 869 (1940) See also 2 SCOTT, TRUSTS § 237 (1939).

[6] United States v. Alabama, 313 U.S. 274 (1941)

[7] Washington Water Power Co. v. United States, 135 F. 2d 541 (C.C.A. 9th 1943)

[8] *Cf* New York *ex rel* Rogers v. Graves, 299 U.S. 401 (1937); Pittman v. Home Owners' Loan Corp., 308 U.S. 21 (1939)

year" next following its acquisition of the realty.[9] But thus far the only statute of the United States on the subject of tax liability in federal condemnation proceedings provides merely that

> The court shall have power to make such orders in respect of encumbrances, liens, rents, *taxes, assessments,* insurance, and other charges, if any, as shall be just and equitable.[10]

And (especially since the provision with respect to taxes and assessments is found among provisions with respect to "private" encumbrances) this section of the statutes hardly expresses a purpose to prorate the real property tax liability so as to bring about the assumption of a part thereof by the United States.

It is arguable, however, that the statute permits the district courts in federal condemnation proceedings to adjust the tax liability of the condemnee to his *pro rata* use and occupation of the realty or the receipt of its rental value during the course of the "tax year," and to deny the state's claim for the balance of the taxes for that year as against the federal government. Thus the economic loss resulting from the federal government's tax immunity is borne by the state and local governments *against whom the federal government's tax immunity exists* rather than by the private individual, as the involuntary transferor of his property for the "public good." This conception of the meaning of "the court shall have power to make such orders in respect of . . . taxes, assessments, . . . if any, as shall be just and equitable" seems to have been applied by the district courts in several cases.[11]

This view was expressed by the order of the district court in *People of Puerto Rico v. Palo Seco Fruit Co.*[12] In this instance the federal government by condemnation proceedings obtained title to and possession of the appellee's land during October, 1941. The federal district court for Puerto Rico ordered that the insular government was entitled to receive out of the money deposited in court as compensation only half of the property taxes for the fiscal year current at the time the property was taken. The district court in its order said (although its did not base its order on this ground) that

> There is really very little equity in exacting a property tax from the taxpayer after he has been deprived of his property, ...[13]

And the district court went on to say that, under the power conferred by the last paragraph of U.S.C.A., Section 258a, which gives

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[9] See Note, 63 A.L.R. 1332 (1929)

[10] 46 STAT. 1421 (1931), 40 U.S.C. § 258a (1946). (emphasis supplied.)

[11] United States v. Certain Land in City of St. Louis, Mo., 29 F Supp. 92 (E.D. Mo. 1939); United States v. Certain Parcels of Land in Prince George's County, Md., 40 F Supp. 436 (D. Md. 1941).

[12] 136 F. 2d 886 (C.C.A. 1st 1943).

[13] *Id.* at 887.

it authority to make such orders in respect of taxes and assessments, if any, "as shall be just and equitable," it was disposed to the view that it

> might make an order in respect to encumbrances or liens which would require the payment only of the taxes accrued and payable up to the time of the taking.[14]

The Circuit Court of Appeals, First Circuit, reversing the District Court of the United States for Puerto Rico in the *Palo Seco* case and awarding the insular government the full amount of the current taxes out of the compensation award questioned this view of the section's scope;[15] and it has been expressly denied in a number of other cases.[16]

The basis for denying such an "apportionment" of current taxes and for awarding the full amount thereof to the taxing government out of the compensation award has been that the federal courts in condemnation proceedings are to be governed by the *state law* on the question and that the state law in these cases required the imposition of the full amount of the current taxes on the condemnee, regardless of the fact that he had been deprived of a commensurate use and occupation of the premises or of the rental value of the property during the tax year.[17]

If the "state law" to be applied in federal condemnation proceedings is the composite of state statutes relating to the assessment, equalization, "security" for and collection of taxes, and these statutes are to be inexorably applied without regard to the supervening and uncontemplated fact of the federal condemnation of

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[14] *Ibid.*

[15] *Ibid.*

[16] United States v. Certain Parcels of Land in Philadelphia, Pa., 130 F 2d 782 (C.C.A. 3d 1942); Collector of Revenue within and for the City of St. Louis, Mo. v. Ford Motor Co., 158 F 2d 354 (C.C.A. 8th 1946). And see 79 A.L.R. 116 (1932), Supplemental Decisions.

[17] United States v. Certain Parcels of Land in San Diego, San Diego County, Calif., 44 F Supp. 936 (S.D. Cal. 1942), United States v. Certain Parcels of Land in Philadelphia, Pa., 130 F 2d 182 (C.C.A. 3d 1942); Collector of Revenue within and for the City of St. Louis, Mo. v Ford Motor Co., 158 F. 2d 354 (C.C.A. 8th 1946). For a discussion of these cases, see *infra*. But see *Re* South Carolina Public Service Authority, 37 F. Supp. 28 (E.D. S.C. 1941), holding, alternatively, that (1) a South Carolina statute of 1939 did not require, as alleged, the imposition on the condemnee of taxes accruing after he had been dispossessed of his property and before payment of the award into court and that (2) any such state statute would be violative of the "due process" clause of the Fourteenth Amendment and unconstitutional. Compare with the view of the United States Circuit Court of Appeals, First Circuit, in the *Palo Seco* case, *supra*, that the "apportionment" of current state taxes under 40 U.S.C.A., Section 258a, or presumably any other federal statute, would "destroy" the state's tax lien, and thus be violative of the "due process" clause of the Fifth Amendment!

the property taxed, there will be no occasion for the "apportionment" of the taxes of the condemnee, unless a state statute, as is rarely the case, so provides.[18] Again, it may be that the whole burden of the federal tax immunity may be borne by the taxing state and local governments if the condemnation proceeding is instituted at a time when, under the state tax laws (either statutory or decisional) the tax lien has not yet "attached," although part of the tax year has already elapsed.[19] In either event, the burden of taxation is hardly "equitable"; and in both events the variations that exist among the several states as to the times when tax liens "attach" and as to whether they "attach" continuously or whether there is an hiatus, so to speak, in the tax encumbrance of realty, introduce the elements of haphazardness and lack of uniformity in this phase of the law of federal condemnations.

But the state statutes respecting the administration of their real property tax systems were written, one may safely presume, without the problem occasioned by the condemnation of land by the sovereign in mind. Thus, even if the federal government is without power to legislate or adjudicate an "apportionment" of the condemnee's tax liability in federal condemnation cases, the state courts are not without power to ameliorate the tax burden of the condemnee in condemnation proceedings instituted by that state or by one of its local subdivisions. In state and local condemnation proceedings the same problem of tax "apportionment" appears, and it has been considered in a small number of states, with the usual varying results.[20] In some states the full amount of current taxes has been imposed on the condemnee; in others the tax has been "apportioned" according to his *pro rata* use and occupation of the property during the "tax year." It is the law as declared by each state *on this precise point* that is to govern in federal condemnation proceedings. Where there are no state decisions on this precise point it seems clear that the federal courts are not required to impose the full amount of current taxes on the condemnee by awarding it out of the compensation paid into court, merely be-

[18] The tax statutes of Washington and New Jersey make express provision for an arbitrary apportionment of taxes between vendor and purchaser in the absence of contrary stipulations. Borough of Edgewater v. Corn Products Refining Co., —— N.J. ——, 53 A. 2d 212 (1947); Washington Water Power Co. v. United States, 135 F. 2d 541 (C.C.A. 9th 1943). In both cases current taxes were "apportioned," under these statutes, as to the condemnees and, of course, the balances "remitted" as to the United States.

[19] See People of Puerto Rico v. Palo Seco Fruit Co., 136 F 886 (C.C.A. 1st 1943), where the court points out the hiatus in the tax liens of successive years during which, if condemnation proceedings were instituted, no tax liability would fall upon the condemnee. And see cases collected in 79 A.L.R. 116, Supplemental Decisions.

[20] See cases collected in 79 A.L.R. 116 (1932) and Supplemental Decisions.

cause (a) inexorable following of the state tax statutes written without this problem in mind, would compel this result, (b) because the decisional law on this point in another state having comparable tax statutes would compel this result, (c) because this result was attained in other federal condemnation proceedings arising under the laws, either statutory or decisional, of another state, or (d) because the appropriate state's decisional law has awarded the taxing unit the amount of taxes already delinquent when the condemnation proceedings were instituted or has awarded the amount of special benefit assessments. Still, an examination of the recent federal cases strongly suggests that all of these factors have operated to cause the denial of an "apportionment" of the condemnee's tax liability in federal condemnation proceedings.[21]

It does not follow, as seems to have been assumed in many federal cases, from the mere fact that a state's tax lien has "attached" at the time that the state or one of its local subdivisions condemns a parcel of property, that the courts of that state would hold the condemnee liable for the full amount of current taxes unless he had also enjoyed the use and occupation of the premises or received their rental value during the "tax year." Thus in *Re Twelfth Ward*[22] the New York court imposed the current taxes on some and not on other condemnees involved in the same condemnation proceedings, although there was the usual inchoate tax lien on all the properties at the time of their condemnation. The New York court thus stated the principle according to which it granted relief to some of the condemnees from the entire tax burden that would otherwise have been imposed on them by the mere mechanical application of the state's tax statutes:

> It is equally clear that, at the time of the actual appropriation of the property by the city, the owners were entitled to be relieved of all burdens incident to their ownership. Certainly it would not be "just compensation" to take a man's land, and compel him to pay the taxes and assessments thereafter levied on the property, while at the same time withholding the purchase price. Undoubtedly, had the title completely vested in the city on the 9th day of January, 1895, the property owners would have been relieved from all obligations of this nature. Now it appears that some of these property owners were deprived of all beneficial use of their property on that date, while others had thereafter but limited use; and yet all the awards were, as specified in section 14 of the report "subject to the amount due and unpaid on

[21] See, for example, United States v. Certain Parcels of Land in Eau Claire, Wis., 49 F. Supp. 225 (E.D. Wis. 1943), and, for other cases, see Supplemental Decisions to 79 A.L.R. 116.

[22] 40 App. Div. 281, 58 N.Y. Supp. 58 (1899). To the same effect, see *Re* Riverside Park, 59 App. Div. 603, 69 N.Y. Supp. 742, *aff'd*, 167 N.Y. 627, 60 N.E. 1116 (1901)

> account of taxes and assessments lawfully confirmed prior to, and a lien upon, the premises for which the said awards have been made, at the date of this our report." Upon the city's theory, therefore, the owner must not alone be deprived of the unrestricted use of his property and of the ad interim use of his money, but he must also be compelled to pay for its police protection, and for public improvements charged against it as a benefit, during all the period of delay, for which he is in no way responsible, and which he is powerless to shorten. It will be seen that, if this theory be correct, the owner's award would be constantly diminished by each year's delay, until, if the period were long enough, it would be entirely wiped out. It can hardly be contended that a theory which, logically followed out, would under any possible circumstances produce such a result, affords a satisfactory basis for an award of "just compensation."[23]

Hence, if all the "state law" that appears in a federal condemnation proceeding is to the effect that under the state's tax statutes the property was subject to an inchoate tax lien at the time the condemnation proceedings were instituted, it does not follow that the mechanical application of the tax statutes would not have been relieved against as a matter of "equity" had the issue been presented in the courts of that state. And thus a federal court is under no necessity of imposing the entire amount of current taxes on the condemnee merely because the state's tax lien has already "attached" or because the courts of *another* state with identical or closely similar tax statutes have imposed the entire amount of current taxes. Nevertheless, a number of federal cases seem to have based their imposition of the full amount of current taxes on the condemnee either on (1) the mere finding that, under the state's tax statutes, the tax lien had already "attached" or on (2) the mere fact that other federal or state decisions had based their holdings on the finding that, under the tax statutes of the states there involved, the tax lien had already "attached."[24]

The difficulty with which a federal court is confronted in the absence of state decisional law on the precise question of the liability of a condemnee for current taxes, is illustrated in *Allen, County Treasurer v. Henshaw et al.*[25] There lands in Oklahoma were condemned and title thereto taken by the United States on or about March 15, 1943. Awards were made by the federal district court and checks therefor issued, payable jointly to the county treasurer and each individual landowner in order that the treasurer might retain sufficient funds to pay any taxes for which such condemnees might be liable. The county treasurer, in keeping with the theory applied in many prior federal condemnation cases arising in

[23] 40 App. Div. 281, 58 N.Y. Supp. 58 (1899).
[24] 79 A.L.R. 116 (1932), Supplemental Decisions.
[25] 197 Okla. 123, 168 P 2d 625 (1946)

other states, proposed to retain an amount sufficient to cover current taxes for the "tax year" 1943. One of the condemnees brought a writ of mandamus in the state court to compel the treasurer to pay over this controverted amount. The trial court granted the writ, and it was sustained by the Supreme Court of Oklahoma. While the Oklahoma "law" on the subject as announced by the Oklahoma Supreme Court also turned on the date on which the state's tax lien "attached," that date was made to depend on an "event" in the "tax year" not necessarily consistent with decisions in other states having tax statutes otherwise similar to those of Oklahoma. The *Henshaw* case thus not only illustrates the difficulty which confronts a federal court in condemnation proceedings when there are no applicable state decisions on the precise question, but it also suggests a happy procedural solution of the problem which invites a state court decision on the matter.

Almost all states impose on the condemnee in state or local condemnation proceedings the full amount of any taxes that have already become due and owing and remain uncollected at the time the condemnation proceedings were instituted; and where there is a personal liability for real property taxes in addition to the lien against the property, this is the uniform result reached by the relatively few state courts which have passed on the matter.[26] Although such state decisions are no authority whatsoever for imposing the full amount of current taxes on the condemnee, still the decision of the federal court in *Cobo, City Treasurer v. United States*[27] is unexceptionable; but it is wholly distinguishable from cases requiring an order respecting current taxes.

In the *Cobo* case the owner of the property was dispossessed by the federal government early in February of 1932. At that time the taxes for the "tax years" of 1930 and 1931 had long since been due and payable, whereas the taxes for 1932 were "accruing" in the course of the "continuous" administration of Michigan's tax statutes. The City of Detroit intervened in the condemnation proceedings and moved for an order directing the payment to the city out of the award of the amount of the "back" taxes for 1930 and 1931. The motion for an order with respect to these "back" taxes was granted. There was no claim for any part of the taxes that would have become due and owing sometime in 1932 and no order with respect thereto was made. And yet the decision in the *Cobo* case seems to have had an influence in other federal cases when the resolution of the condemnee's tax liability was concerned with current taxes.

The state decisions uniformly hold that a condemnee is liable

[26] See Note, 79 A.L.R. 116 (1932).

[27] 94 F 2d 351 (C.C.A. 6th 1938)

for the amount of any "special assessments" levied against the land and due and payable at the time the condemnation proceedings are instituted.[28] These decisions are, however, based on the wholly different theory of taxation underlying "special assessments," as contrasted with annually recurring real property taxes. Strictly speaking, a *tax* "is imposed for the purpose of supporting the government generally without reference to any special advantage which may be supposed to accrue to the person taxed." Such a tax is each citizen's contribution to the costs of maintaining the general services of government in promoting the public safety, health and welware. An *assessment*, on the other hand, is a charge which is "predicated upon the principle of equivalents or benefits which are peculiar to the persons or property charged therewith, and which [is] assessed or appraised according to the measure or proportion of such equivalents."[29] By hypothesis, then, the condemnee's property had its value enhanced when the public improvement financed through the "special assessment" was made; such enhanced value will have been reflected in the award of damages to the condemnee; and the imposition on the condemnee of the full amount of the "special assessment" still due and owing is theoretically sound and wholly consistent with decisions from the same state prorating the current tax liability of the same condemnee in the same proceedings. Such state decisions, awarding the full amount of "special assessments" to the taxing unit, do not in any way bespeak the rule of that state with respect to the imposition or proration of current taxes; and such state decisions therefore should not govern a federal court's disposition of the current tax liability in a federal condemnation proceeding arising in such states.

Of the federal decisions in which the liability for current taxes was raised, three especially purport to turn at least in part on the precisely applicable state decisional law.[30]

In the first of these three cases, *United States v. Certain Parcels of Land in City of San Diego*,[31] current taxes were imposed in their entirety on the ground, in part, that the California decisional law compelled this result. The federal district court relied on *Marin*

[28] See, especially, City of Los Angeles v. Superior Court, 2 Cal. 2d 138, 39 P 2d 401 (1935); Ross v. Gates, 183 Mo. 338, 81 S.W. 1107 (1904), and see Note, 79 A.L.R. 116 (1932).

[29] Ridenour v. Saffin, 1 Handy 464 (Ohio Super. Ct. 1855).

[30] United States v. Certain Parcels of Land in City of San Diego, Calif., 44 F. Supp. 936 (S.D. Cal. 1942), United States v. Certain Parcels of Land in Philadelphia, Pa., 130 F. 2d 782 (C.C.A. 3d 1942), Collector of Revenue within and for the City of St. Louis, Mo. v. Ford Motor Co., 158 F 2d 354 (C.C.A. 8th 1946). These three cases were also based, in large part, on the fact that, under the states' tax statutes, the tax liens had already "attached" at the time the condemnation proceedings were instituted.

[31] 44 F. Supp. 936 (S.D. Cal. 1942).

Municipal Water District v. North Coast Water Co.[32] and on *City of Los Angeles v. Superior Court.*[33] In the *Marin* case the Water District had previously condemned the defendant's land and dispossessed it within the current tax year. Later, the taxes remaining unpaid, the land was sold for taxes. The Water District redeemed the land and brought suit against the defendant for reimbursement on the grounds (1) that there had been a warranty against encumbrances which had been breached by defendant's failure to discharge the tax lien, and (2) that the amount of taxes current at the time of the making of the condemnation award was deductible from the amount of the award. The California court found that neither of the grounds urged would support a recovery, and held for the defendant. In the *City of Los Angeles* case the city was permitted to deduct from the compensation award the amount of "assessments for certain street improvements," which had been based on the benefit conferred on the property at the time the improvements were made and which had been due and payable before the institution of the condemnation proceedings. Neither of these cases support the federal district court's view, in the *San Diego* case, *supra,* of California decisional law respecting a condemnee's liability for current taxes; indeed, the *Marin* case, *supra,* tends to support the contrary view; and the federal court wholly overlooked other California decisions which bear more directly on the question.[34]

In *United States v Certain Parcels of Land in Philadelphia,*[35] the federal district court apportioned the taxes for the year current in which the condemnation proceedings had been instituted according to the condemnee's use and occupation of the property during that "tax year." The United States Circuit Court of Appeals, Third Circuit, reversed the order of the district court and imposed the entire amount of the current year's taxes on the condemnee on the ground, in part, that Pennsylvania decisional law compelled this result. The Circuit Court relied principally on *Philadelphia v. Pennsylvania Company for the Instruction of the Blind,*[36] *Dougherty v. City of Philadelphia,*[37] and *William G. Halkett Co. v. City of Philadelphia.*[38] The first two of these cases held that the exemption from taxation expressly granted charitable corporations by the State of Pennsylvania does not begin until the "tax year" next ensuing

[32] 40 Cal. App. 260, 180 Pac. 620 (1919).

[33] 2 Cal. 2d 138, 39 P 2d 401 (1935)

[34] See, for example, Los Angeles v. Los Angeles Pacific Co., 31 Cal. App. 100, 159 Pac. 992 (1916).

[35] 130 F 2d 782 (C.C.A. 3d 1942)

[36] 214 Pa. 138, 63 Atl. 420 (1906).

[37] 112 Pa. Super. 570, 172 Atl. 177 (1934)

[38] 115 Pa. Super. 209, 175 Atl. 299 (1934)

the "tax year" in which the property was acquired by a charitable corporation. That determination would seem to have little, if any, bearing on the precise issue then before the federal courts. In the *Halkett* case, *supra*, the United States had begun negotiating for the plaintiff's property in the latter part of 1931 and later took it through condemnation proceedings, but the plaintiff "was in possession of his property, either by himself or his tenants, *and enjoyed the use and income from it until November 4, 1932.*"[39] The plaintiff brought "amicable assumpsit and case stated" to determine the right of the local taxing authorities to collect taxes for the "tax year" of 1932. The court held that since the plaintiff as condemnee had remained in possession of the property and "enjoyed the use and income from it" within the 1932 "tax year" until November 4, 1932, the city could collect such taxes as were attributable to that period of occupation—especially in view of the fact that the city had previously "voluntarily made such apportionment for the benefit of the plaintiff. . . ." This decision neither clearly supports the view that current taxes should be imposed in their entirety nor that they should be prorated according to the condemnee's use and occupation of the premises during the current "tax year." In view of "the custom, which by common consent, [had] acquired the 'force of law' " that taxes "are prorated between the vendor and purchaser on a sale of the land,"[40] it is conceivable that the Pennsylvania courts might, were the issue squarely presented to them, adopt the rule of apportionment in condemnation proceedings.

In *Collector of Revenue within and for the City of St. Louis v. Ford Motor Co.*,[41] the federal district court apportioned the current taxes for the year in which the condemnation proceedings had been instituted according to the Ford Motor Company's use and occupation of the premises within that year. On appeal by the City of St. Louis, the United States Circuit Court of Appeals, Eighth Circuit, reversed the order of the district court and imposed the entire amount of the current year's taxes on the condemnee on the ground, in part, that Missouri decisional law required this result. The Circuit Court of Appeals relied chiefly, if not solely, on *Jasper Land and Improvement Company v. Kansas City.*[42] The issue of the condemnee's liability for taxes accruing after the institution of condemnation proceedings was squarely presented in the *Jasper* case, and the Missouri court imposed the entire year's taxes on the condemnee. It was argued in the *Ford Motor Company* case, on behalf of the condemnee, however, that the Missouri court's decision

[39] *Ibid.* (Emphasis supplied.)

[40] United States v. Certain Parcels of Land in Philadelphia, Pa., 130 F 2d 782, 784 (C.C.A. 3d 1942).

[41] 158 F 2d 354 (C.C.A. 8th 1946).

[42] 283 Mo. 674, 239 S.W. 864 (1922).

in the *Jasper* case had depended on (1) the rule that, under the Missouri Constitution, an owner may not be dispossessed until the amount of the award has been paid into court for his benefit and (2) that, in that instance, the owner-condemnee had remained in possession during the whole of the current "tax year" and that the taxes accruing during that year were thus "due and owing" at the time he was actually dispossessed.[43] Both the facts, as reported, and the language in the opinion of the *Jasper* case are equivocal, at best; and it may well be that the Circuit Court of Appeals' view of Missouri decisional law, as announced in the *Jasper* case, would be reaffirmed by the Missouri Supreme Court. In any event, the decision in the *Ford Motor Company* case can be wholly supported under this view of the governing Missouri decisional law on the precise question involved.

In the present state of the federal decisions and in view of the tendency to decide the issue in particular cases either on the mechanical application of the appropriate state's tax statutes or the decisional law of another state with similar tax statutes—as declared either by the courts of that state or as "found" by the federal courts—it would be better to adopt either of the procedures resorted to in *United States v. 25.936 Acres of Land, More or Less, in Borough of Edgewater*[44] and in *Allen, County Treasurer v. Henshaw*.[45] In the *Edgewater* case, the United States Circuit Court of Appeals, Third Circuit, remanded the cause to the federal district court with the direction "to retain jurisdiction for a reasonable length of time to permit the Borough of Edgewater and [the condemnee] to litigate in the courts of New Jersey" the issue respecting the condemnee's liability for current taxes. This was done in *Borough of Edgewater v. Corn Products Refining Co.*,[46] and an apportionment of taxes based on New Jersey state law was obtained.[47] In the *Henshaw* case the federal district court issued checks in the amount of the awards payable jointly to the county treasurer and each individual condemnee; the question of the liability for current taxes was litigated in the Oklahoma state courts, and the nonliability of the condemnee for the entire amount of the current taxes was authoritatively established as a matter of state decision in the very case affected.

If either of these procedures should become the established practice in federal condemnation proceedings, the federal courts

[43] The writer was "of counsel" for respondent Ford Motor Co. and argued the matter in the Circuit Court of Appeals.

[44] 153 F. 2d 277 (C.C.A. 3d 1946).

[45] 197 Okla. 123, 168 P 2d 625 (1946).

[46] 136 N.J.L. 220, 53 A. 2d 212 (Sup. Ct. 1947), *aff'd*, 57 A. 2d 39 (Ct. Err. & App. 1948).

[47] See note 18 *supra*.

would be relieved of the difficulty of determining the state decisional law on the point; and this alone would go a long way toward clarifying the whole problem. But there would still exist the near certainty of variation in result among the several states, and it is also likely that many state decisions would continue the element of haphazardness in result as among condemnees whose properties were taken at varying times within the "tax year." It is not at all clear that it could be successfully urged that the amount of current taxes, imposed on a condemnee and not relatable to his use and occupation of the premises within that "tax year," be considered as an element of damages in determining the amount of the award to him.[43] All this seems to suggest the need for Congressional relief, in the interests of uniformity and certainty—and of essential fairness to condemnees—by a statutory "assumption" by the United States of a proration of the taxes accruing and current during the year in which properties are condemned by the federal government.

[43] 18 AM. JUR. § 260 (1938).