Per Roger Sayles:
"Therefore, the U.S. citizens (citizen of the federal corporation) residing in one of the states of the union, are classified as property and franchises of the federal government as an "individual entity"", Wheeling Steel Corp. v. Fox, 298 U.S. 193, 80 L.Ed. 1143, 56 S.Ct. 773

No. 663
U.S.

The words Class and Entity are not found.

Wheeling Steel Corp. v. Fox

298 U.S. 193 (1936) · 56 S. Ct. 773
Decided May 18, 1936

Starting on page 193.

APPEAL FROM THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA.

No. 663.

Argued March 9, 10, 1936. Decided May 18, 1936.

1. Intangible property, such as accounts receivable and bank deposits, may have a situs for taxation by a State other than that of the owner's domicile through being part of a business localized in the taxing State. P. 208. 2. The State in which intangible property belonging to a foreign corporation is thus localized cannot be denied constitutional power to tax it upon the ground that, by legal fiction, the property is so attributable to the State by which the corporation was chartered as to vest in that State the sole power to tax it. P. 211. So *held* where the corporation maintained in the State of its incorporation an office styled its "principal" office, in which a duplicate stock ledger and records of capital stock transactions were kept, but actually conducted its business outside of that State. 3. A Delaware manufacturing corporation conducted none of its business in that State but established its commercial domicile in West Virginia. There it maintained its general business offices where its general accounts were kept and in which its stockholders and directors held their meetings and from which its officers managed and controlled its operations, including what was done in its plants and sales offices in other States. All contracts of sale were subject to the approval of this main office and all invoices were payable there. It had bank deposits, outside of West Virginia, resulting from deposits by its West Virginia office of commercial paper received from customers, which deposits were used in meeting payrolls and in paying for materials, equipment, and maintenance and operating expenses in the course of its manufacturing activities but were drawn upon only by the West Virginia office or under its direction. *Held*, that the bank deposits and accounts receivable for goods made at the plants and sold through the sales offices were taxable by West Virginia. P. 211. Note: The West Virginia assessment, as amended and approved by the state court, permitted a 194 deduction of an amount taxed by *194 the State of Ohio on "accounts and notes receivable." The record, however, presents the question of the constitutionality of the tax in West Virginia, and no question of the amount or validity of any tax assessed elsewhere. 4. The West Virginia statutes, as construed by the state court, tax only such part of the intangible property of a foreign corporation as upon the facts and the applicable principles of law the State may rightfully tax. P. 215. 5. No delegation of authority, violative of the Federal Constitution, exists in permitting the state tax officials to fix the assessment of intangible property of a foreign corporation by applying the law to the facts, subject to review by the state courts and ultimately to review, as to any federal questions arising, by this Court. P. 215. 6. The assertion that the West Virginia tax on intangible property of foreign business corporations, in comparison with taxes on property of natural persons, railroads and other public utilities, denies

to business corporations the equal protection of the laws, is not sustained by the record in this case. P. 215. Affirmed.

APPEAL from a judgment of a Circuit Court of West Virginia in a statutory proceeding for the review of a tax assessment. The Supreme Court of Appeals of the State denied a writ of error, the judgment having been entered pursuant to its decision on a previous review. *In re Wheeling Steel Corporation Assessment*, 115 W. Va. 553; 177 S.E. 535.

Messrs. J.E. Bruce and *Wright Hugus* for appellant.

The statutory provisions, as construed, operate to tax property over which the State has no jurisdiction.

The State creating a corporation has the sole right to tax the intangible property of that corporation unless such intangible property has acquired a "business situs" elsewhere, — that is, it has been derived from, and is being held for use in, a purely local business. And conversely, a State which is not the domicile of the taxpaying corporation, and
195 in which the intangible property of *195 such corporation has not acquired a "business situs," cannot, consistently with the due process clause of the Fourteenth Amendment, impose a tax upon such property. *Virginia* v. *Imperial Coal Sales Co.*, 293 U.S. 15; *Safe Deposit Trust Co.* v. *Virginia*, 280 U.S. 83; *Liverpool L. G. Ins. Co.* v. *Board*, 221 U.S. 346; *Baldwin* v. *Missouri*, 281 U.S. 586.

West Virginia is not the domicile of the appellant. Appellant was organized and now exists under and by virtue of the laws of Delaware. It operates in West Virginia, Ohio and Minnesota as a foreign corporation, having complied with the laws of each of those States taxing and regulating foreign corporations doing business therein.

The laws of West Virginia do not provide for the domestication of foreign business corporations. On the contrary, c. 31, Art. 1, § 79 (Michie Code, 1932, § 3091) provides that foreign corporations may do business, as foreign corporations, within West Virginia under certain conditions. Foreign corporations doing business within the State preserve their status as foreign corporations. Chapter 11, Art. 12, § 71 (Michie Code, 1932, § 939) illustrates that different methods are used in calculating license taxes imposed on foreign, as distinguished from domestic, corporations, and that the policy of West Virginia is to maintain that distinction.

The Supreme Court of Appeals in its opinion took the position that, notwithstanding the facts that appellant is a foreign corporation, that 72.90% of its real estate and tangible personal property is located outside of West Virginia, and that 75.80% of its shipments in 1932 originated from its manufacturing plants located outside of West Virginia, its entire business had been localized in West Virginia.

This overthrows the distinction between domestic and foreign corporations as now existing in the
196 law, and *196 attempts to substitute therefor a distinction depending, apparently, upon the place where the executive and management functions are exercised. It transfers to the place of control at least one of the attributes of domicile — the power to tax the total intangible property of a corporate taxpayer irrespective of the fact that its real estate and tangible personal property may be located elsewhere.

From the finding that all the property of the appellant is controlled by the executive offices in West Virginia, the state court deduces that all the intangible personal property owned by appellant, wherever it may be said to be located and however arising, except that portion actually taxed in other States, is taxable by West Virginia. It may just as well be argued that all the real property and all the tangible personal property owned by appellant is likewise controlled by the West Virginia office; and, if the court's reasoning is correct, should also

be amenable to assessment and taxation in West Virginia. But the court does not attempt to extend the argument to its logical conclusion.

If taxation of real and tangible personal property located outside of the jurisdiction of the taxing authority is deprivation of property without due process (*Union Refrigerator Transit Co*. v. *Kentucky*, 199 U.S. 194), the assessment and taxation of intangible personal property located or arising from business done outside of the jurisdiction of the taxing authority is just as much an attempted deprivation of property without due process.

Appellant owns and operates manufacturing facilities both within and without the State of West Virginia. Only 27.10% of the assessed value of its real estate and tangible personal property is located in West Virginia. Only 24.20% of its shipments originated in West Virginia in 1932. Its West Virginia production was 15.6% of the total production in 1932. Only 19.45% of its employees
197 *197 were employed in West Virginia in 1932. Its West Virginia payrolls were only 16.22% of the total payrolls in 1932. Its West Virginia ingot capacity is only 16.6% of its total ingot capacity, and ingot capacity is a recognized basis of determining the producing ability of a steel company.

It is clear that the larger portion of appellant's intangibles sought to be assessed and taxed by West Virginia was derived from operations carried on outside of West Virginia. If intangibles can have any situs for taxation other than at appellant's domicile in Delaware, such situs cannot be determined solely by control, for such a rule would result in taxation of property outside of the jurisdiction of the State. The use of tangible property, both real and personal, in business, creates intangible property; and it is submitted that the only fair rule for the taxation of property in States other than the State of the domicile is a rule which allocates intangibles on the basis of tangible property owned and used in production of material for sale. Such a rule will permit each State in which tangible property is located and operated for profit to tax a fair proportion of the intangible property created within its borders.

It is well settled in the law that a corporation is domiciled in the State of its creation, and that it cannot migrate. It may own property and do business in other States, but its domicile is not thereby changed. To hold that a corporation may have a roving domicile, dependent upon the place its executive functions are exercised from time to time, would be an anomaly. *Adams Express Co*. v. *State Auditor*, 166 U.S. 185.

The money and accounts receivable here sought to be taxed are property derived from business done for the most part in the State of Ohio. The management activities in West Virginia, particularly the "control" emphasized by the state
198 court, did not create these intangibles. *198 Appellant's business is not localized in West Virginia. Its general offices in Wheeling did not and could not bring into existence such intangibles without the acts of manufacture and shipment in and from the State of Ohio. The most important act — the manufacture of the steel — was performed in Ohio. No money would have been received, and no credits would have been created but for such manufacture. If intangibles arising from appellant's Ohio manufacturing operations are taxable in any State, other than Delaware, they are taxable in Ohio. They are not taxable in West Virginia. *Hans Rees Sons, Inc*. v. *North Carolina*, 283 U.S. 123; *American Barge Line Co*. v. *Board*, 246 Ky. 573; *Looney* v. *Crane Co.*, 245 U.S. 178; *Alpha Portland Cement Co*. v. *Massachusetts*, 268 U.S. 203; *Baldwin* v. *Missouri*, 281 U.S. 586; *Beidler* v. *South Carolina Tax Comm'n*, 282 U.S. 1; *First National Bank* v. *Maine*, 284 U.S. 312.

The state law, as construed, results in multiple taxation. Cases hereinafter discussed involve not only property taxes, but also transfer, inheritance,

license and income taxes, but the same general jurisdictional principles govern all types of taxation. *Frick* v. *Pennsylvania*, 268 U.S. 473.

The modern view of this Court, to the effect that multiple taxation of intangible personal property is repugnant to the due process clause of the Fourteenth Amendment, apparently had its inception in the case of *Safe Deposit Trust Co*. v. *Virginia*, 280 U.S. 83.

That intangibles consisting of negotiable bonds and certificates of indebtedness are subject to the imposition of an inheritance tax only by the State of the decedent's domicile was held in *Farmers Loan Trust Co*. v. *Minnesota*, 280 U.S. 204. This case expressly overruled *Blackstone* v. *Miller*, 188 U.S. 189.

Baldwin v. *Missouri*, 281 U.S. 586, involved other types of intangible property. In that case the Court
199 *199 refused to apply the "business situs" doctrine. Mr. Justice Holmes, in his dissenting opinion, recognized that the majority opinion in effect overruled the cases upholding "business situs" as a basis for taxation of intangible property. See: *Beidler* v. *South Carolina Tax Comm'n*, 282 U.S. 1; *First National Bank* v. *Maine*, 284 U.S. 312.

A franchise or license tax imposed by a State upon a foreign corporation for the privilege of doing business within that State, but measured in part by property owned or business done outside, is a deprivation of property without due process of law. *Looney* v. *Crane Co.*, 245 U.S. 178; *Alpha Portland Cement Co*. v. *Massachusetts*, 268 U.S. 203.

An income tax imposed by a State upon a foreign corporation measured in part by income received from property owned or business done outside of that State, is a deprivation of property without due process of law. *Hans Rees Sons* v. *North Carolina*, 283 U.S. 123; *Newport Co*. v. *Wisconsin Tax Comm'n*, 219 Wis. 293.

The fact that the state court's opinion permits the deduction of intangible property owned by appellant and taxed in Ohio during the same tax period does not assist in any determination of the question of jurisdiction to tax.

All the receivables arising from business transacted within Ohio are taxable there and could be taxed in that State if Ohio should at some time prohibit the deduction of indebtedness, which is not improbable in view of the fact that West Virginia has prohibited the deduction of indebtedness.

The state court acknowledges that Ohio has power to tax a portion of appellant's intangibles, apparently under the "business situs" theory. Suppose that Ohio did not choose to exercise that power. Would West Virginia, because of Ohio's
200 failure to exercise an acknowledged *200 power, acquire jurisdiction to tax intangibles derived from Ohio business?

It is doubtful that the "business situs" theory of taxation, even if it would now be upheld by this Court, is applicable under West Virginia statutes. Those statutes contain no provision for allocation to that State of intangible property which is within its jurisdiction, as distinguished from such property over which it has no jurisdiction.

If the legislature has not prescribed a clear and specific manner in which taxes shall be assessed, neither the administrative officers nor the courts may supply the defect. Statutes imposing taxes are to be construed most strongly against the Government and in favor of the taxpayer.

The statutes in question, as construed below, when read in connection with § 15, Art. 3, c. 11 of the West Virginia Code, which limits the assessment for taxation of similar property owned by an individual or unincorporated firm to money derived from or belonging to and credits arising out of business done by such individual or

unincorporated firm within the State of West Virginia, operate to deny to appellant the equal protection of the laws.

And, when read in connection with §§ 2, 4, 5, 6 and 7, Art. 6, c. 11 of the Code, which limit the assessment for taxation of similar property owned by persons, firms or corporations operating as public utilities to property "wholly held or used in this State," they again operate to deny appellant the equal protection of the laws.

Mr. Homer A. Holt, Attorney General of West Virginia, with whom *Messrs. Ira J. Partlow* and *W. Holt Wooddell*, Assistant Attorneys General,
201 were on the brief, for appellees. *201

The accounts receivable and money on deposit have a taxable situs in West Virginia.

Generally, the taxable situs of accounts receivable and of money in bank is at the domicile of the owner. *Baldwin* v. *Missouri*, 281 U.S. 586, 591; *Beidler* v. *South Carolina Tax Comm'n*, 282 U.S. 1, 8. They may, however, acquire a situs for purposes of taxation at some place other than the technical domicile of the owner. *In re Wheeling Steel Corporation Assessment* (this case), 115 W. Va. 553; *Miami Coal Co.* v. *Fox*, 203 Ind. 99; *New Orleans* v. *Stempel*, 175 U.S. 309; *Bristol* v. *Washington County*, 177 U.S. 133; *Board of Assessors* v. *Comptoir National D'Escompte*, 191 U.S. 388; *Metropolitan Life Ins. Co.* v. *New Orleans*, 205 U.S. 395; *Liverpool L. G. Ins. Co.* v. *Assessors*, 221 U.S. 346; *Virginia* v. *Imperial Coal Sales Co.*, 293 U.S. 15; *Safe Deposit Trust Co.* v. *Virginia*, 280 U.S. 83; *Commonwealth* v. *United Cigarette Machine Co.*, 119 Va. 447; *Bemis Bros. Bag Co.* v. *Tax Commission*, 158 La. 1; *Buck* v. *Miller*, 147 Ind. 586; *Higgins* v. *Commonwealth*, 126 Ky. 211; *Finch* v. *York County*, 19 Neb. 50.

Our position in this case is that the accounts receivable and bank deposits have acquired a taxable situs in West Virginia, and that they have no taxable situs in Delaware, the technical domicile of the corporation, and that the record does not show the acquisition of a taxable situs in any other State by any part of said intangibles, though we have not assigned cross error to the judgment of the Supreme Court of Appeals of West Virginia in deducting $250,133.42 from the assessment as originally approved by the tax commissioner, upon the mere showing that that amount had been assessed in the State of Ohio.

Just as a part of the business of a corporation may be localized in a State other than that of the technical domicile, so may all of such business become so localized if in fact the corporation is
202 not doing business and is not managing *202 and controlling its assets and operations in the State of its technical domicile, but is, in fact, managing, keeping, and controlling its assets and business in another State.

Here, Wheeling Steel Corporation has not merely localized a part of its business in West Virginia through the activities of an agent, but has localized its entire fiscal management in West Virginia through its principals.

All of the manufacturing business of appellant has not been so localized in West Virginia, but it is believed that it is sufficient for the purposes of *ad valorem* property taxes upon the intangibles of appellant that the business of keeping, managing and controlling all of such intangibles has been localized in West Virginia.

The theory that intangible personal property can be taxed only when related to the taxation of real estate or tangible personal property was rejected by this Court in *Virginia* v. *Imperial Coal Sales Co.*, 293 U.S. 15, 20.

We are not considering an income tax, but an *ad valorem* property tax upon intangible property. The source of the property is not determinative. That which is determinative is the situs of the intangible property on the assessment date. West Virginia, of course, cannot tax the personal property, iron and steel, manufactured by appellant and located in Ohio. Obviously, however, if such

iron and steel were removed from Ohio to West Virginia, West Virginia could then tax them as tangible personal property, and the source from which they were obtained by the corporation would not be material. Likewise, if the iron and steel be not removed to West Virginia, but be exchanged for money or accounts receivable, and in the course of the transaction such money or accounts receivable be transferred to West Virginia, then West Virginia may impose an *ad valorem* property tax upon such intangibles.

It is significant that in the cases of *Baldwin* v. *Missouri*, 281 U.S. 586, 593; *Farmers Loan Trust Co*. *203 v. *Minnesota*, 280 U.S. 204, 213; *First National Bank* v. *Maine*, 284 U.S. 312, 330; and *Beidler* v. *South Carolina Tax Comm'n*, 282 U.S. 1, 9, in each of which cases an inheritance tax was involved, the Court was careful to point out that the intangible personal property involved had not acquired a business situs in the States which sought to impose the taxes.

The rule that the taxable situs of intangibles is at the technical domicile of the owner is but a mere fiction, and will not be followed when the fact is clear that the intangible property has a situs elsewhere. Cf. *Bristol* v. *Washington County*, 177 U.S. 133, 141. See also *Board of Assessors* v. *Comptoir National D'Escompte*, 191 U.S. 388, 404; *Safe Deposit Trust Co*. v. *Virginia*, 280 U.S. 83, 92.

In *Virginia* v. *Imperial Coal Sales Co.*, 293 U.S. 15, the decision was not placed solely upon the ground that the corporation was a Virginia corporation, but as well upon the ground that the intangibles were managed and controlled within Virginia.

In *Safe Deposit Trust Co*. v. *Virginia*, 280 U.S. 83, the opinion commented upon the fact that the actual presence and control of the intangibles were elsewhere than at the domicile of the beneficiaries. Following this, reference was made to many of the "business situs" cases to which we have heretofore referred.

The record does not show a taxable situs in Ohio of any of appellant's accounts receivable. We do not concede that the voluntary return of accounts receivable by appellant to the taxing authorities of Ohio and the payment of taxes thereon, when the record does not show any taxable situs in Ohio, deprives West Virginia of the right to tax all of the intangibles of appellant which the record, we believe, shows to have a taxable situs in West 204 Virginia. *204

The statutes of West Virginia under which appellant's intangible property was assessed, as interpreted by the state courts, are not in violation of the equal protection clause of the Fourteenth Amendment when considered in connection with the statutes relating to the assessment of like property of either natural persons or public utility corporations. Appellant's error in this regard results from a failure to consider all of the pertinent statutes. [Citing and discussing many statutes of the State.]

Appellant has shown no facts of discrimination with respect to it and any other taxpayer, either business corporation, public utility corporation, or natural person. It is believed that the pertinent statutes plainly show a constant purpose and intent to tax all intangibles within the State and to tax no intangibles which are without the State. However, even though the statute were susceptible of an interpretation, which, if adopted, would result in discrimination against appellant, no showing of any administrative action which is discriminatory in fact is presented.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

This appeal presents the question of the validity of an *ad valorem* property tax laid by West Virginia upon accounts receivable and bank deposits of appellant, Wheeling Steel Corporation, organized under the laws of Delaware.

The tax statutes[1] were assailed upon the ground that, as applied, they violated the due process and
205 equal protection *205 clauses of the Fourteenth Amendment of the Constitution of the United States. The proceeding was a statutory one, instituted by appellant in the Circuit Court of Ohio County, West Virginia, to review a county assessment which was made as of January 1, 1933. The judgment of that court, reducing the assessment, was reversed by the Supreme Court of Appeals of West Virginia. *In re Wheeling Steel Corporation Assessment*, 115 W. Va. 553; 177 S.E. 535. The Circuit Court then entered final judgment which the Supreme Court of Appeals refused to review. The case comes here on appeal.

[1] The statutes to which appellant refers are: Code of West Virginia, Chapter 11, Article 3, §§ 12, 13, 15, Article 5, § 1, Article 6, § 2, Article 12, § 71; Chapter 31, Article 1, § 79.

The case was submitted upon agreed statements which disclosed the following facts: The Corporation maintains its principal office in Delaware through the Corporation Service Company, as permitted by the laws of that State. It keeps there a duplicate stock ledger and records of all transactions with respect to its capital stock, the originals of such ledger and records being kept in New York City. It files reports and pays franchise taxes as required by Delaware.

The general business offices of the Corporation are located in Wheeling, Ohio County, West Virginia. There, the general books and accounting records are kept. The chairman of the board, president, treasurer, secretary and chief counsel reside at Wheeling. There, its stockholders' and directors' meetings, as permitted by the laws of Delaware, are held. Dividends, when declared, are ordered to be paid and distributed at meetings held at Wheeling, although the checks are drawn and distributed by the dividend disbursing agent located in New York City and are paid with funds there deposited.

The Corporation maintains sales offices in various cities of the United States. Sales contracts are negotiated and orders are taken by these offices subject to acceptance or rejection at Wheeling.
206 *206

The principal manufacturing plants of the Corporation are located in the State of Ohio. The plant offices maintain original detailed accounting records showing materials received, railroad cars received and shipped, detailed labor costs, production and shipments, and detailed stocks of goods and payrolls. Employment offices are maintained at each plant. The Portsmouth, Ohio, plant makes up and mails out invoices for all products shipped from that plant, together with bills of lading and shipping notices. The other plants prepare complete invoices with exception of information relating to the price of materials described. The latter invoices are then forwarded to Wheeling where they are completed and mailed to the customer. Bills of lading and shipping notices are, however, mailed to customers from the individual plants. All invoices are payable in Wheeling. The majority of commercial accounts are paid by check issued at Wheeling. Payrolls are made up and payroll checks are prepared and signed at the various plants and are there distributed to the employees. Such checks are paid with funds on deposit in banks in the localities where the plants are situated.

The Corporation owns vessels operating on the Allegheny, Ohio and Mississippi Rivers, transporting coal and steel. These vessels are registered at the port of Pittsburgh.

The total assessed value of the real estate and tangible personal property owned by the Corporation on January 1, 1933, was $31,977,600. The assessed value of its real estate and tangible personal property in West Virginia was $8,673,205, or 27.10 percent. of the total.

At least 80 percent. of the sums spent by the Corporation in the conduct of its business, including the purchase of materials, maintenance

and repairs of plants, building of improvements, property additions, payrolls and other operating
207 expenses were made in connection *207 with the operation of its plants and business outside the State of West Virginia and all such payments, aside from moneys borrowed, were made from the proceeds of sales of its products. The moneys thus expended in the conduct of its business in Ohio and States other than West Virginia are expended by executive action taken at Wheeling, and by the drawing of checks or drafts at that place, except in connection with the payment of payrolls at its Portsmouth, Ohio, and Steubenville, Ohio, plants, where payroll checks or orders are drawn against moneys sent to banks at those points for the express purpose of meeting the payrolls and for incidental items as they arise. All moneys are controlled and the expenditures directed by the Wheeling office, and if the immediate expenditure be made elsewhere, it is made only under specific or general direction and control of that office.

On January 1, 1933, the Corporation had on deposit to its credit in various banks the sum of $2,307,773.61, of which $849,161.99 was on deposit in West Virginia. Of the last mentioned amount the Corporation had received $121,684.91 from sales of goods manufactured in West Virginia and the remainder from sales of goods manufactured in, and shipped from, points outside that State. The money on deposit in banks outside West Virginia on January 1, 1933, had been deposited by the Corporation by sending from its Wheeling office the original checks or drafts received from its customers. The deposits outside West Virginia are not segregated for the purpose of keeping separately the receipts from sales of products manufactured in, and shipped from, West Virginia plants. Ordinarily not more than 20 percent. of the total amounts on deposit at any time within and without West Virginia have been derived from sales of products manufactured in that State.

The total amount of the Corporation's accounts and notes receivable on January 1, 1933, was
208 $2,234,743.11. *208 Of this amount, $374,410.42 were receivables for goods sold and manufactured in, and shipped from, West Virginia to resident and non-resident purchasers. It appeared that the Corporation had been assessed in Ohio, as of January 1, 1933, on accounts and notes receivable amounting to $250,133.42.

The Supreme Court of Appeals of West Virginia held that there had been "such a localization of the corporation's business at Wheeling" that there was imparted "to its entire intangible property a *prima facie* situs for taxation at that place." But the court thought that the "statutory limitation of the assessment to property `liable to taxation'" indicated that the legislature "did not propose to tax intangibles which were primarily subject to taxation in another jurisdiction." And referring to the above mentioned taxation in Ohio, the Supreme Court of Appeals said: "For the purposes of this opinion, we assume that the claim of our sister state is well founded, and should be deducted from the assessment as corrected by the Tax Commissioner." And in remanding the cause to the Circuit Court, the Supreme Court of Appeals gave opportunity to have it determined "whether or not further deductions should be made in deference to the legal demands of other states." In the further proceeding in the Circuit Court, it was stipulated that "no states other than Ohio and West Virginia have assessed taxpayer upon any of its intangibles for the year 1933."

First. — The tax is not a privilege or occupation tax. It is not a tax on net income. See *Hans Rees' Sons* v. *North Carolina*, 283 U.S. 123, 133. It is an *ad valorem* property tax. We have held that it is essential to the validity of such a tax, under the due process clause, that the property shall be within the territorial jurisdiction of the taxing state. This rule receives its most familiar illustration in the case of land. The rule has been
209 extended *209 to tangible personal property which is thus subject to taxation exclusively in the State

where it is permanently located, regardless of the domicile of the owner. *Union Refrigerator Transit Co*. v. *Kentucky*, 199 U.S. 194, 204, 206; *Frick* v. *Pennsylvania*, 268 U.S. 473, 489. We have said that the application to the States of the rule of due process arises from the fact "that their spheres of activity are enforced and protected by the Constitution and therefore it is impossible for one State to reach out and tax property in another without violating the Constitution." *United States* v. *Bennett*, 232 U.S. 299, 306. Compare *Burnet* v. *Brooks*, 288 U.S. 378, 401. When we deal with intangible property, such as credits and choses in action generally, we encounter the difficulty that by reason of the absence of physical characteristics they have no situs in the physical sense, but have the situs attributable to them in legal conception. Accordingly we have held that a State may properly apply the rule *mobilia sequuntur personam* and treat them as localized at the owner's domicile for purposes of taxation. *Farmers Loan Trust Co*. v. *Minnesota*, 280 U.S. 204, 211. And having thus determined "that in general intangibles may be properly taxed at the domicile of their owner," we have found "no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles." *Id.*, p. 212. The principle thus announced in *Farmers Loan Trust Co*. v. *Minnesota* has had progressive application. *Baldwin* v. *Missouri*, 281 U.S. 586; *Beidler* v. *South Carolina Tax Comm'n*, 282 U.S. 1; *First National Bank* v. *Maine*, 284 U.S. 312, 328, 329. But despite the wide application of the principle, an important exception has been recognized.

In the case of tangible property, the ancient maxim, which had its origin when personal
210 property consisted in *210 the main of articles appertaining to the person of the owner, yielded in modern times to the "law of the place where the property is kept and used." *First National Bank* v. *Maine, supra*. It was in view "of the enormous increase of such property since the introduction of railways and the growth of manufactures" that it came to be regarded as "having a situs of its own for the purpose of taxation, and correlatively to [be] exempt at the domicile of its owner." *Union Refrigerator Transit Co*. v. *Kentucky, supra*, p. 207. There has been an analogous development in connection with intangible property by reason of the creation of choses in action in the conduct by an owner of his business in a State different from that of his domicile. *New Orleans* v. *Stempel*, 175 U.S. 309; *Bristol* v. *Washington County*, 177 U.S. 133; *Board of Assessors* v. *Comptoir National*, 191 U.S. 388; *Metropolitan Life Insurance Co*. v. *New Orleans*, 205 U.S. 395; *Liverpool L. G. Insurance Co*. v. *Board of Assessors*, 221 U.S. 346.

These cases, we said in *Farmers Loan Trust Co*. v. *Minnesota, supra*, p. 213, "recognize the principle that choses in action may acquire a situs for taxation other than at the domicile of their owner if they have become integral parts of some local business." We adverted to this reservation in *Beidler* v. *South Carolina Tax Comm'n, supra*, p. 8, and in *First National Bank* v. *Maine, supra*, p. 331.

In the instant case, both parties recognize the principle and the exception. It is appellant's contention that the State creating a corporation has the sole right to tax its intangible property "unless such intangible property has acquired a `business situs' elsewhere." Counsel for the State agrees with appellant on this point and in fact asserts "that, generally, the taxable situs of accounts receivable and of money in bank is at the domicile of the owner." But the State insists that the
211 accounts receivable *211 and bank deposits of the Wheeling Steel Corporation had acquired a taxable situs in West Virginia and that they have no taxable situs in Delaware, where the Corporation was chartered.

Second. — The Corporation complied with the laws of the State of its creation in designating its "principal" office in that State. It is manifest that

this designation, while presumably sufficient for the purpose, was a technical one and that the office is not a principal office so far as the actual conduct of business is concerned. While a duplicate stock ledger and records of transactions with respect to capital stock are maintained in Delaware, the business operations of the Corporation are conducted outside that State. The office in Delaware is maintained through the service of an agency organized to furnish this convenience to corporations of that description. To attribute to Delaware, merely as the chartering State, the credits arising in the course of the business established in another State, and to deny to the latter the power to tax such credits upon the ground that it violates due process to treat the credits as within its jurisdiction, is to make a legal fiction dominate realities in a fashion quite as extreme as that which would attribute to the chartering State all the tangible possessions of the Corporation without regard to their actual location.

The constitutional authority of West Virginia to tax the accounts receivable and bank deposits in question cannot be denied upon the ground that they are taxable solely in Delaware. The question is whether they should be deemed to be localized in West Virginia.

Third. — The Corporation established in West Virginia what has aptly been termed a "commercial domicile." It maintains its general business offices at Wheeling and there it keeps its books and accounting records. There its directors hold their meetings and its officers conduct the affairs of the Corporation. There, as appellant's
212 *212 counsel well says, "the management functioned." The Corporation has manufacturing plants and sales offices in other States. But what is done at those plants and offices is determined and controlled from the center of authority at Wheeling. The Corporation has made that the actual seat of its corporate government.

The question here is not of the taxation of the plants in other States. The real estate, equipment and all tangible property there located are taxable by those States respectively. The accounts receivable with which we are now concerned are the proceeds of contracts of sale. While these contracts are negotiated and orders are taken at the various sales offices throughout the country, they are subject to acceptance or rejection at the Wheeling office. All invoices are payable at Wheeling. Thus the contracts of sale become effective by the action taken at the Wheeling office and there the accounts are kept and the required payments are made. In the face of these facts, it cannot properly be said that the credits arise either where the goods are manufactured or at the sales offices where the orders are taken. The tax is not on the manufacturing or on the privilege of maintaining sales offices. The tax is not on the net profits of a unitary enterprise demanding a method, not intrinsically arbitrary, of making an apportionment among different jurisdictions with respect to the processes by which the profits are earned. *Underwood Typewriter Co*. v. *Chamberlain*, 254 U.S. 113, 120, 121; *Bass, Ratcliff Gretton, Ltd*. v. *State Tax Comm'n*, 266 U.S. 271, 282, 283; *Hans Rees' Sons* v. *North Carolina, supra*. Such a tax on net gains is distinct from an *ad valorem* property tax on the various items of property owned by the Corporation and laid according to the location of the property within the respective tax jurisdictions. Here, the tax is a property tax on the accounts receivable, as separate items of property, and these are not to be regarded as parts of the manufacturing plants
213 where the goods sold are produced. *213

Hence we cannot agree with appellant's counsel that the only fair rule in such a case is one "which allocates intangibles on the basis of tangible property owned and used in production of material for sale." This is to confuse two distinct subjects of *ad valorem* property taxation, the accounts receivable which arise from sales and the manufacturing plants. The accounts are not

necessarily localized in whole or in part where the goods are made but are attributable as choses in action to the place where they arise in the course of the business of making contracts of sale. We said, in *Virginia* v. *Imperial Coal Sales Co.*, 293 U.S. 15, 20, that we were not able to perceive "any sound reason for holding that the owner must have real estate or tangible property within the State in order to subject its intangible property within the State to taxation."

The tax is laid both on accounts receivable and on the amount of deposits in banks. It appears that the Corporation has deposit accounts in several States. The deposits outside West Virginia were made by sending from the Wheeling office to the various banks the original checks or drafts received by the Corporation from its customers. From these deposit accounts the Corporation, by executive action at Wheeling, pays the amounts required for payrolls, materials, equipment, maintenance and operating expenses as these amounts become payable in the course of its operations in Ohio and other States. Checks and drafts on these bank accounts are drawn at Wheeling, except in connection with the payment of payrolls at certain manufacturing plants where payroll checks or orders are drawn against moneys sent to banks at such points for that express purpose and for meeting incidental items. The agreed statement shows that "All moneys are controlled and the expenditures directed by the Wheeling office, and
214 if the immediate expenditure be *214 made elsewhere, such immediate expenditure is made only under specific or general direction and control of the Wheeling office." The so-called "money in bank" is not cash or physical property of the Corporation but is an indebtedness owing by the bank to the Corporation by virtue of the deposit account. From the Wheeling office proceed the items deposited and there the withdrawals are directed and controlled. In the light of this course of business as shown by the agreed statements of fact, we find no sufficient basis for concluding that the bank accounts thus maintained and controlled were properly attributable to the Corporation at any place other than at its general office at Wheeling. If there were any special circumstances by which any of these deposits could be deemed to have been localized elsewhere, they do not appear upon the present record.

The state court permitted the deduction of the amount of the intangible property of the Corporation which had been assessed in Ohio. That assessment, according to the agreed statement, was "on accounts and notes receivable." Counsel for the State, while insisting that the record does not show a taxable situs in Ohio of any of appellant's accounts receivable, has not taken a cross appeal or sought to assign error with respect to this part of the judgment of the Supreme Court of Appeals. The State is not in a position to complain of the deduction and no question as to its propriety is before us upon this record. Appellant urges that in Ohio "only the excess of receivables and prepaid items over current payables" is actually taxed, and that the deduction of "current indebtedness" accounts for the amount of the Ohio assessment. The inference is sought to be drawn that the amount of accounts receivables taken into consideration in Ohio was thus larger than the amount assessed. We find no basis for a conclusion whether, or to what extent, deductions
215 were allowed in Ohio. The stipulation states *215 that the appellant had been assessed "on accounts and notes receivable" in the amount which the state court of West Virginia has allowed. Upon this record the question before us is with regard to the constitutional validity of the tax as assessed in West Virginia and not as to the amount or validity of any tax assessed elsewhere.

Further, we find no ground for appellant's contention that the statutes of West Virginia, under which the tax is laid, are invalid in the view that they require the taxation of all the intangibles of a foreign corporation doing business within the State, regardless of the place where such intangibles may properly be the subject of

taxation. We think the argument is sufficiently met by the construction placed upon these statutes by the state court. It held that the legislature intended to limit the assessment to property which was liable to taxation according to the facts and the applicable principles of law. Nor would this inquiry of the state officials into the facts involve, as contended, any delegation of authority of which complaint could be made under the Federal Constitution. The taxing officials would apply the law to the facts of the case subject to review by the courts of the State and ultimately by this Court so far as any federal question might be involved.

Our conclusion is that appellant has failed to show that West Virginia in laying the tax has transcended the limits of its jurisdiction and thus deprived appellant of its property without due process of law.

Fourth. Appellant also contests the tax upon the ground that equal protection of the laws has been denied. The argument is that the statutes, as construed, require that the total intangibles of appellant are to be reported and assessed, except that portion taxed in other States, and hence that the statutes discriminate unlawfully against business corporations and in favor of natural persons. Appellant also urges discrimination on
216 the *216 basis of a comparison with the provisions for the taxation of the property of railroads and other public utilities. Counsel for the State presents an analysis of the state statutes and insists that there is no discrimination between the assessment of the intangibles of corporations, either foreign or domestic, and of those of natural persons, or with respect to the assessment of corporations engaged in public service.

The contention of appellant is that we should deduce the protested discrimination from the face of the respective statutes. But we do not find that their provisions require the asserted construction and we have not been advised of decisions of the state court placing such a construction upon them. The decision in the instant case, as we have seen, is not that the statutes require taxation in West Virginia of all of the intangibles of appellant, without due regard to the place where they may properly be deemed to be localized, but only of such intangibles as upon the facts and the law, according to the course of business, may be deemed to be within the jurisdiction of the State. The record discloses no discrimination of which appellant is entitled to complain.

The judgment of the state court is

Affirmed.

217 *217