



79 S.Ct. 641

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359 U.S. 108, 79 S.Ct. 641, 3 L.Ed.2d 667, 3 A.F.T.R.2d 966, 59-1 USTC P 9338, 1959-1 C.B. 636
(Cite as: 359 U.S. 108, 79 S.Ct. 641)

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SIMS v. UNITED STATES
 U.S. 1959.

Supreme Court of the United States
 Edgar B. SIMS, Petitioner,
 v.
 UNITED STATES of America.
No. 88.

Argued Feb. 26, 1959.
 Decided March 23, 1959.

Suit by United States against State Auditor of West Virginia to recover sum equal to value of property not surrendered by Auditor pursuant to **levy** by Director of Internal Revenue upon accrued salaries of state **employees**. The United States District Court for the Southern District of West Virginia, Ben Moore, Chief Judge, entered judgment against the Auditor in his individual capacity, and the Auditor appealed. The Court of Appeals, 252 F.2d 434, affirmed and the Supreme Court granted certiorari. The Supreme Court, Mr. Justice Whittaker, J., held that under statute providing that any person in possession of property or property rights subject to **levy** for delinquent taxes and upon which a **levy** has been made shall surrender such property or rights and upon failure to surrender shall be subject in his own person and estate, State Auditor, who was empowered and obligated to deduct and withhold from salaries of state **employees** sums to pay taxes as may be required by an act or acts of Congress of the United States and who alone had obligation and power to issue warrants for payment of salary, was a 'person' obligated with respect to the salaries covered by **levy** against state **employees** for delinquent federal taxes and was personally liable to federal government for refusing to honor its **levies**.

Affirmed.

West Headnotes

[1] **Federal Courts 170B** **452**

170B Federal Courts

170BVII Supreme Court

170BVII(B) Review of Decisions of Courts of Appeals

170Bk452 k. Certiorari in General. Most Cited Cases

(Formerly 106k383(1))

Questions of whether a federal **levy** on accrued salaries of **employees** of a state for income tax deficiencies was authorized and whether State Auditor was personally liable for refusing to surrender accrued salaries to federal government justifying granting of certiorari. 26 U.S.C.A. (I.R.C.1954) §§ **6331**, 6332.

[2] **Internal Revenue 220** **3150**

220 Internal Revenue

220V Income Taxes

220V(E) Salaries, Wages or Compensation

220k3150 k. In General. Most Cited Cases

(Formerly 220k348)

Nothing in the constitution requires that salaries of state **employees** be treated any differently for federal tax purposes than the salaries of others. 26 U.S.C.A. (I.R.C.1954) §§ **6331**, 6332.

[3] **Internal Revenue 220** **4857**

220 Internal Revenue

220XXV Collection

220XXV(B) **Levy** or Distrain

220k4857 k. Property Subject to Distrain.

Most Cited Cases

(Formerly 220k1783)

Generally, accrued salaries are property and rights to property subject to **levy** for income tax deficiencies.

[4] **Internal Revenue 220** **4857**

220 Internal Revenue

220XXV Collection

220XXV(B) **Levy** or Distrain

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220k4857 k. Property Subject to Distraint.
 Most Cited Cases

(Formerly 220k1783)

Under statute providing that any person in possession of property or rights of property subject to **levy** upon which a **levy** has been made shall surrender such property rights and upon failure to surrender shall be subject in his own person and estate, a state is a "person" and a **levy** on accrued salaries of **employees** of a state is permissible. 26 U.S.C.A. (I.R.C.1954) § 6332.

[5] Statutes 361 ↪199

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k187 Meaning of Language

361k199 k. Particular Words and

Phrases. Most Cited Cases

Whether the term "person" when used in a federal statute includes a state cannot be abstractly declared, but depends upon its legislative environment.

[6] Internal Revenue 220 ↪3027

220 Internal Revenue

220I Nature and Extent of Taxing Power in General

220I(E) Construction and Operation of Revenue Laws in General

220k3027 k. In General. Most Cited Cases

(Formerly 220k121)

In interpreting federal revenue measures expressed in terms of general application, Supreme Court has ordinarily found them operative in the case of state activities even though states are not expressly indicated as subjects of tax.

[7] Internal Revenue 220 ↪4857

220 Internal Revenue

220XXV Collection

220XXV(B) **Levy** or Distraint

220k4857 k. Property Subject to Distraint.

Most Cited Cases

(Formerly 220k1783)

Under provision of Internal Revenue Code

authorizing collection of delinquent taxes by leStatute authorizing collection of delinquency taxes by **levy** upon all property and rights of property of a delinquent taxpayer including a **levy** upon accrued salary or wages of any officer, **employee**, or elected official of the United States was enacted to subject salaries of federal **employees** to same collection procedures as are available against all other taxpayers, including **employees** of a state. 26 U.S.C.A. (I.R.C.1954) § 6331.

[8] Internal Revenue 220 ↪4857

220 Internal Revenue

220XXV Collection

220XXV(B) **Levy** or Distraint

220k4857 k. Property Subject to Distraint.

Most Cited Cases

(Formerly 220k1783)

Statute authorizing collection of delinquency taxes by **levy** upon all property and rights of property of a delinquent taxpayer including a **levy** upon accrued salary or wages of any officer, **employee**, or elected official of the United States was enacted to subject salaries of federal **employees** to same collection procedures as are available against all other taxpayers, including **employees** of a state. 26 U.S.C.A. (I.R.C.1954) § 6331.

[9] Internal Revenue 220 ↪4858

220 Internal Revenue

220XXV Collection

220XXV(B) **Levy** or Distraint

220k4858 k. Liability of Third Person for Refusal to Surrender Property on Which **Levy** Has Been Made. Most Cited Cases

(Formerly 220k1784)

Under statute providing that any person in possession of property or property rights subject to **levy** for delinquent taxes and upon which a **levy** has been made shall surrender such property or rights and upon failure to surrender shall be subject in his ince two or more persons cannot be entitled to depletion on the same income. 26 U.S.C.A. (I.R.C.1939) § 23(m).

[10] States 360 ↪137

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360 States

360IV Fiscal Management, Public Debt, and Securities

360k135 Warrants and Certificates of Indebtedness

360k137 k. Power and Duty to Issue. Most Cited Cases

Under West Virginia law, State Auditor alone has the obligation and power to issue warrants for payment of salaries of state **employees**. Code W.Va. 12-3-13a, 38-5B-5.

[11] Mandamus 250 ↪107

250 Mandamus

250II Subjects and Purposes of Relief

250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities

250k104 Payment of Debts and Claims

250k107 k. Salaries and Wages. Most Cited Cases

Under West Virginia law, state **employees** entitled to payment for services may enforce their rights by mandamus against the State Auditor. Code W.Va. 12-3-13a, 38-5B-5.

[12] Federal Courts 170B ↪452

170B Federal Courts

170BVII Supreme Court

170BVII(B) Review of Decisions of Courts of Appeals

170Bk452 k. Certiorari in General. Most Cited Cases

(Formerly 106k383(1))

Where conclusions of judges who are constantly required to pass upon laws of a state appear to be founded on reason and authority, such conclusions will be accepted by the Supreme Court.

***108** Mr. Fred H. Caplan, Charleston, W.Va., for petitioner.

Miss Melva Graney, Washington, D.C., for respondent.

Mr. Justice WHITTAKER delivered the opinion of the Court.

[1] The Commissioner of Internal Revenue assessed an income tax deficiency against each of three

residents of West Virginia and forwarded the assessment lists to the ***109** Director of Internal Revenue at Parkersburg for collection. The deficiencies remaining unpaid for more than 10 days after demand for payment and the taxpayers being then employed by the State of West Virginia, the Director issued notices of **levy** directed to the State of West Virginia and served them on petitioner, as the State Auditor, seizing the accrued salaries of the taxpayers pursuant to s **6331** of the 1954 Internal Revenue Code, 26 U.S.C. (Supp. V) s **6331**, 26 U.S.C.A. s **6331**.^{FN1} Petitioner refused to honor the **levies** and instead issued and delivered payroll warrants to the taxpayers for their then accrued net salaries aggregating \$519.71.^{FN2} Thereafter the Government brought this suit in the Federal District Court against petitioner under s 6332 of the 1954 Internal Revenue Code, 26 U.S.C. (Supp. V) s 6332, 26 U.S.C.A. s 6332,^{FN3} ****644** to recover from ***110** him personally the \$519.71 that he had so paid to the taxpayers in disobedience to and defeat of the Government's **levies**. The District Court rendered judgment for the Government and the Court of Appeals affirmed, 252 F.2d 434. Certiorari was sought on the grounds that s **6331** does not authorize a **levy** on the accrued salaries of **employees** of a State, and that, if it be held that it does, petitioner was not a person 'obligated with respect to' the accrued and seized salaries, within the meaning of s 6332, and, therefore, is not personally liable for refusing to surrender them to the Government. We granted the writ to determine those questions. 358 U.S. 809, 79 S.Ct. 24, 3 L.Ed.2d 54.

FN1. 26 U.S.C.(Supp. V) s **6331**, 26 U.S.C.A. s **6331**, in pertinent part, provides:

'(a) Authority of Secretary or delegate.-If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax * * * by **levy** upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. **Levy** may be made upon the accrued salary or

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wages of any officer, **employee**, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of **levy** on the employer * * *.

'(b) Seizure and sale of property.-The term '**levy**' as used in this title includes the power of distraint and seizure by any means. In any case in which the Secretary or his delegate may **levy** upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).'

FN2. The assessment against each of the taxpayers substantially exceeded in amount the accrued salary owing to each at the time of the **levies**.

FN3. 26 U.S.C.(Supp. V) s 6332, 26 U.S.C.A. s 6332, provides:

'(a) Requirement.-Any person in possession of (or obligated with respect to) property or rights to property subject to **levy** upon which a **levy** has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

'(b) Penalty for violation.-Any person who fails or refuses to surrender as required by subsection (a) any property or rights to property, subject to **levy**, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes for the collection of which such **levy** has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such **levy**.

'(c) Person defined.-The term 'person,' as used in subsection (a), includes an officer or **employee** of a corporation or a member or **employee** of a partnership, who as such officer, **employee**, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.'

[2][3] Nothing in the Constitution requires that the salaries of state **employees** be treated any

differently, for federal tax purposes, than the salaries of others, *Helvering v. Gerhardt*, 304 U.S. 405, 58 S.Ct. 969, 82 L.Ed. 1427; *Graves v. People of State of New York ex rel. O'Keefe*, 306 U.S. 466, 59 S.Ct. 595, 83 L.Ed. 927, and it is quite clear, generally, that accrued salaries are property and rights to property***111** subject to **levy**.^{FN4} In plain terms, s **6331** provides for the collection of assessed and unpaid taxes 'by **levy** upon all property and rights to property' belonging to a delinquent taxpayer.^{FN5} Pursuant to that statute a regulation was promulgated expressly interpreting and declaring s **6331** to authorize **levy** on the accrued salaries of **employees** of a State to enforce collection of any federal tax.^{FN6}

FN4. *Glass City Bank of Jeanette, Pa. v. United States*, 326 U.S. 265, 268, 66 S.Ct. 108, 110, 90 L.Ed. 56; *United States v. Long Island Drug Co.*, 2 Cir., 115 F.2d 983, 986; 9 Mertens, *Law of Federal Income Taxation* (Rev.), s 49.205.

FN5. The only property exempt from **levy** is that listed in s 6334(a) of the 1954 Internal Revenue Code, 26 U.S.C.(Supp. V) s 6334(a), 26 U.S.C.A. s 6334(a), consisting of certain personal articles and provisions. It does not exempt salaries or wages.

FN6. Section 301.**6331**-1(a)(4)(ii) of Treasury Regulations relating to Seizure of Property for Collection of Taxes (1954), 26 CFR (Revised as of Jan. 1, 1958) s 301.**6331**-1(a)(4)(ii), in pertinent part, provides:

'State and municipal **employees**. Accrued salaries, wages, or other compensation of any officer, **employee**, or elected or appointed official of a State or Territory, or of any agency, instrumentality, or political subdivision thereof, are also subject to **levy** to enforce collection of any Federal tax.'

This Regulation became effective on January 1, 1955, 1955-1 Cum.Bull., p. 195, s 7851, and therefore prior to the service on petitioner of the Government's notices of **levy** in October 1955.

[4] Although not disputing these principles,

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petitioner advances two arguments in support of his claim that the statutes do not authorize a **levy** on the accrued salaries of **employees** of a State. First, he contends that a State is not a 'person' within the meaning of s 6332, and, second, he argues that Congress, by specifically authorizing in s **6331** a **levy** 'upon the accrued salary or wages of any officer, **employee**, or elected official, of the United States, the District of Columbia, or any agency or instrumentality' thereof, but not similarly specifically authorizing **levy** upon the accrued salaries or wages of ***112 employees** of a State, evinced its intention to exclude the latter from such **levies**.

[5][6] Though the definition of 'person' in s 6332 does not mention States or any sovereign or political entity or their officers among those it 'includes' (Note 3), it is equally clear that it does ****645** not exclude them. This is made certain by the provisions of s 7701(b) of the 1954 Internal Revenue Code that 'The terms 'includes' and 'including' when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.' 26 U.S.C. (Supp. V) s 7701(b), 26 U.S.C.A. s 7701(b). Whether the term 'person' when used in a federal statute includes a State cannot be abstractly declared, but depends upon its legislative environment, *State of Ohio v. Helvering*, 292 U.S. 360, 370, 54 S.Ct. 725, 727, 78 L.Ed. 1307; *State of Georgia v. Evans*, 316 U.S. 159, 161, 62 S.Ct. 972, 973, 86 L.Ed. 1346. It is clear that s 6332 is stated in all-inclusive terms of general application. 'In interpreting federal revenue measures expressed in terms of general application, this Court has ordinarily found them operative in the case of state activities even though States were not expressly indicated as subjects of tax.' *Wilmette Park Dist. v. Campbell*, 338 U.S. 411, 416, 70 S.Ct. 195, 198, 94 L.Ed. 205, and cases cited. We think that the subject matter, the context, the legislative history, and the executive interpretation, i.e., the legislative environment, of s 6332 make it plain that Congress intended to and did include States within the term 'person' as used in s 6332.

[7][8] Nor is there merit in petitioner's contention that Congress, by specifically providing in s **6331**

for **levy** upon the accrued salaries of federal **employees**, but not mentioning state **employees**, evinced an intention to exclude the latter from **levy**. The explanation of that action by Congress appears quite clearly to be that this Court has held in *Smith v. Jackson*, 246 U.S. 388, 38 S.Ct. 353, 62 L.Ed. 788, that a federal disbursing officer might not, in the absence of express congressional authorization, set off an indebtedness of a federal **employee*113** to the Government against the **employee's** salary, and, pursuant to that opinion, the Comptroller General ruled that an 'administrative official served with (notices of **levy**) would be without authority to withhold any portion of the current salary of such **employee** in satisfaction of the notices of **levy** and distraint.' 26 Comp.Gen. 907, 912 (1947). It is evident that s **6331** was enacted to overcome that difficulty and to subject the salaries of federal **employees** to the same collection procedure as are available against all other taxpayers, including **employees** of a State.

Accordingly we hold that ss **6331** and 6332 authorize **levy** upon the accrued salaries of state **employees** for the collection of any federal tax.

[9][10][11] This brings us to petitioner's contention that even if the salaries of state **employees** are subject to **levy**, he is not personally liable to the Government for refusing to honor its **levies** because, contrary to the holding of the courts below, he was not a person 'obligated with respect to' the salaries covered thereby. Congress did not define the questioned phrase, nor do we feel called upon here to delimit its scope, for we think it includes, at least, a person who has the sole power to control disposition of the fund, and we also think that, under the West Virginia law, petitioner both had and exercised that power. By a West Virginia statute, 1 W.Va.Code, 1955, s 1013(1), (12-3-13a) he was empowered and obligated to deduct and withhold from the salaries of state **employees** sums 'to pay taxes as may be required by an act or acts of the congress of the United States of America'; and, similarly, another West Virginia statute, 2 W.Va.Code, 1955, s 3834(18), (38-5B-5), authorizes garnishments to be served upon him to sequester the salaries of state **employees**. He alone has the obligation and power to issue warrants for

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the payment of salaries, and state **employees** entitled to payment for services may enforce their rights by mandamus against him. *114**646State ex rel. Board of Governors of West Virginia University v. Sims, 133 W.Va. 239, 55 S.E.2d 505; State ex rel. Board of Governors of West Virginia University v. Sims, 136 W.Va. 789, 68 S.E.2d 489; State ex rel. Board of Governors of West Virginia University v. Sims, 140 W.Va. 64, 82 S.E.2d 321. By and to the extent of these West Virginia laws petitioner was obligated and empowered in respect to the sequestered salaries. These laws empowered him completely to control the disposition of that fund. He exercised that power by refusing to honor the Government's valid **levies** and to surrender the fund to the Government. Instead he surrendered the fund to the taxpayers. That action by petitioner resulted in defeat of the Government's valid **levies**.

[12] Upon these principles four judges who are constantly required to pass upon West Virginia laws have held that, under the law of that State, petitioner is a person who was obligated with respect to the salaries covered by the Government's **levies**. Their conclusion appears to be founded on reason and authority, and under familiar principles will be accepted here. *Propper v. Clark*, 337 U.S. 472, 486-487, 69 S.Ct. 1333, 1341-1342, 93 L.Ed. 1480. Being a person who, under the law of West Virginia, was obligated with respect to the salaries covered by the Government's **levies**, petitioner is, by s 6332(b), made personally liable to the Government in a sum equal to the amount, not exceeding the delinquent taxes, which he refused to surrender to the Government but surrendered instead to the taxpayers in defeat of the Government's **levies**. The judgment of the Court of Appeals was therefore correct and must be affirmed.

Affirmed.

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History

Direct History

- ▶ 1 U.S. v. Sims, 1957 WL 10964, 58-1 USTC P 9253, 52 A.F.T.R. 1774 (S.D.W.Va. Jul 24, 1957) (NO. CIV. ACTION 1794)
Judgment Affirmed by
- ▶ 2 Sims v. U.S., 252 F.2d 434, 1 A.F.T.R.2d 963, 58-1 USTC P 9269 (4th Cir.(W.Va.) Feb 07, 1958) (NO. 7525)
Certiorari Granted by
- H** 3 Sims v. U.S., 358 U.S. 809, 79 S.Ct. 24, 3 L.Ed.2d 54 (U.S.W.Va. Oct 13, 1958) (NO. 88)
AND Judgment Affirmed by
- => 4 **Sims v. U.S., 359 U.S. 108, 79 S.Ct. 641, 3 L.Ed.2d 667, 3 A.F.T.R.2d 966, 59-1 USTC P 9338, 1959-1 C.B. 636 (U.S.W.Va. Mar 23, 1959) (NO. 88)**

Court Documents

Appellate Court Documents (U.S.A.)

U.S. Appellate Briefs

- 5 Sims v. U.S., 1958 WL 91685 (Appellate Brief) (U.S. Dec. 12, 1958) **Brief for the Petitioner** (NO. 88)
- 6 Sims v. U.S., 1959 WL 101276 (Appellate Brief) (U.S. Jan. 21, 1959) **Brief for the United States** (NO. 88)

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