tained without abandoning principles long established and a host of precedents soundly based.

MR. JUSTICE MCREYNOLDS and MR. JUSTICE ROBERTS join in this opinion.

McGOLDRICK, COMPTROLLER OF THE CITY OF NEW YORK, *v.* FELT & TARRANT MFG. CO.*

CERTIORARI TO THE SUPREME COURT OF NEW YORK.

No. 45. Argued January 2, 1940.—Decided January 29, 1940.

Sales of merchandise for which orders were taken within the City of New York, subject to approval by the vendors in other States, and delivery of which, following such approval, was made to purchasers in that city, either by direct interstate shipment, or by interstate shipment to the vendor's New York City agency and delivery by the agent to the purchaser after inspection, tests, and adjustments,—*held* constitutionally subject to the New York City sales tax, on the authority of *McGoldrick* v. *Berwind-White Coal Mining Co., ante,* p. 33. P. 76.

279 N. Y. 678, 280 *id.* 688; 281 *id.* 608, 669, reversed.

CERTIORARI, 307 U. S. 620, to review judgments setting aside tax levies. See also, 254 App. Div. 246; 255 *id.* 961; 4 N. Y. S. 2d 615; 8 N. Y. S. 2d 667.

Mr. William C. Chanler, with whom *Messrs. Sol Charles Levine, Edmund B. Hennefeld,* and *Jerome R. Hellerstein* were on the briefs, for petitioner.

A state tax is void under the commerce clause only if in some way it interferes with the power of Congress to regulate commerce among the several States. That is a question of fact. Each statute must be judged upon its own facts. *Hump Hairpin Co.* v. *Emmerson,* 258 U. S. 290,

* Together with No. 474, *McGoldrick, Comptroller of the City of New York,* v. *A. H. DuGrenier, Inc., et al.,* also on writ of certiorari, 308 U. S. 545, to the Supreme Court of New York.

295; *Gregg Dyeing Co.* v. *Query,* 286 U. S. 472, 481; *Western Live Stock* v. *Bureau of Revenue,* 303 U. S. 250, 259. Cf. *Graves v. N. Y. ex rel. O'Keefe,* 306 U. S. 466.

This Court has recently sustained a state tax in a case involving one of these respondents, under circumstances identical in every respect with those here presented. *Felt & Tarrant Mfg. Co.* v. *Gallagher,* 306 U. S. 62, 64–66. Cf. *Southern Pacific Co.* v. *Gallagher,* 306 U. S. 167.

It is apparent that both the California and the New York taxes are upon the consumer, based upon his acquisition of property for consumption. The New York tax is as much a "use" tax as the California tax, and the California tax is as much a "sales" tax as the New York tax. Both are taxes on the consumer, both require collection by the vendor, and both are otherwise identical in substance and procedure.

Upon the facts, this case is indistinguishable from the recent case of *Graybar Electric Co.* v. *Curry,* 308 U. S. 513.

The fact that the orders for the goods in these two cases may have been accepted at the home office of the sellers in other States, does not subject the transactions to the danger of a greater burden than that borne by the local transactions.

The order is made in one State and the acceptance takes place in another. Neither activity has any realistic physical relationship to any locality. The purchaser might send his order by mail directly to Illinois or Massachusetts instead of delivering it to the seller's local agent in New York; or the seller might send the order back to its agent in New York, with its approval, to be accepted in New York by its agent. All of these are common business practices. No part of the making of the contract has any inherently local attributes.

By administrative interpretation and by decision of the state court, mere contracts of sale or the transfer of title without transfer of possession are not taxed. *Matter*

of Gunther's Sons v. *McGoldrick,* 279 N. Y. 148. The tax is imposed only upon local transfers of title and possession to purchasers.

The rule against multiple taxation has application only where the validation of a particular tax would necessarily compel the validation of an identical tax upon the identical counterpart of the identical transaction when imposed by another State. The fact that some different tax might be imposed upon a different taxpayer and upon a different phase of the same transaction by another State, does not subject interstate commerce to the danger of a burden of multiple taxation not borne by local commerce. The reason is that if such tax is valid its burden exists independently of the imposition of the tax at bar, and is a burden which will be equally borne by local commerce.

An apportioned tax on the making of contracts would be identical in effect with an apportioned gross receipts tax. Each State where some part of the activity took place could impose an apportioned tax upon the transaction, and local transactions would bear the same burden as interstate transactions.

Mr. Newton K. Fox for respondent in No. 45.

The sales were not local and are therefore not intended to be taxed by the New York Law. *Matter of National Cash Register Co.* v. *Taylor,* 276 N. Y. 208, 213–214, cert. den., *sub nom. McGoldrick* v. *National Cash Register Co.,* 303 U. S. 656.

Taxation of the sales is prohibited by the commerce clause. Cases *supra.*

See: *Robbins* v. *Shelby County Taxing District,* 120 U. S. 489; *Stewart* v. *Michigan,* 232 U. S. 665; *Dozier* v. *Alabama,* 218 U. S. 124; *Brennan* v. *Titusville,* 153 U. S. 289; *Rearick* v. *Pennsylvania,* 203 U. S. 507; *Crenshaw* v. *Arkansas,* 227 U. S. 389; *Caldwell* v. *North Carolina,* 187

U. S. 622; *Cheney Bros.* v. *Massachusetts,* 246 U. S. 147; *Alpha Cement Co.* v. *Massachusetts,* 268 U. S. 203.

The commerce clause protects all contracts, negotiations and sales of goods shipped in interstate commerce. *Federal Trade Commission* v. *Pacific States Paper Trade Assn.,* 273 U. S. 52, 64; *Real Silk Mills* v. *Portland,* 268 U. S. 325, 333; *Robbins* v. *Shelby County Taxing District,* 120 U. S. 489; *Stewart* v. *Michigan,* 232 U. S. 665.

Where goods are purchased in one State for transportation to another, the "commerce" includes the purchase quite as much as it does the transportation. *Currin* v. *Wallace,* 306 U. S. 1, 10.

Where commodities are bought for use beyond state lines, the sale is a part of interstate commerce and both the buying and selling are interstate commerce and are not subject to state regulation. *United States* v. *Rock Royal Co-op.,* 307 U. S. 533, 569; *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U. S. 282, 290, 291; *Lemke* v. *Farmer's Grain Co.,* 258 U. S. 50, 54–55; *Shafer* v. *Farmer's Grain Co.,* 268 U. S. 189, 198–199; *Federal Trade Comm'n* v. *Pacific States Paper Trade Assn.,* 273 U. S. 52, 64; *Kidd* v. *Pearson,* 128 U. S. 1, 20; *Sonneborn* v. *Cureton,* 262 U. S. 506; *Ware & Leland* v. *Mobile County,* 209 U. S. 405; *Highland Farms Dairy* v. *Agnew,* 300 U. S. 608, 615.

A State can not lay a tax on interstate commerce in any form. *Cooney* v. *Mountain States T. & T. Co.,* 294 U. S. 384, 392; *Helson* v. *Kentucky,* 279 U. S. 245, 249; *Alpha Cement Co.* v. *Massachusetts,* 268 U. S. 203; *National Labor Relations Board* v. *Fainblatt,* 306 U. S. 601; *Gwin, White & Prince, Inc.* v. *Henneford,* 305 U. S. 434, 437; *Foster Packing Co.* v. *Haydel,* 278 U. S. 1, 10.

The New York City tax, by erroneous administration, becomes a burden on interstate commerce. It must be borne in mind that the tax in this case was imposed upon

and collected from a foreign manufacturer and not from a local purchaser in New York City. The amount of tax payable by the manufacturer to the City depends entirely upon the amount of interstate business done, namely, 2% on all gross sales made in New York City. It is therefore a direct charge on interstate business and a burden on such commerce. *Adams Mfg. Co.* v. *Storen,* 304 U. S. 307, 311–312; *Gwin, White & Prince, Inc.* v. *Henneford,* 305 U. S. 434; *Anglo-Chilean Corp.* v. *Alabama,* 288 U. S. 218.

There is also the risk of multiple taxation. *Gwin, White & Prince, Inc.* v. *Henneford,* 305 U. S. 434, 439–440.

When the City of New York compels an Illinois corporation, which is not authorized to do business in New York, to act as a collecting agency for the City, compels it to file returns, to make reports, and to incur substantial additional costs and expenses, the City is attempting to exercise its sovereign powers beyond its jurisdiction. That it can not do without burdening interstate commerce.

Invalidation of this tax would not cause discrimination against New York manufacturers and merchants.

The orders for the machines were directed to the manufacturer in Illinois, and there accepted or rejected. A machine by serial number was appropriated to each order in Illinois and shipped to the purchaser in New York. The purchaser was billed from Chicago and remitted directly to Chicago. Thus the elements of local sales are lacking.

Testing of the machines before delivery to customers was in furtherance of interstate commerce. *Dozier* v. *Alabama,* 218 U. S. 124; *Rearick* v. *Pennsylvania,* 203 U. S. 507; *Caldwell* v. *North Carolina,* 187 U. S. 622; and *Crenshaw* v. *Arkansas,* 227 U. S. 289.

Mr. John H. Jackson, with whom *Mr. Haig H. Davidian* was on the brief, for respondents in No. 474.

The tax is violative of the commerce clause because it imposes a direct and immediate burden upon transactions constituting interstate commerce. Where the subject matter of the tax is some integral part of the process of interstate commerce, the state tax is bad without regard to discrimination. Upon this point the decisions of this Court have been consistent from *Robbins* v. *Shelby County Taxing District,* 120 U. S. 489, to the recent decisions in *Adams Mfg. Co.* v. *Storen,* 304 U. S. 307, and *Gwin, White & Prince, Inc.* v. *Henneford,* 305 U. S. 434. *U. S. Glue Co.* v. *Town of Oak Creek,* 247 U. S. 321, 328; *Ozark Pipe Line Corp.* v. *Monier,* 266 U. S. 555, 568 (dissent); *Nashville, C. & St. L. Ry. Co.* v. *Wallace,* 288 U. S. 267; *Coverdale v. Arkansas-Louisiana Pipe Line Co.,* 303 U. S. 604; *Crew Levick Co.* v. *Pennsylvania,* 245 U. S. 292; *Spalding & Bros.* v. *Edwards,* 262 U. S. 66, 69; *Cooney* v. *Mountain States Tel. Co.,* 294 U. S. 384, 393.

The tax is violative of the commerce clause because it exposes the manufacturer to the danger of double taxation on the same transaction. The contract of sale was made in Massachusetts and it is beyond the possibility of dispute that it would be taxable there.

As an economic fact the tax is discriminatory as against residents of other States and tends substantially to discourage the sale of vending machines in interstate commerce.

If a State were free to tax the sale of goods in interstate commerce, provided only that it taxed its own identical goods at the same rate, the power could easily be used to exclude goods of a type not locally manufactured in order to give an advantage to local manufacturers of goods which could be substituted for them.

Felt & Tarrant Mfg. Co. v. *Gallagher,* 306 U. S. 62, is not analogous.

MR. JUSTICE STONE delivered the opinion of the Court.

These are companion cases to *McGoldrick* v. *Berwind-White Coal Mining Co., ante,* p. 33. As in that case the question for decision is whether the New York City tax laid upon sales of goods for consumption as applied to respondents infringes the commerce clause of the Federal Constitution.

Upon certiorari to review determinations by the Comptroller of the City of New York, that each of the respondents was subject to the tax, the Appellate Division of the New York Supreme Court set the levy aside. *Matter of Felt & Tarrant Mfg. Co.* v. *Taylor,* 254 App. Div. 246; 4 N. Y. S. 2d 615; *Matter of A. H. DuGrenier, Inc.,* 255 App. Div. 961; 8 N. Y. S. 2d 667. The New York Court of Appeals, without opinion, affirmed the judgment in each case, 279 N. Y. 678; 18 N. E. 2d 311; 281 N. Y. 608; 22 N. E. 2d 172, but by its amended remittitur declared that the affirmance was upon the sole ground that the tax infringed the commerce clause of the Federal Constitution, 280 N. Y. 688; 281 N. Y. 669. The relevant provisions of the taxing act are set out in our opinion in the *Berwind-White Company* case and need not be repeated here.

Respondent, Felt & Tarrant Mfg. Co., an Illinois corporation, with its factory and principal place of business in that state, manufactures and sells adding and calculating machines known as comptometers. It maintains an office in New York City, from which its agents solicit in the city orders for comptometers, which are forwarded to the Illinois office for approval. If accepted each order is filled by allocating to it the purchased comptometer designated by its serial number. It is invoiced to the purchaser and shipped to the New York City office of respondent's sales agent, where it is inspected, tested and adjusted, and then delivered to the purchaser. Remit-

tances are made by the purchaser direct to the Illinois office. The course of business in soliciting and filling orders so far as now material is that of the same company, described in *Felt & Tarrant Mfg. Co.* v. *Gallagher,* 306 U.S. 62.

Respondent, DuGrenier, Inc., a Massachusetts corporation with its factory and principal office in that state, is engaged in the manufacture and sale of automatic vending machines. They are sold throughout the United States by an exclusive sales agent, the respondent Stewart & McGuire, Inc., having an office in New York City. The sales in the city, when not of machines located at the New York office, are effected through solicitations of orders by the agent, which takes from the prospective purchaser a signed order or a contract for a conditional sale on partial payment, which is forwarded by the agent to the Massachusetts office. If accepted there the order is filled by shipping the purchased machine by rail or truck direct to the purchaser in New York City, who pays the freight.

In both cases the tax was imposed on all the sales of merchandise for which orders were taken within the city and possession of which was transferred to the purchaser there. Decision in both is controlled by our decision in the *Berwind-White Company* case. For reasons stated at length in the opinion in that case the tax so laid does not infringe the commerce clause. The judgments will be reversed and the causes remanded for further proceedings not inconsistent with this opinion.

Reversed.

The Chief Justice, Mr. Justice McReynolds, and Mr. Justice Roberts dissent from the judgments in these cases upon the grounds stated in the dissenting opinion in *McGoldrick* v. *Berwind-White Coal Mining Co., ante,* p. 59.