

## Federal and New York State Administration of the Estate Tax Law Applicable to Joint Estates and Estates by the Entirety

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## TAX COMMENT

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FEDERAL AND NEW YORK STATE ADMINISTRATION OF THE ESTATE TAX LAW APPLICABLE TO JOINT ESTATES AND ESTATES BY THE ENTIRETY.—Estate taxes, or death taxes, as they are generally called, are of great antiquity. This mode of taxation was instituted by the Romans in the days of Augustus and was used by the nations of Europe throughout the Middle Ages, as it is now being used by the governments of the twentieth century.<sup>1</sup> These taxes are usually imposed, either on the privilege of a decedent to transfer property or on the privilege of an heir or legatee to receive property; the former being the nature of the federal estate tax now in effect.<sup>2</sup> Congress in the Constitution is given the power to levy taxes<sup>3</sup> and it has long since been settled that our federal government through its legislative branch has the power to tax transmission of legacies.<sup>4</sup> Such a tax is an excise or duty<sup>5</sup> and not a direct tax which requires apportionment under the Constitution, nor is it a tax upon property. It is simply a tax upon the transfer or transmission of property by will or descent,<sup>6</sup> and as such is not an unconstitutional interference with the rights of the states to regulate descent and distribution.<sup>7</sup>

The federal estate tax law in effect now, in so far as it pertains to the interest of a deceased in property held jointly or by the entirety, is embodied in Section 302 (e) of the Revenue Act of 1926.<sup>8</sup> At common law such estates were not subject to a transfer

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<sup>1</sup> COOLEY, TAXATION (4th ed.) 136.

<sup>2</sup> MONTGOMERY, FEDERAL TAX HANDBOOK (1932) 736; Young Men's Christian Association v. Davis, 264 U. S. 47, 44 Sup. Ct. 291 (1924); Edwards v. Slocum, 264 U. S. 61, 44 Sup. Ct. 293 (1924).

<sup>3</sup> UNITED STATES CONSTITUTION, Act 1, Section 8, Clause 1.

<sup>4</sup> Knowlton v. Moore, 178 U. S. 41, 20 Sup. Ct. 747 (1900).

<sup>5</sup> Shwab v. Doyle, 258 U. S. 529, 42 Sup. Ct. 391 (1922).

<sup>6</sup> *Supra* note 4; United States v. Perkins, 163 U. S. 625, 16 Sup. Ct. 1073 (1896).

<sup>7</sup> New York Trust Company v. Eisner, 256 U. S. 345, 41 Sup. Ct. 506 (1921).

<sup>8</sup> 44 Stat. 70, 26 U. S. Code 1094 (e). "The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property \* \* \* (e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, \* \* \* except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than a fair consideration in money or money's worth \* \* \*." This estate tax is based on the Revenue Act of 1916, 39 Stat. 777, which has frequently been amended. REVENUE ACT OF 1918, 40 Stat. 1097; REVENUE ACT OF 1921, 42 Stat. 227; REVENUE ACT OF 1924, 43 Stat. 303; REVENUE ACT OF 1926, 44 Stat. 69.

tax upon the death of one of the tenants inasmuch as the undivided interest of decedent was deemed to have passed to the survivor, not by event of death, but by the instrument creating the estate.<sup>9</sup> However, under the statute<sup>10</sup> they are subject to the federal estate tax regardless of when the tenancy was created.<sup>11</sup> The Supreme Court held in *Tyler v. United States*<sup>12</sup> that an earlier provision<sup>13</sup> corresponding to Section 302(e) was not invalid as imposing a direct tax without apportionment, or being "arbitrary and capricious,"<sup>14</sup> for at the deceased's death, and because of it, the survivor "for the first time became entitled to exclusive possession, use and enjoyment" of the estate; "she ceased to hold the property subject to qualifications imposed by law relating to tenancies by the entirety, and became entitled to hold and enjoy it absolutely as her own."<sup>15</sup> Then, and then only, did she acquire the power not theretofore possessed of disposing of the property by an exercise of her sole will. In *Phillip v. The Dime Trust and Safe Deposit Company*<sup>16</sup> the applicability of the corresponding section of the Revenue Act of 1924 to property held in tenancies by the entirety created before 1924, but after 1916,<sup>17</sup> was before the court. That case held this section not to be capricious and arbitrary in respect to such property. The statute involved herein is expressly made applicable to estates created and existing before the passage of the act;<sup>18</sup> the same provision with little variation appearing in the 1916 and successive acts.<sup>19</sup> This type of property interest has therefore been embraced within an established taxing system prior to the creation of the estates in question, and the fact that it was so embraced, of necessity, relieves the statute of the objection that it is arbitrarily retroactive. To hold otherwise would make the statute amenable to evasion, and would be entirely opposed to the expressed intention of Congress. These opinions, however, failed to expressly pass on the constitutionality of a tax on joint estates or estates by the

<sup>9</sup> *Infra* note 36.

<sup>10</sup> *Supra* note 8.

<sup>11</sup> *Infra* notes 12, 14, 16, 23 and 24.

<sup>12</sup> 281 U. S. 497, 50 Sup. Ct. 356 (1930); (1930) 5 ST. JOHN'S L. REV. 135.

<sup>13</sup> REVENUE ACT OF 1916, §202 (c), 39 Stat. 777, 778.

<sup>14</sup> This case involved a tenancy by the entirety created subsequent to the enactment of the taxing act before the court.

<sup>15</sup> *Supra* note 12, at 504.

<sup>16</sup> 284 U. S. 160, 52 Sup. Ct. 46 (1931).

<sup>17</sup> This is the year in which the first law containing a similar section was enacted.

<sup>18</sup> §302, subd. (h) of Revenue Act of 1924 reads: "Subdivisions (b), (c), (d), (e), (f), (g) of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this act."

<sup>19</sup> §202, REVENUE ACT OF 1916, 39 Stat. 756, 777-778; §300, REVENUE ACT OF 1917, 39 Stat. 1000, 1002; §402, REVENUE ACT OF 1918, 40 Stat. 1057, 1097; §402, REVENUE ACT OF 1921, 42 Stat. 227, 278.

entirety, created prior to 1916,<sup>20</sup> for such estates were not involved therein. The language of the court in the *Tyler* case,<sup>21</sup> that "The death of one of the parties to the tenancy became the generating source of important and definite accession to the property rights of the other," leads one to believe that by implication, the constitutionality of such a tax could have been upheld. But it was not until the Supreme Court had before it a set of facts and circumstances which required of it a definite expression as to the effect of a tax on such an estate, that we find the rule directly stated, the court holding taxable a transfer of property which was owned under a joint tenancy created by a transfer in 1915. In June, 1915, J. H. Gwin, the petitioner in the case, and his mother, residents of California, acquired by equal contribution certain property as joint tenants which they continued to hold until her death on October 5, 1924. The Commissioner of Internal Revenue included the value of one-half of the property which decedent and her son had acquired as stated in arriving at the federal estate tax. This was challenged as error. The Supreme Court affirmed the commissioner's ruling and pointed out that by this transfer the rights of possible survivorship were not irrevocably fixed, since under the state law the joint estate might have been terminated through voluntary conveyance by either party, through proceedings for partition, or through an involuntary alienation under an execution. The right to effect these changes in the estate were not terminated until the co-tenant's death. Cessation of this power after enactment of the Revenue Act of 1924<sup>22</sup> presented proper occasion for imposition of the tax. *The death became the generating source of definite accession to the survivor's property rights.*<sup>23</sup> This rule has recently been extended to apply to the interests of decedents in estates by the entirety created prior to 1916.<sup>24</sup>

In its most recent expression on this subject,<sup>25</sup> the Supreme Court was deciding the effect of the estate tax on real property situated in Illinois which was conveyed in 1909 to decedent and his wife "not in tenancy in common, but in joint tenancy," it not appearing whether the wife made any contribution to the cost of the real estate. The husband died in 1923. Section 402 of the Revenue Act of 1921<sup>26</sup> in effect at the date of the husband's death, provided: "That the value of the gross estate of the decedent shall

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<sup>20</sup> *Supra* note 17.

<sup>21</sup> *Supra* note 12.

<sup>22</sup> This act in respect to taxing joint estates is similar to the one now in effect. *Supra* note 8.

<sup>23</sup> *Gwin v. Commissioner of Internal Revenue*, 287 U. S. 224, 53 Sup. Ct. 157 (1932).

<sup>24</sup> *Third National Bank and Trust Company v. White*, 287 U. S. 577, 53 Sup. Ct. 290 (1932).

<sup>25</sup> *Griswald et al. v. Commissioner of Internal Revenue*, 290 U. S. —, 54 Sup. Ct. 5 (1933).

<sup>26</sup> 42 Stat. 278.

be determined by including the value at the time of his death of all property \* \* \* (d) To the extent of the interest therein held jointly or as tenants by the entirety by the decedent and any other person \* \* \* except such part thereof as may be shown to have belonged to such other person and never to have been received or acquired by the latter from the decedent for less than a fair consideration in money or money's worth. \* \* \*

No express provision was made in the section as to whether the statute referred to transfers made and estates created before or after the passage of the act. In their return for the federal estate tax, the executors of the deceased husband did not include any of the value of this property thus held by the husband and wife as joint tenants. The Commissioner of Internal Revenue valued the real estate at \$90,000 and included the whole of it in the value of the decedent's gross estate, as being within the reach of Section 402(d). Upon appeal the Board of Tax Appeals held that the value of only the husband's one-half of the property could be included for the purposes of the tax.<sup>27</sup> Both the petitioners and the commissioner appealed to the Circuit Court of Appeals. The latter appeal was dismissed on motion of the commissioner and the only question remaining for determination was as to the taxation of half of the property. The Circuit Court affirmed the decision of the Board of Tax Appeals.<sup>28</sup> On a writ of certiorari, the judgment was affirmed.

Mr. Justice Sutherland, writing the opinion, states:

"Whether this application of the statute gives it a retroactive effect is the sole question here involved; and with it we find no difficulty. *Under the statute the death of the decedent is the event in respect of which the tax is laid.*<sup>29</sup> It is the existence of the joint tenancy at that time, and not its creation at the earlier date, which furnishes the basis for the tax. By judgment under review, only half of the value, that is to say, the value of decedent's interest, has been included, leaving the survivor's interest unaffected. After the creation of the joint tenancy, and until his death, decedent retained his interest in, and control over, half of the property. *Cessation of that interest and control presented proper occasion for the imposition of the tax.*"<sup>30</sup>

This decision not only holds to the federal rule as enunciated in former Supreme Court decisions,<sup>31</sup> but in no way changes the

<sup>27</sup> *Griswald et al. v. Commissioner of Internal Revenue*, 23 B. T. A. 635 (1931).

<sup>28</sup> *Griswald et al. v. Commissioner of Internal Revenue*, 62 Fed. 591 (C. C. A. 7th, 1932).

<sup>29</sup> Italics own.

<sup>30</sup> *Ibid.*; *supra* note 23 and cases cited.

<sup>31</sup> *Supra* notes 23 and 24.

effect of the statute as to the amount taxable upon decedent's death,<sup>32</sup> for this latter point was not at issue.

New York State, prior to September 1, 1930,<sup>33</sup> had experimented greatly with the taxation of joint estates and had made many changes with the inheritance tax imposed thereon.<sup>34</sup> As a result, the taxability of any joint estate before 1930 generally depended (1) upon the date of decedent's death and (2) upon the date of the creation of such estate. If the death occurred after June 30, 1925 and before September 1, 1930, a joint estate was subject to the inheritance tax, irrespective of when the estate was created, as though the decedent was the owner of a fractional part and had bequeathed such part to the survivor. The entire value of the property was divided into the number of joint tenants and the quotient was subject to the tax.<sup>35</sup> Where the death occurred before July 1, 1925, the following rules prevailed: (1) If the estate was created before May 20, 1915, and the decedent died before such date, no inheritance tax was imposed;<sup>36</sup> (2) if the estate was created before May 20, 1915, and the decedent died after this date the transfer was subject to the inheritance tax to the extent of deceased's interest on that date;<sup>37</sup> (3) if the estate was created

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<sup>32</sup> The property is included in the gross estate to the extent that the decedent had any interest therein. In joint estates and estates by the entirety, upon the death of one tenant, that proportion of the value of the property equal to the proportion he or she contributed to it will be taxable. Where no contribution has been made by any tenant, that is, for example, where the property was acquired by gift or inheritance, and there is no provision governing the interest of each tenant in the joint tenancy (there is no need for such provision in a tenancy by the entirety, for at law each tenant thereof is deemed to have an equal share), each is deemed to have an equal share and upon death of one his ratable interest is taxable to his estate.

<sup>33</sup> The present estate tax law of New York became effective on this date. TAX LAW, art. 10c, L. 1930, c. 710.

<sup>34</sup> Prior to 1915, New York followed the common law rule. On May 20, 1915, provision was made (N. Y. Laws [1915] c. 664) for the taxation of joint estates in intangible personal property as though the whole property belonged absolutely to the deceased owner and had been transferred to the survivor by will, the entire property passing to the survivor was taxable. In 1916 the rule was amended (N. Y. Laws [1916] c. 323) to include all property, both real and personal, tangible and intangible. In 1925 the law was again changed (N. Y. Laws [1925] c. 143) to subject the estate to taxation as though the decedent had been the owner of a fractional part of the property and had bequeathed his portion to the survivor, only that portion being taxable.

<sup>35</sup> N. Y. STATE ESTATE TAX LAW, art. 10, 10A, L. 1925, c. 143.

<sup>36</sup> *Re Thompson*, 217 N. Y. 609, 111 N. E. 1101 (1915); *Matter of Carnegie*, 236 N. Y. 517, 142 N. E. 266 (1922); *cf. Matter of Pitou*, 79 Misc. 384, 140 N. Y. Supp. 919 (1913); *Matter of Reed*, 82 Misc. 632, 154 N. Y. Supp. 247 (1915).

<sup>37</sup> *Matter of McKelway*, 221 N. Y. 15, 116 N. E. 348 (1917). The joint estate in this case was created before 1915 and the husband died after the passage of the 1915 amendment taxing joint estates. The court held that a half interest in the property belonged to the wife in her own right before the amendment of the transfer tax act, and that a half passed to her thereafter as survivor of her husband. The tax was restricted to the half, thus accruing by survivorship after the passage of the act. *Cf. Re Wintjen*, 99 Misc. 471,

after May 20, 1915, and decedent died before 1925, the entire estate was subject to the inheritance tax.<sup>38</sup>

In so far as estates by the entirety are concerned, in New York they are confined to the ownership of real property<sup>39</sup> and they, as the joint estates, before 1930, were dependent upon the date of decedent's death and upon the date of the creation of such estates. For inheritance tax purposes before 1930, these estates may be divided into three groups: (1) where the estate was created before April 26, 1916;<sup>40</sup> (2) where the estate was created on or after April 26, 1916, and one of the tenants died before April 17, 1924; (3) where the estate was created on or after April 26, 1916, and one of the tenants died on or after April 17, 1924. In the first case, no tax is imposed regardless of the date when the death occurred. In the second case, the whole property is subject to the tax as though it had belonged absolutely to the decedent and had been transferred to the survivor by will. In the third instance, one-half of the property is taxable as though that half belonged to the decedent and had been transferred to the survivor by will.<sup>41</sup>

The above interpretations and application by the New York courts of these amendments to the transfer tax act<sup>42</sup> created a very complicated set of affairs in the then existent law. To simplify the situation and to lighten the burden of the lawyer, the legislature on September 1, 1930, enacted a new estate tax law.<sup>43</sup> At the same time that this new rule went into effect, a new method of taxing transfers of property became effective. The old law applied to estates of decedents who died prior to September 1, 1930, but the new method is used for all transfers that take place due to death occurring on or after that date. The general purpose of this new estate tax is to facilitate the harmonizing of the death

165 N. Y. Supp. 927 (1917); *In re Horler's Estate*, 180 App. Div. 608, 168 N. Y. Supp. 221 (1917); *Matter of Ludwig*, 113 Misc. 263, 184 N. Y. Supp. 542 (1920); *Matter of Reynolds*, 120 Misc. 424, 199 N. Y. Supp. 494 (1923).

<sup>38</sup> *Matter of Dolbeer's Estate*, 226 N. Y. 623, 123 N. E. 381 (1919); *Matter of Cossitt's Estate*, 236 N. Y. 524, 142 N. E. 268 (1923). The appellate division (204 App. Div. 545, 198 N. Y. Supp. 560 [1923]), in this latter case, after adverting to the conflicting views of the various surrogates' courts, held that a joint estate created subsequent to the 1915 amendment was subject to a transfer tax on its full amount. The Court of Appeals, in affirming, disposed of the doubt in so far as the law prevailing before the 1925 amendment was applicable.

<sup>39</sup> *Matter of Albrecht*, 136 N. Y. 91, 36 N. E. 632 (1891); *In re Blumenthal's Estate*, 236 N. Y. 448, 141 N. E. 911 (1923).

<sup>40</sup> See *In re Lyons Estate*, 233 N. Y. 208, 135 N. E. 247 (1933). It was held, in this decision, that property which was acquired in a tenancy by the entirety before the enactment of any such transfer tax statute, was exempt from taxation.

<sup>41</sup> Art. 105, Reg. §220 (5), art. 10 TAX LAW; §248 (4), art. 10A TAX LAW, N. Y. Laws (1925) c. 143.

<sup>42</sup> *Supra* notes 34, 35, 36, 37, 38, 40 and 41.

<sup>43</sup> Art. 10C, TAX LAW, N. Y. Laws (1930) c. 710.

taxes of the state and federal governments. It therefore follows as closely as it can, the provisions of the federal estate tax law.<sup>44</sup>

Section 249(r)<sup>45</sup> provides, as does the federal statute,<sup>46</sup> that upon the death of a husband or wife who are tenants by the entirety a tax is payable on the value of the property less such part as can be shown to have originally belonged to the survivor. The question has arisen, may the tax imposed by this section be applied to property in which decedent was interested during his lifetime as a tenant by the entirety when such tenancy was created prior to the effective date of the statute and prior to the time when property so held was first selected in any of the estate tax laws as an appropriate subject of taxation?<sup>47</sup> The Court of Appeals in the *Estate of Robert Weiden*,<sup>48</sup> its most recent expression on the point, answered in the affirmative. In this case five parcels of real estate were conveyed to husband and wife as tenants by the entirety between the years 1893 and 1908. At the time of the husband's death, Section 249(r) of the Tax Law was in effect.<sup>49</sup> The appraiser included thereunder, in the gross estate of the husband, the whole value of the real estate, no showing being made that the wife had any previous interest in the property or made any contribution to the cost of acquisition. Upon an appeal from a *pro forma* order assessing the tax the Surrogate's Court of Kings County held that the property should not have been included in the deceased husband's gross estate, and that Section 249(r) of the Tax Law, in so far as it applied to tenancies by the entirety created prior to 1916, violated the Constitutions of the United States and of the state of New York.<sup>50</sup> The Appellate Division affirmed.<sup>51</sup> Upon appeal to the Court of Appeals that court, in a *per curiam* opinion, reversed and remitted the matter to the surrogate for the purpose of including in the transfer tax the estate by the entirety.

The court, in its opinion, states,

"In *Tyler v. United States*,<sup>52</sup> *Gwin v. Commissioner*,<sup>53</sup> and *Third National Bank and Trust Company v. White*,<sup>54</sup> the

<sup>44</sup> Compare §249 (r) of the New York Estate Tax with §302 (e) of the Federal Estate Tax Law and note the similarity.

<sup>45</sup> *Supra* note 43.

<sup>46</sup> §302 (e), *supra* note 8.

<sup>47</sup> The New York State Legislature first authorized such tax in 1916, c. 323, Laws 1916.

<sup>48</sup> N. Y. Court of Appeals, November 21, 1933; N. Y. L. J., December 4, 1933, at 2067.

<sup>49</sup> *Supra* note 43.

<sup>50</sup> *Matter of Weiden*, 144 Misc. 854, 259 N. Y. Supp. 573 (1932) and 146 Misc. 381, — N. Y. Supp. — (1933).

<sup>51</sup> 240 App. Div. 716, — N. Y. Supp. — (1933), amending 239 App. Div. 852, — N. Y. Supp. — (1933).

<sup>52</sup> *Supra* note 12.

<sup>53</sup> *Supra* note 23.

<sup>54</sup> *Supra* note 24.

Supreme Court has indicated that the tax does not violate the provisions of the United States Constitution. We will apply the same rules in determining the effect of similar provisions of the constitution of this state, for the purpose of maintaining the uniformity of administration of the Tax Law<sup>55</sup> which the Legislature has sought to achieve."

In a prior proceeding<sup>56</sup> decided in October, 1932, before the decision in the *Matter of Weiden*<sup>57</sup> was rendered by the Court of Appeals, Surrogate Foley held that the whole value of three mortgages acquired by a husband and wife as joint tenants in 1922 and 1928 should not be included in the gross estate of the husband, who died on December 30, 1930, but that only one-half of the property was subject to the New York estate tax. This issue arose again in the *Dwyer* case upon a subsequent appeal by the State Tax Commission from the order fixing the estate tax. In this latter proceeding Surrogate Foley held that the rules which he had deemed applicable in his prior decision in the *Dwyer Estate*<sup>58</sup> had been swept away by the decision in the *Matter of Weiden*,<sup>59</sup> and that therefore the entire value of the mortgages should be included in the gross estate of the husband, it being conceded that the wife had made no contribution to the joint property.

The surrogate stated:

"The date of the creation of the estate is no longer material. The change of the existing taxing statute, either in form from a transfer tax to an estate tax, or by any substantial change in the rate of tax, is immaterial. The Court of Appeals has adopted the rule of the United States Supreme Court, that the death of one of the parties is the 'generating source'<sup>60</sup> of the succession to the entire property and the whole fund or property must be included in the gross estate of the decedent."<sup>61</sup>

These two cases, the *Weiden* case<sup>62</sup> and the *Dwyer* case,<sup>63</sup> in overruling the prior decisions in the *Matter of McKelway*<sup>64</sup> and the *Matter of Lyon*,<sup>65</sup> have recognized and effectuated the intent

<sup>55</sup> Consolidated Laws, c. 60.

<sup>56</sup> Estate of Dwyer, 145 Misc. 603, 260 N. Y. Supp. 120 (1932).

<sup>57</sup> *Supra* note 48.

<sup>58</sup> *Supra* note 56.

<sup>59</sup> *Supra* note 48.

<sup>60</sup> Tyler v. United States, *supra* note 12.

<sup>61</sup> Estate of John Dwyer, N. Y. County Surrogates' Court, November 28, 1933; N. Y. L. J., December 4, 1933, at 2067.

<sup>62</sup> *Supra* note 48.

<sup>63</sup> *Supra* note 61.

<sup>64</sup> *Supra* note 37.

<sup>65</sup> *Supra* note 40.

of the decedent estate commission and the tax commission, which recommended, and the legislature, which enacted the new Estate Tax Law, which intent, as we have seen, was to "harmonize so far as possible the construction and application of the federal and of the state statutes." Briefly stated, the present New York rule, on this point, as its federal counterpart, makes death of one of the parties the "generating source" of the succession to the entire property, and the whole fund or property must be included in the gross estate of the decedent. The application of this general rule would be unfair, unreasonable and illogical in the case of a survivor who had made contribution or who had been, with the decedent, a beneficiary of a gift, bequest or devise which had created the estate. It is the death of the grantor which brings about "that shifting of the economic benefits of the property which is the real subject of the tax."<sup>66</sup> In the case of a tenant who has contributed to the cost of the estate or who has been the recipient of such bequest, devise or gift, there is no shifting of the economic benefits from the deceased upon which the tax might be levied, for from the time of the estate's creation, the survivor was entitled to such economic benefits of his proportionate share. The New York legislature has wisely and prudently adopted the exception to the general rule, as embodied in the federal statute,<sup>67</sup> that there shall be excepted such part of the value of the property "as is proportionate to the consideration furnished" by the survivor; or, "where property has been acquired by gift, bequest, devise or inheritance, as in a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or where so acquired by the decedent and any other person as joint tenants \* \* \*, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants."<sup>68</sup>

MURRAY W. DUBERSTEIN.

INCOME TAX—ANNUITIES AND INCOMES OF TRUSTS.—As the law governing the taxation of incomes has been of comparatively recent development, it is natural to find that the early decisions of the courts concerning the taxability of different kinds of incomes have left many points unsettled, requiring later decisions to determine their status for taxation purposes. Within the last decade, for example, the courts have been confronted with a series of cases presenting the question whether, in a given instance, that which the donee acquired under a will was a bequest or was income. If

<sup>66</sup> Chase National Bank v. United States, 278 U. S. 327, 49 Sup. Ct. 126 (1928).

<sup>67</sup> REVENUE ACT OF 1926, §302 (e); *supra* note 8.

<sup>68</sup> N. Y. ESTATE TAX LAW §249—1 (5); *supra* note 43.