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Federal Estate Tax--California Estate Tax as a Deduction

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situation discriminated against must be shown to be precisely the same as that included in the class which is shown to be favored.[3] Whatever inequality of burden results from the statute in question comes from the election of certain taxpayers to avail themselves of privileges offered to all, and not an arbitrary classification by the legislature.[4] From the holdings of the courts in previous decisions relating to similar statutes, it seems clear that Section 214-A of the Tax Law bears a real and reasonable relation to the privilege granted, is not unnecessarily burdensome, and is not violative of the Federal Constitution.[5]

In adjudicating the instant case, the Court would not give a false interpretation to the statute which is clear and unequivocal.[6] The judiciary will not construe a statute so as to give to it a meaning neither intended nor warranted by the language used.[7] Once again, the Court, in its liberal construction of the equality clause of the 14th Amendment of the Federal Constitution, gives to the state great power in its constitutional right of taxation.

A. H.

FEDERAL ESTATE TAX—CALIFORNIA ESTATE TAX AS A DEDUCTION.—On April 25, 1917, Rosa Von Zimmerman, an enemy alien, died testate. Her will was probated and taxes paid to the Federal and State Governments. The Alien Property Custodian, under act of Congress, served notice on the executors to surrender the estate to him and it was in his hands until the passage of the Winslow Act.[1] This action was brought by Kombst and other residuary legatees joined with the Alien Property Custodian who allege that the tax paid to the state of California is a deductible item for computation of Federal Estate Tax. As the action was brought eight years after

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does not violate the provision if, within the sphere of its operation, it affects alike all persons similarly situated. See also 1 COOLEY, THE LAW OF TAXATION (1924) §§249, 357, 358.

[3] Bradley & Co. v. City of Richmond, 110 Va. 521, 66 S. E. 872 (1910).

[4] Merchants and Manufacturers Bank v. Pennsylvania, 167 U. S. 461, 17 Sup. Ct. 829 (1897).

[5] Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113, 41 Sup. Ct. 45 (1920); People *ex rel.* Bass, Ratcliff & Gretton v. State Tax Commission, 232 N. Y. 42, 133 N. E. 122, 266 U. S. 271, 45 Sup. Ct. 82 (1924); National Company v. Commonwealth of Massachusetts, 277 U. S. 413, 48 Sup. Ct. 534 (1928).

[6] Wiley v. Solvay Process Co., 215 N. Y. 584, 109 N. E. 606 (1915); Cooper-Snell Co. v. State, 230 N. Y. 249, 129 N. E. 893 (1921), holds that a statute should be read according to the natural and obvious import of the language used without resorting to a subtle or forced construction either limiting or extending the effect.

[7] *Ibid.*

[1] 42 STAT. 1511, c. 285, March 4, 1923.

the tax was paid and the Statute of Limitations had run, the question arose whether the claim could be brought. The Court of Claims held that the action should be allowed on the part of the Alien Property Custodian inasmuch as he was an agent of the government and a Statute of Limitations should not be applied to a government agent unless Congress expressly states that intention.[2] The lower court decided in favor of the taxpayer,[3] basing its decision on a comparison of the California Statute with similar statutes of other states[4] as it found the cases of the California Court construing this statute to be clouded. Upon a writ of certiorari to the Supreme Court of the United States, *held,* reversed. *United States* v. *Kombst,* 285 U. S. —, 52 Sup. Ct. 616.

Taxes on estates are of two kinds, those taxing the privilege of transferring property by will or laws of descent, being chargeable to the estate, and those charging or taxing the right to take property by will or descent, being chargeable against the share of the legatee or distributee.[5] Under the Revenue Act[6] under which the tax in question was levied, the latter or succession tax is not a deductible item, not being a charge against the estate. The California courts construing the statute levying a tax on estates in California held it to be a succession tax.[7] As the highest court of California held the statute to levy a succession tax the Supreme Court held that it was not necessary to interpret the act and the commissioner properly disallowed the item as a deduction. Inasmuch as the item was not deductible the Court reversed the decision of the Court of Claims without passing upon the question of whether or not the action was barred as against the Alien Property Custodian by the Statute of Limitations.

A. E. A.

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[2] U. S. v. Nashville, Chi. & St. L. Ry. Co., 118 U. S. 120, 6 Sup. Ct. 1006, DuPont deNemours & Co. v. Davis, 264 U. S. 456, 44 Sup. Ct. 456 (1924).

[3] 52 F. (2d) 1030 (Court of Claims 1931).

[4] Leach v. Nichols, 50 F. (2d) 787 (C. C. A. 1st, 1931), *rev'd,* 285 U. S. —, 52 Sup. Ct. 338 (1932).

[5] Oppenheimer, *Proceeds of Life Insurance Policies Under the Federal Estate Tax* (1930) 43 HARV. L. REV. 724, 727; Note (1930) 5 ST. JOHN'S L. REV. 147.

[6] REV. ACT OF 1916 §203 (a) (1).

[7] Keith v. Johnson, 271 U. S. 1, 46 Sup. Ct. 415 (1925); Estate of Kennedy, 157 Cal. 517, 108 Pac. 280 (1910); Estate of Hite, 159 Cal. 392, 113 Pac. 1072 (1911); Estate of Miller, 184 Cal. 674, 195 Pac. 413 (1921).