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Estate Tax, Tenancy by the Entirety (Phillips v. Dime Trust & Safe Deposit Co., 283 U.S. 795 (1931))

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sented are met by the governmental ruling that the fair market value at the time of acquisition shall constitute the basis. The decision in the present case is a lucid exposition of the logic inherent in a ruling which, at first glance, may appear somewhat arbitrary.

J. L.

ESTATE TAX, TENANCY BY THE ENTIRETY.—Appellee sought to recover Federal Estate taxes paid upon thirteen items of property, real and personal, held by the testator and his wife as tenants by the entirety. As to those items of property held upon tenancies by the entirety created after the effective date of the Revenue Act of 1924, it was conceded that the tax was rightfully assessed; but as to those items of property held upon tenancies by the entirety created after the Revenue Act of 1916 and before the effective date of the Revenue Act of 1924, it was contended that the statute is arbitrarily retroactive. The government argued that the tax is laid upon rights devolving upon the wife at the death of her husband after the passage of the act, and that the statute is therefore not applied retroactively. *Held,* The tax was validly assessed. *Phillips* v. *Dime Trust & Safe Deposit Co.,* 283 U. S. 795, 52 Sup. Ct. 46 (1931).

The Supreme Court has recently held that the interest of the surviving tenant may be subjected to an estate tax,[1] reasoning that "The death of one of the parties to the tenancy became the generating source of important and definite accessions to the property rights of the other."[2] Disregarding the common law fiction of husband and wife unity it is at once apparent that the surviving tenant whose rights had formerly been hedged in on all sides has now acquired sole proprietorship of the property.

A transfer tax levied on a donor in respect to absolute gifts made *inter vivos* has been held to be invalid.[3] Here technical title, power to recall, and beneficial use and enjoyment had all passed out of the settlor prior to the enactment of the applicable taxing sections. But, where the settlor reserves the right during his life to alter the terms of the trust,[4] or to revoke the trust[5] the tax has been held not to be retroactive within the condemnation of the Fifth

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[1] Tyler v. U. S., 281 U. S. 497, 50 Sup. Ct. 356 (1930); (1930) 5 ST. JOHN'S L. REV. 135.

[2] *Supra* note 1, at p. 504, 50 Sup. Ct. at 359.

[3] Nichols v. Coolidge, 274 U. S. 531, 47 Sup. Ct. 710 (1927); Blodgett v. Holden, 275 U. S. 142, 48 Sup. Ct. 105 (1927); Untermyer v. Anderson, 276 U. S. 440, 48 Sup. Ct. 353 (1928); Coolidge v. Long, 282 U. S. 582, 51 Sup. Ct. 306 (1931).

[4] Saltonstall v. Saltonstall, 276 U. S. 260, 48 Sup. Ct. 225 (1927).

[5] Reinecke v. Northern Trust Co., 278 U. S. 339, 49 Sup. Ct. 123 (1928); (1929) 42 HARV. L. REV. 833.

Amendment. 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.[6] It is patent that in the instant case the death of the husband brought into being new property rights in the wife[7] which constitute "that shifting of the ecenomic benefits" upon which the tax is laid.[8] Since these rights are created at a period subsequent to the enactment of the act it cannot be said that the operation of the statute is retroactive.[9]

The statute is expressly made applicable to estates created and existing before the passage of the act,[10] the same provision with little variation appearing in the 1916 and successive acts[11] 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 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 express intention of Congress.

H. P.

ESTATE TAX—TRANSFER TAX—DECEDENT *Non Compos Mentis.* —In December, 1930, while *non compos mentis,* one Mr. Bowles transferred certain of his preferred and common shares of stock in a Marine Surety Co. to his wife, Louise, absolutely. He died in July, 1924, never having been judicially declared insane. The government attempted to tax these shares on the theory that at the time of the death of Mr. Bowles, he had an interest therein which after his death was subject to payment of (a) the charges against the estate, (b) the expenses of its administration and (c) the distribution as part of his estate.[1] *Held,* The shares were not taxable. *Safe Deposit and Trust Co. of Baltimore* v. *Tait, Collector of Internal Revenue,* 54 F. (2d) 383 (D. C. Md. 1931).

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[6] Chase Natl. Bank v. U. S., 278 U. S. 327, 49 Sup. Ct. 126 (1928); Note (1930) 5 ST. JOHN'S L. REV. 147.

[7] *Supra* note 1, at p. 503, 50 Sup. Ct. at 358.

[8] Chase Natl. Bank v. U. S., *supra* note 6.

[9] Coolidge v. Long, *supra* note 3.

[10] Section 302, subd. (h) of REV. ACT of 1924 reads: "Subdivisions (b), (c), (d), (e), (f), and (g) of this section shall apply to the transfers, trust, estates, interests, rights, powers, and relinquishment of power, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this act."

[11] Section 202, REV. ACT of 1916, 39 Stat. 1000, 1002; §300, REV. ACT of 1917, 39 Stat. 1000, 1002; §402, REV. ACT of 1918, 40 Stat. 1057, 1097; §402, REV. ACT of 1921, 42 Stat. 227, 278.

[1] Crooks v. Harrelson, 282 U. S. 55, 51 Sup. Ct. 49 (1930).