St. John's Law Review

Volume 6, May 1932, Number 2 Article 34

Estate Tax--Transfer Tax--Decedent Non Compos Mentis (Safe Deposit and Trust Co. of Baltimore v. Tait, Collector of Internal Revenue, 54 F.2d 383 (D.C. Md. 1931))

St. John's Law Review

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).

---

[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).

The subject of inheritance tax was reviewed from a new and an unusual angle. As the court itself expressed it, "The proposition now advanced by the government is novel. If sound it will establish an entirely new principle in estate or inheritance taxation, both Federal and State." [2] If a person is *non compos mentis* in fact but not judicially declared so to be, his contracts and conveyances are voidable at his option, but if there is an adjudication of insanity, they are void.[3]

The government claimed that Bowles' death was the fact or event which, by removing the possibility or revocation of the gift or transfer, made the gift absolute, and thus sought to treat the property as transferred by his death to the beneficiary.[4] The court ruled that there are "important differences between powers reserved to revoke a trust or change a beneficiary in life insurances on the one hand and a mere right of action to avoid a conveyance by a lunatic on the other." [5] In the former the reserved power is regarded as an integral part of the instrument creating the gift, while in the latter, a conveyance is at once absolute in form and effect, subject only to possible defeat by a plenary law suit. The court in summing up stated, that "a practical mind whether legal or lay, would not be likely to consider the property in this case as a part of the estate of Mr. Bowles. The question here is not whether Congress could have taxed the property but whether it has taxed it; and if, as must be the scope of that subsection is restricted to its literal wording, we must conclude that this particular property is not covered." [6] This view re-echoes the trend of the courts in construing tax laws. While they are sedulous to prevent tax evasions, they uniformly maintain that such statutes are not to be extended by implication beyond the clear import of the language used.[7] Whenever there is a doubt as to the meaning of the statute it should be resolved in favor of the tax payer.[8]

---

[2] Safe Deposit and Trust Co. of Baltimore v. Tait, 54 F. (2d) 383, 386.

[3] Reilly v. Carter, 76 Md. 581, 25 Atl. 667 (1893); Flach v. Gottschalk Co., 88 Md. 368, 41 Atl. 908 (1898); Valentine v. Lunt, 115 N. Y. 496, 22 N. E. 209 (1889); Highes v. Jones, 116 N. Y. 67, 22 N. E. 446 (1889); Smith v. Ryan, 191 N. Y. 452, 84 N. E. 402 (1908); Atkinson v. McCulloh, 149 Md. 662, 132 Atl. 148 (1926).

[4] Chase National Bank v. United States, 278 U. S. 327, 49 Sup. Ct. 126 (1929); Reinecke v. Trust Co., 278 U. S. 339, 49 Sup. Ct. 123 (1929).

[5] *Supra* note 2 at 386. The government had cited Crooks v. Harrelson, *supra* note 1, which held simply that where the owner of property parts with it reserving the power of recall, his death is the fact or event which makes the gift absolute.

[6] *Supra* note 2 at 387.

[7] Crooks v. Harrelson, *supra* note 1; United States v. Merriam, 263 U. S. 179, 44 Sup. Ct. 64 (1928).

[8] Gould v. Gould, 245 U. S. 151, 38 Sup. Ct. 53 (1919); Reinecke v. Trust Co., *supra* note 4.

The judicial mind ought not to be impervious to ideas merely because they are new, provided they are sound in principle. But the formidable doctrine of *stare decisis* here invoked regarding interpretation of tax statutes has been so widely recognized by the courts that confusion if not contradictions of principles would result if the court determined other than it did.

W. B. S.