St. John's Law Review

Volume 5, December 1930, Number 1 Article 31

Estate Tax--Transfer Tax--Situs of Intangibles for Taxation of Non-Resident's Property (Baldwin v. Missouri, 281 U.S. 586 (1930))

St. John's Law Review

ESTATE TAX—TRANSFER TAX—SITUS OF INTANGIBLES FOR TAXATION OF NON-RESIDENT'S PROPERTY.—Bonds, promissory notes and credits were deposited by a resident of Illinois in a Missouri bank. The notes were secured by liens upon land situated in Missouri. On her death, Illinois imposed an inheritance tax on the value of all the intangible property, wherever situated. Missouri thereafter taxed the transfer of the non-resident's property and was upheld by its Supreme Court. On appeal, *Held,* reversed. Though the property was physically in Missouri the tax situs was in the owner's state, Illinois, and, under the Fourteenth Amendment, Missouri could not tax the transfer to the decedent's son. Holmes, Stone, Brandeis, dissent. Baldwin v. Missouri, 281 U. S. 586, 50 Sup. Ct. 436 (1930).

Earlier in the same term it was held the corpus of a trust could be taxed only at the domicile of the trustee when the beneficiaries had no control.[1] It was also decided that Minnesota could not levy a tax on bonds of that State which physically were in New York, the domicile of the owner.[2] The present attitude of the Court indicates the application of the maxim *mobilia sequentur personam,* when the situs of the debt is found at the owner's domicile. But fundamentally, the Supreme Court seems desirous of eliminating the burdens of double taxation.[3] For a long time it had been the rule that both States, the one of the situs of property and the State of the owner's domicile could levy a tax.[4] The Court in the instant case was forced to overlook a long line of its own decisions to reach the majority ruling and a strong minority opinion by Stone, *J.,* favors the imposition of a double tax as long as the owner has secured the benefit and protection of the two States.[5] The majority view circumvents the possible evasion of taxation and reaches a result sought by the reciprocal exemption statutes carried on the statute books of over three-fourths of the states. Holmes, *J.,* in the dissent, favors the result reached by the decision in allowing only one state to tax intangibles but is fearful of the abrogation of the constitutional rights of the

---

[1] Safe Deposit and Trust Co. v. Virginia, 280 U. S. 83, 50 Sup. Ct. 59 (1929).

[2] Farmers' Loan and Trust Co. v. Minnesota, 280 U. S. 204, 50 Sup. Ct. 98 (1930); see (1930) 4 St. John's L. Rev. 322.

[3] McReynolds, *J.,* p. 438, "the inference seems to be that double taxation—by two states on the same transfer—should be sustained in order to prevent escape from liability in exceptional cases. We cannot assent."

[4] Blackstone v. Miller, 188 U. S. 189, 23 Sup. Ct. 277 (1903); Liverpool, London and Globe Ins. Co. v. Orleans Assessors, 221 U. S. 346, 31 Sup. Ct. 416 (1911); Frick v. Pennsylvania, 268 U. S. 473, 34 Sup. Ct. 603 (1925); Blodgett v. Silberman, 277 U. S. 1, 48 Sup. Ct. 410 (1927).

[5] Stone, *J.,* dissenting. 281 U. S. 586, 50 Sup. Ct. 439 (1930).

states.[6] From a practical, economic viewpoint the decision seems sound. It is unfortunate that the decision does not settle the mooted point concerning the double taxability of stock and like intangibles.

W. H. S.

ESTATE TAX—VALIDITY OF A LEVY ON LIFE INSURANCE POLICIES ISSUED BEFORE PASSAGE OF ESTATE TAX WHERE RIGHT TO CHANGE BENEFICIARY WAS RESERVED.—Decedent, who died in 1920, procured four insurance policies; two of them were issued before the effective date of the Act. In each, he named his wife as the beneficiary and reserved the power to change the beneficiary. Against the protest of his executors a transfer tax was paid on these two policies. An action was brought to recover this amount by the plaintiff as executor. On appeal, *Held,* that a levy on life insurance policies issued before the passage of the Estate Tax Law was valid where a power to change beneficiary was retained under section 402 (f) of the Revenue Act of 1918.* Heiner v. Grandin, Circuit Court of Appeals, Third Circuit (1930).

The Supreme Court has held that a tax may not be imposed on insurance policies issued before the Estate Tax Law was enacted where the right to change the beneficiary was not reserved.[1] Where the policies were procured subsequently to the passage of the Act, and the right to change was reserved the validity of a tax levy was upheld.[2] As to what the rule would be in a case where the right to change had been retained on policies issued before the Act, we have, as yet, no statement from the Supreme Court. In a recent case[3] involving trusts created under conditions very similar to the instant case, the trusts were held to be taxable, since it was a transfer intended to take effect in possession or enjoyment at or after the grantor's death, and thus part of his estate. The right to the enjoyment and possession was generated by decedent's death precisely the same as the right to possession and enjoyment of a trust estate

[6] Holmes, *J.*, dissenting, says at p. 439, "I have not yet adequately expressed the more than anxiety that I feel at the ever-increasing scope given to the Fourteenth Amendment in cutting down what I believe to be the constitutional rights of the state."

* The statute reads: "* * * that the value of the gross estate of the decedent shall be determined by including at the time of his death of all property, real or personal, tangible or intangible, wherever situated,

(f) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over $40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by decedent upon his own life."

[1] Lewellyn v. Frick, 268 U. S. 238, 45 Sup. Ct. 487 (1925).

[2] Chase National Bank v. United States, 278 U. S. 327, 49 Sup. Ct. 126 (1929).

[3] Reinecke v. Trust Co., 278 U. S. 339, 49 Sup. Ct. 123 (1929).