

## Estate Tax--Transfer Tax--Discretion in Remitting Assets to Foreign State to Permit Imposition of Foreign Tax (Matter of Martin, 255 N.Y. 359 (1931))

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of whether "economic benefits shifted" to the beneficiaries at the survivor's death, the decision is without one instance of soundness.<sup>17</sup>

W. H. S.

ESTATE TAX—TRANSFER TAX—DISCRETION IN REMITTING ASSETS TO FOREIGN STATE TO PERMIT IMPOSITION OF FOREIGN TAX.—The State of Connecticut petitioned the Surrogate's Court to direct the executor of the will of the decedent Alice C. Martin, to remit certain securities of the estate to an administrator c.t.a. appointed in Connecticut, the testatrix's domicile. The purpose was to permit the assessment and collection in Connecticut of a tax upon the transfer of securities (now in N. Y. State) effected by the will. *Held*, petition denied. Return of assets to another state is not a relief to be demanded as of right but is entirely discretionary. The exercise of the discretion having been approved by the Appellate Division, may not be revised except for manifest abuse. *Matter of Martin*, 255 N. Y. 359 (1931).

In comity, courts should not aid foreign estates which seek to deprive the state of the testator's domicile of property rights.<sup>1</sup> But comity does not require the remittance of assets to the state of domicile merely in order that distribution may be there made.<sup>2</sup> In all events, the Surrogate's power, if any, to direct the transfer of assets to a foreign state rests within his discretion.<sup>3</sup> Since in the instant case compliance with the petition would result in the depletion of the assets by unnecessary and wasteful duplication of administrations and accounting, the Surrogate's discretion is clearly sound. The question of comity in the administration of taxes on intangibles made significant by recent U. S. Supreme Court decisions<sup>4</sup> was politely deferred, since no assessment or claim of any lien presently enforceable was present.

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Ct. 543, 62 L. ed. 1149 (1917); *Cooper v. U. S.*, 280 U. S. 409, 50 Sup. Ct. 164, 74 L. ed. 516 (1929).

<sup>17</sup> *Rothschaeffer, Taxation of Transfer Intended to Take Effect in Possession or Enjoyment at Grantor's Death*, (1930) 14 Minn. L. Rev. 453 and 603; also *supra* note 14.

<sup>1</sup> *Loucks v. Standard Oil Co.*, 224 N. Y. 99, 120 N. E. 198 (1918).

<sup>2</sup> *Parsons v. Lyman*, 20 N. Y. 103 (1859); *Despard v. Churchill*, 53 N. Y. 192 (1873); *Higgins v. Eaton*, 202 F. 75 (C. C. A., 2nd, 1912).

<sup>3</sup> *Matter of Hughes*, 95 N. Y. 55 (1884); *People ex rel Liggett v. Fetherston*, 223 N. Y. 679, 119 N. E. 1069 (1918); *Surrogate's Court Act*, Sec. 309; C. P. A., Sec. 589.

<sup>4</sup> *Farmer's Loan and Trust Co. v. Missouri*, 280 U. S. 204, 50 Sup. Ct. 98 (1930); *Baldwin v. Missouri*, 281 U. S. 586, 50 Sup. Ct. 439 (1930); *Beidler v. S. Car. Tax. Comm.*, 282 U. S. 1, 51 Sup. Ct. 54 (1930), which overrule *Blackstone v. Miller*, 188 U. S. 189, 23 Sup. Ct. 277 (1903).