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Federal Estate Tax--Estates by Entirety (U.S. v. Provident Trust Company of Pennsylvania, IV U.S. Daily, Oct. 15, 1929 at 1950 (3rd Cir.))

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TAX COMMENT

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FEDERAL ESTATE TAX—ESTATES BY ENTIRETY.—Decedent and his wife acquired several parcels of real estate in Philadelphia as tenants by the entirety. Having conveyed some of the real estate, part of the consideration was secured by a ground rent reserved to themselves as tenants by the entirety. Upon the death of decedent, the Commissioner of Internal Revenue sought to include in decedent's gross estate the value of the ground rent and other property held by decedent and his wife as tenants by the entirety. *Held*, that under the laws of Pennsylvania the interest of the surviving spouse was the same after the death of decedent as it was before and, hence, that it was beyond the constitutional power of Congress to include in the gross estate for taxation, property held by decedent and his wife as tenants by the entirety. *U. S. v. Provident Trust Company of Pennsylvania* (C. C. A. 3d), IV U. S. Daily, Oct. 15, 1929 at 1950.

It was the intention of Congress to subject tenancies by the entirety to the Federal estate tax.¹ The Federal estate tax is an excise tax on the privilege of transferring any property or interest in property.² This interest is not that to which legatees succeed, but rather the interest which ceases by reason of death.³ In *Saltonstall v. Saltonstall*⁴ the Court further refined the nature of the tax by saying that the shifting of the economic benefits and burdens of property was the subject of the tax. Is there any interest in the estate by the entirety which decedent had and which is transferred to the other tenant upon the death of decedent? This must be answered by referring to the nature of an estate by the entirety as determined by the courts of the state, in this case, Pennsylvania.⁵ In Pennsylvania the estate by the entirety rests upon the legal unity of husband and wife.⁶ "Each is seized of the whole estate from its inception and upon the death of one while the rights of survivorship remain to the other that other takes no new title or estate."⁷ The rule with respect to the nature of estates by the entirety is carried into effect in the inheritance tax statutes of Pennsylvania. In *Estate of Henry G.*

¹ Rev. Act of 1926, Sec. 302 (e); Rev. Act of 1921, Sec. 402 (d).

² *Knowlton v. Moore*, 178 U. S. 41, 20 Sup. Ct. Rep. 747 (1900).

³ *Y. M. C. A. v. Davis*, 264 U. S. 47, 44 Sup. Ct. Rep. 291 (1924).

⁴ 276 U. S. 260, 48 Sup. Ct. Rep. 225 (1928).

⁵ *Edward Hines Yellow Pine Trustees v. Martin*, 268 U. S. 458, 45 Sup. Ct. Rep. 543 (1925).

⁶ *Brihl v. Martin*, 236 Pa. 519, 84 Atl. Rep. 953 (1912).

⁷ See Note 6, *supra*.

Fink⁸ the Court held that the survivor received nothing by virtue of the death of decedent which might be the subject of the tax. The instrument which created the estate gave the wife the entire estate, and, upon his death, her interest in the whole estate continues. Congress thus has no constitutional power to include for taxation property of a decedent in Pennsylvania held by the entirety.

In New York State the law with respect to the tax on an estate by the entirety depends upon when the tenancy was created and when decedent died. If the tenancy was created prior to April 26, 1916 there is no tax upon the death of either tenant regardless of when such death occurs.⁹

If the tenancy was created after April 26, 1916 and one of the tenants died prior to April 17, 1924, there is a taxable transfer of the whole property to the survivor.¹⁰

If one of the tenants dies after April 17, 1924 there is a taxable transfer on one-half of the property.¹¹

B. H.

INCOME—FUTURE ASSIGNMENT.—Plaintiff, by virtue of a contract, became entitled to receive commissions on renewal premiums of life insurance policies. The right, under the contract, to receive part of these renewal commissions, was irrevocably assigned to his wife. The Insurance Company made a number of payments, under the assignment, to the assignee. In computing deficiencies in the plaintiff's income return the Commissioner added these payments. Against these additions the plaintiff assignor protests. *Held*, that money received under an assignment of future income is, at the time of receipt by the assignee, part of taxable gross income of the assignor. *Hall v. Commissioner*, B. T. A. IV U. S. Daily, October 9, 1929 at 1903.

Despite the fact that the assignor had procured the policies for the assured and had fully earned his commission there was no certainty that it would be paid or ever become due. The right to receive these sums may always be defeated by the death of the policy-holder or his refusal to pay the new premiums.¹ The right to be paid must first accrue to the assignor before the assignee may receive under

⁸ 6 Erie County Law Journal, 281 (1922).

⁹ *Matter of Lyon*, 233 N. Y. 208, 135 N. E. 247 (1922); *Estate of Farrand*, 126 Misc. 590, 214 N. Y. Supp. 793 (1926).

¹⁰ New York Tax Law, L. 1915, ch. 664, and L. 1916, ch. 323, Sec. 83.

¹¹ Art. 10, Sec. 220 (5).

¹ *Edwards v. Keith*, 231 Fed. 110, 145 C. C. A. 298, L. R. A. 1918 A 498 (C. C. A. 2d, 1916), *certiorari* denied 243 U. S. 638, 37 Sup. Ct. Rep. 402, 61 L. ed. 942.