Denver Law Review

Volume 20 | Issue 7 Article 2

January 1943

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DICTA

Published monthly by the Denver and Colorado Bar Associations.

20 cents a copy $1.75 a year

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Recent Changes in the Inheritance Tax Law†

BY BERTON T. GOBBLE*

At the last annual meeting of the Colorado Bar Association held at Colorado Springs on September 17-19, 1942, I read a paper entitled, "The Problem of Multiple Inheritance Taxes on Intangible Property."[1] At that time a recommendation was made for the adoption of a reciprocal act to prevent the double taxation of intangibles belonging to decedents, the threat of which again had risen to plague the American taxpayer.

The 34th General Assembly adopted certain amendments to the inheritances and successions tax law, as set forth in House Bill 191, effective April 26, 1943. Included was the adoption of the uniform reciprocal exemption law which now makes Colorado reciprocal with some thirty-six states and territories. Section 6, chapter 85, of the 1935 Colorado Statutes Annotated was amended to read as follows:

"Transfer by resident or non-resident.—A tax is hereby imposed under the conditions and subject to the exemptions and limi-

†An address given before the Law Club in Denver on May 19, 1943.

*Of the Denver bar, Assistant Attorney General and Inheritance Tax Commissioner.

[1] 19 DICTA (1942) 239.

tations hereinafter prescribed, upon transfers, in trust or otherwise, of the following property or any interest therein or income therefrom:

"(a) When the transfer is from a resident of this state:

"1. Real property situated in this state;

"2. Tangible personal property, except such as has an actual situs without this state;

"3. All intangible personal property, wheresoever the notes, bonds, stock certificates, or other evidence, if any, thereof, may be physically located, or the banks or other debtors may be located or domiciled;

"(b) When the transfer is from a non-resident of this state:

"1. Real property situated in this state;

"2. Tangible personal property which has an actual situs in this state;

"3. Intangibles that have acquired an actual or business situs in this state; provided, however, that the tax imposed hereby on such intangibles shall not be payable

"(1) If the transferor is a resident of a state or territory of the United States which at the time of the transfer did not impose a transfer tax or death tax of any character in respect of personal property of residents of this state (except tangible personal property having an actual situs in such state or territory); or

"(2) If the laws of the state or territory of residence of the transferor at the time of the transfer contained a reciprocal provision under which non-residents were exempted from transfer taxes or death taxes of every character in respect of personal property (except tangible personal property having an actual situs therein) provided the state or territory of residence of such non-residents allowed a similar exemption to residents of the state or territory of residence of such transferor. For the purposes of this section the District of Columbia, Puerto Rico and the Philippine Islands shall be considered territories of the United States."

As to those states which had previously adopted such reciprocal legislation, Colorado became a reciprocal state on the effective date of the amendment, to-wit, April 26, 1943. As to any other state which might thereafter adopt a similar reciprocal act, reciprocity would commence as of the date of the passage of the act by such state. In this connection it is interesting to note that the state of Utah adopted the uniform act, which became effective May 11, 1943; so that Utah and Colorado became reciprocal states on that date. It will be recalled that Utah was the state which had levied a succession tax on stock held by a New

York resident decedent, based upon the premise that the stock represented shares in a Utah corporation, and was consequently subject to tax, even though the certificates for which were at all times located in the state of New York. The Supreme Court of the United States held[2] that Utah could levy an inheritance tax on the transfer of such stock certificates which were "within its jurisdiction." It will be noted that Colorado under the new act will not attempt to tax the transfer of intangibles of non-resident decedents unless such intangibles have acquired an actual or business situs in this state. The word "situs" has been defined to mean "site, situation, location; the place where a thing is."[3] In our statute, no doubt, the words "actual situs" were used to distinguish it from the term "legal situs." It will be remembered that the legal situs of personal property need not necessarily be the place where it is physically located. It is therefore obvious that an intangible having a legal situs in the state of domicile might also have an actual situs in another state. It seems clear a bank account in a Colorado bank has an actual situs in this state. On the other hand, a stock certificate representing shares of stock in a Colorado corporation, which certificate is physically located outside of Colorado, appears to have no actual or business situs in this state.

The term "business situs" has been defined as follows: "Notes, mortgages, tax sale certificates and the like might be brought into the state for something more than a temporary purpose, be devoted to some business use here and thus become incorporated with the property of this state for revenue purposes. Such a situs has aptly been termed a 'business situs'."[4] "To constitute 'business situs' as a basis for taxation of intangible personal property at a place other than the owner's domicile, possession and control of the property must be localized in some independent business or investment away from the domicile, so that its substantial use and value primarily attach to and become assets of outside business."[5] Perhaps the best example of an intangible having a business situs in this state would be the credit accounts of a business actually operating within the state.

At the present time the following states and territories appear to be reciprocal with Colorado: Alaska, Arizona, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah,

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[2]State Tax Commission of Utah v. Aldrich and Harkness, Administrators, 316 U. S. 174, 62 S. Ct. 1008, 86 L. ed. 1358, 139 A. L. R. 1436 (1942).

[3]Greene County v. Wright, 126 Ga. 504, 54 S. E. 951, 953 (1906). 39 WORDS AND PHRASES (Perm. ed.) 352.

[4]Honest v. Gann, 120 Kan. 365, 244 Pac. 233, 235 (1926).

[5]Grieves v. State *ex rel.* County Attorney, 168 Okla. 642, 35 P. (2d) 454, 456 (1934). 5 WORDS AND PHRASES (Perm. ed.) 1046.

Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The following states and territories appear to be non-reciprocal: Alabama, Arkansas, Georgia, Idaho, Kentucky, Montana, Nebraska, North Carolina, North Dakota, Oklahoma, Puerto Rico, South Dakota, and Texas.

It has been held that absence of an inheritance tax act invokes the exemption under such type of legislation.[6] For this reason the state of Nevada, which has no form of succession tax, would be considered a reciprocal state with Colorado as to decedents dying after April 26, 1943. By reason of the express terms of the act, Colorado is not reciprocal with any foreign country, it having been held that the word "state" of itself may not ordinarily be construed as a foreign state or country.[7]

House Bill 191 also adopted a reciprocal act in connection with the taxation of bequests to public institutions, societies, corporations, associations, or trusts formed for charitable, benevolent, educational or religious purposes.[8] Under the new act, transfers to such an organization will not be taxed if it was organized under the laws of this state, or if the use is limited within the state of Colorado, or if the transfer is to an organization organized under a foreign state or country which exempts transfers from Colorado resident decedents to organizations incorporated or existing under the laws of that foreign country or state.

Under another amendment to the inheritance tax law, it is provided that if a decedent be not a resident of this state then the exemption allowable shall be the proportion of the allowable exemption in the case of residents that the property taxable by this state bears to the whole property transferred by the decedent.[9] This provision in the law can best be illustrated by an example. Suppose a non-resident decedent died possessed of Colorado real estate of the value of $10,000 which he devised to a child. If the value of the whole property transferred by the decedent (which would, of course, include the Colorado property) amounted to $100,000, then the child would be entitled to one-tenth of the statutory exemption of $10,000 or a limited exemption of $1,000. The tax would be computed by deducting the exemption of $1,000 from the taxable property valued at $10,000, leaving a net taxable estate in Colorado of $9,000, which would be taxed at the Class A rate. This provision of the law would also apply in the case of the taxation of intangible property having an actual or business situs in this state, owned by a decedent who was not domiciled in a reciprocal state or territory.

The legislature further provided in the new law that in computing the inheritance tax a deduction could be taken for taxes on real and per-

[6] Estate of E. Eilermann, 179 Wash. 15, 32 P. (2d) 763 (1934).
[7] Eidman v. Martinez, 184 U. S. 578, 22 S. Ct. 515, 46 L. ed. 697 (1902).
[8] Sec. 2, H. B. 191, amending sec. 15(a), ch. 85, COLO. STAT. ANN. (1935).
[9] Sec. 2, H. B. 191, amending sec. 15(b), ch. 85, COLO. STAT. ANN. (1935).

sonal property within this state which at the date of the transferor's death were unpaid and constituted a lien against such property.[10] By reason of the fact that under Colorado law such taxes for the current year become a lien on March 1st,[11] if a decedent dies after March 1st, the full amount of the tax for the year in which he died shall be deductible.

A further amendment permits the deduction of an indebtedness of the decedent founded upon a promise or agreement to make a contribution or gift to or for the use of any exempt public institution, society, corporation, association, or trust formed for charitable, benevolent, educational, or religious purposes.[12]

Another provision of the new law provides that a certified copy of the will, letters of administration, or decree of heirship, or a copy of the order of the county court assessing the inheritance tax, may be recorded in the office of the county clerk and recorder of the county where the real property described therein is situate, which record shall thereafter be deemed to be notice of such taxes to a subsequent purchaser and encumbrancer of such real property.[13] In the prior law provision was made only for recording a certified copy of the application for probate of the will or estate of the decedent, or a copy of the assessment order.

Under the new act all receipts for payment of inheritance taxes shall be issued by the department of revenue, which is the agency for the collection of all inheritance and gift taxes. The new form of receipt will not contain a description of the decedent's assets. The lien of the inheritance tax against a decedent's real estate will hereafter be released by the attorney general in the form prescribed by him, which release must be recorded in the office of the county clerk and recorder of the county in which such property is situate in order to release and discharge the lien.[14] The attorney general has prescribed the following form of release of inheritance tax lien against real estate:

RELEASE OF INHERITANCE TAX LIEN

Estate of ..... , Deceased
Date of death .....

It appearing to the attorney general that it is not necessary to preserve the lien granted by the Colorado inheritance tax law against the hereinafter described real estate, in which the above-named decedent had an interest, by virtue of the authority vested in me under the provisions of Section 66, Chapter 85, 1935 Colorado Statutes Annotated, as amended, I do

[10]Sec. 3, H. B. 191, amending sec. 16(b), ch. 85, COLO. STAT. ANN. (1935).
[11]Sec. 2, H. B. 311, amending sec. 4, ch. 142, COLO. STAT. ANN. (1935).
[12]Sec. 3, H. B. 191, amending sec. 16(i), ch. 85, COLO. STAT. ANN. (1935).
[13]Sec. 5, H. B. 191, amending sec. 38, ch. 85, COLO. STAT. ANN. (1935).
[14]Sec. 13, H. B. 191, amending sec. 66, ch. 85, COLO. STAT. ANN. (1935).

hereby forever release and discharge the inheritance tax lien against the following described real estate, to-wit:

(Description of real estate.)

Dated at Denver, Colorado, GAIL L. IRELAND,
Attorney General of Colorado

_____, 194____

By_____
Assistant Attorney General

Note—This release must be recorded in the office of the clerk and recorder of the county in which the property is situate.

Several other minor changes were made in the existing law, most of which were adopted in order to conform to the provisions of the Administrative Code of 1941 concerning the collection of inheritance taxes by the department of revenue.

In view of the heavy purchases of war bonds (or registered United States Savings Bonds) by Colorado citizens, the question of their taxation for inheritance tax purposes arises frequently; and for that reason the attorney general has made certain rulings determining when and in what manner such bonds are taxable upon death.[15] Where savings bonds are registered in the name of *A* or *B*, having been purchased with funds provided by *A*, upon the death of *A* the full redemption value of the bonds are taxable to the survivor, *B*. Such a transfer is considered a taxable gift or grant intended to take effect in possession or enjoyment at or after the death of the transferor.[16] On the contrary, if *B*, the survivor, furnished one-half the funds to purchase the bonds, then only one-half the redemption value thereof would be taxable to *B*. If *B* furnished all the funds for the purchase of the bonds, then upon the death of *A* there would be no taxable transfer to *B*. Bonds registered in the name of *A*, payable on death to *B*, in the event of *A's* death would be taxable to *B*, assuming he survived *A*, to the full extent of the redemption value. The attorney general based his rulings upon the existing inheritance tax law, the rules and regulations of the treasury department governing the issuance and payment of such bonds, and upon the interpretation thereof by our Supreme Court in *Estate of Stanley Meyer v. Mercier*.[17]

All in all, it is believed that the new law as adopted by House Bill 191 will place Colorado foremost in the list of reciprocal states, will facilitate the collection of inheritance taxes, and will aid attorneys generally in connection with inheritance tax matters.

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[15]Op. Atty. Gen. to Inh. Tax Comm'r. July 13, 1942.
[16]Sec. 7(d), ch. 85, COLO. STAT. ANN. (1935).
[17]102 Colo. 422, 80 P. (2d) 332 (1938).