Denver Law Review

Volume 20 | Issue 9 Article 5

July 2021

Colorado Surtax on Income from Oil Royalties

Frederick P. Cranston

Colorado Surtax on Income from Oil Royalties

Appeal from a decision of the Director of Revenue of Colorado asserting an income tax deficiency against a taxpayer.

The director assessed the deficiency for two per cent surtax upon royalties derived by the taxpayer as the owner of mineral rights in real property in Texas, Kansas, and New Mexico from which oil and gas was produced by lessees under oil and gas leases customarily used in the respective states, and upon revenues received under permits from the United States, the taxpayer having acquired the rights of the permittee. The taxpayer, with respect to the property covered by the permits, entered into leases for developing the production of oil and gas from the property.

The taxpayer contended that the royalties consisted of income from tangible property, and that, under the decision in the case of *City and County of Denver vs. Tax Research Bureau,* 101 Colo. 140, 71 Pac. (2d) 809 (1937), was not subject to the surtax. Constitutional questions concerning the validity of the surtax provision in regard to the income were also raised by the taxpayer.

HELD, that the income received under the government permits constituted income from intangibles, and was subject to the surtax, but that the income derived from the oil and gas produced from property, the mineral rights to which were owned by the taxpayer, constituted income from tangible property, and was not subject to the surtax.

No opinion was given upon the constitutional questions. *Martins v. Cruse, as Director of Revenue,* Denver District Court, No. 36783, Sackmann, J., decided June 11, 1943.

FREDERICK P. CRANSTON.

EDITOR'S NOTE: In the case of Marston v. Cruse, decided in the District Court of El Paso County, July 6, 1943, the court found that the income derived from certain oil, gas and mineral leases did not constitute royalties, nor was it income derived from intangible property. Therefore, it was not subject to the surtax provision of the Colorado income tax law.

Comments on Real Estate Standards 34 and 35

The committee of the Denver Bar Association on title standards in promulgating Standards Nos. 34 and 35 concerning the application of the Soldiers' and Sailors' Civil Relief Act to probate on statutory proceedings for determination of interests in real property and as for the principal basis for its determination presents the following memorandum prepared by Golding Fairfield of Denver:

The Soldiers' and Sailors' Civil Relief Act of 1940 and amendments thereto (hereinafter referred to as the act) contemplates proceedings in which "defendants" are designated and against whom a default can be entered. Our special proceeding for "determination of interests" does not provide for "defendants" in the ordinary sense of the word nor is a default entered against any party in interest. The proceeding names and establishes the heirs of the decedent but takes nothing away from these heirs. The proceeding does in fact establish and confirm in these heirs an interest in real property. They can only be deprived of this interest by their own act. An heir may sell or transfer his interest in the real property or he may keep it, just as he pleases. If he does sell or transfer it he must freely and voluntarily execute a deed. No such established heir needs the protection of the act, and it was not intended that the act should apply to such cases.

Assume, however, that the Federal Act is broad enough to include a special proceeding of this kind. Is any better title to the real estate obtained by an attempted compliance with the act? We do not think so. We think such a compliance unnecessary.

The statute requires that notice in the special proceeding be published. The requirement is for the purpose of notifying any possible unknown, unnamed heir. This unknown is the only person concerned with any provision of the act. But, if the act does apply to a special proceeding of this kind and there should exist an unnamed and unknown heir, and if it should happen that this nameless unknown was in military service at the time the decree and findings were entered, then his interests could not be affected either by an attempted compliance with the act or by no compliance. In either case, when he later obtained knowledge of the proceeding and his identity became known, he would have his right under the act to appear in court and have the proceeding re-opened. In other words, every decree that has been entered or will be entered since August 27, 1940, is subject to the remote possibility of there being an unknown heir in military service. Nothing we can do when such decree is taken can deprive this unknown of his rights.

It might be argued that a defendant in military service would have less difficulty in re-opening a decree if the act had not been complied with than if it had been complied with. We do not believe this, but the fact remains that in either event such defendant would still have a right, a right to submit his application and make his showing. If a title is to be objected to as unmarketable because this right exists, the degree of difficulty involved in asserting or establishing the right can have no bearing on the question of marketability.

Subdivision 4 of Section 200 of the act provides: "that if any judgment shall be rendered in a proceeding governed by the section against any person in military service, such judgment may be opened

upon application made by such person not later than 90 days after he leaves the service, and he may be permitted to appear in the action and defend the same provided it is shown that he has a meritorious or legal defense."

This right to appear in the action exists in all cases where a judgment is rendered irrespective of whether or not the act was taken into consideration at the time the judgment was rendered or whether or not an affidavit re military service was filed and an attorney appointed.

All such decrees being subject to this remote possibility of being reopened, we nevertheless affirm that marketability of title is not involved. In other words, a title to real property based on such decree, properly obtained under Colorado statutes, is a good and marketable title, because fundamentally any decree or judgment is good without compliance with the act. It is only when it later appears that a defendant was in military service that any question arises.

All title examinations are based on a series of presumptions. We presume delivery, we presume identity of parties, we presume authentic signatures. We presume that the record is a correct copy of the original. We presume the truth of recitals in certain instruments. And when a Colorado court enters a final decree making certain solemn findings of fact, we presume that those findings are true. When a final decree is entered naming and finding certain persons as heirs of a decedent we rely on the findings of that decree. They are prima facie evidence and remain conclusive until the contrary is shown. Under a decree obtained in the special proceeding for determining interests the title to real estate remains good and marketable until it is shown that there is in fact an unknown heir in military service who has a meritorious claim. If the courts took the position that such decrees were not conclusive, did not render a title prima facie marketable, then in the event of a long war a community could become so situated that it would have no real estate transactions at all because of a universal objection to marketability.

Furthermore, said subdivision 4 of Section 200 provides: "that to vacate, set aside or reverse any judgment because of any of the provisions of the act shall not impair any right or title acquired by any bona fide purchaser for value under such judgment." Consequently, the heirs so determined in the special proceeding have the right any time to convey to a bona fide purchaser and his rights under such conveyance can never be impaired even though an unknown party in interest in the military service later appears and actually sets the decree and findings of court aside.

For these reasons we think it unnecessary to attempt to apply the provisions of the act in a proceeding to determine interests. It was not done in the other war and for the most part attorneys are not doing it now. No rule of any local court requires it.

The Colorado supreme court library has received a bibliography on current tax problems, in mimeographed pamphlet form, prepared in the United States treasury department jointly by the office of the general counsel, office of the tax legislative counsel and the division of tax research.

The letter of transmittal states that no attempt has been made to present an exhaustive bibliography on taxation. Instead, the purpose has been to indicate readily available sources for one desiring an introduction to some of the current tax issues. The scope is limited to federal tax problems. No reference has been made to exclusively state and local taxes or to federal-state-local tax relationships.

Attorney General Waives Certain Transfer Requirements

The attorney general has waived certain requirements of Section 46, Chapter 85, 1935 C. S. A., calling for a release before transferring assets of decedents. Where the value of the asset sold or delivered to the person entitled thereto does not exceed $200.00 in value, no notice need be first given to the inheritance tax department nor written consent of the attorney general obtained before effecting the transfer. The waiver specifically applies to stocks, bonds, notes, mortgages, dividends, interest, bank accounts, certificates of deposit, building and loan accounts or certificates, and wages or salaries; but has no application to contents of safe deposit boxes, insurance, annuities, or real estate.