Denver Law Review

Volume 9 | Issue 12 | Article 6

January 1932

Death and Taxes

Edward Miller

Recommended Citation

Edward Miller, Death and Taxes, 9 Dicta 365 (1932).

DEATH AND TAXES

By Edward Miller of the Denver Bar

J. PANAMERICA SCROOGE was dead; as dead as the classical doornail. That much was certain. But not so certain was the payment of his inheritance taxes. That was in the year 1927 after the Great War, during the Noble Experiment, and, before the Depression Colossus.

During a long and arduous lifetime Scrooge had accumulated securities of all types including stocks, bonds, notes, mortgages, and bank credits representing interests in many States of the Union. Scrooge passed to realms eternal domiciled in the State of Colorado. The inheritance tax authorities in the many States immediately bestirred themselves, hoping to deduct from his estate those portions which they felt were properly due the respective sovereignties which they represented. Before the several States involved would permit transfers of intangible interests they sought to impose and did impose, taxes representing the right of succession granted to the beneficiaries of Scrooge's bounty. They invoked the presumed prerogatives of government to seek their proper share of the estate for the privilege and protection they gave that estate in its growth.

Such taxes were justified upon the judicial authority of the case of *Blackstone v. Miller,* 188 U. S. 189, 23 Sup. Ct. 277, 47 Lawyers' Ed. 439. In that case it was held that a deposit in a New York trust company to the credit of Blackstone, who died domiciled in Illinois, was subject to a transfer tax imposed by the State of New York notwithstanding the fact that the whole succession, including the New York deposit, had been similarly taxed in Illinois. Mr. Justice Holmes who wrote the opinion appended to which appears only the nominal dissent of Mr. Justice White, frowns upon the application of the ancient euphonious maxim *mobilia sequuntur personam.* He sets forth the issue:

> "Therefore the naked question is whether the State (of New York) has the right to tax the transfer by will of such deposit."

And then to offset such immodesty he clothes the answer in the affirmative, simply:

"The answer is somewhat obscured by the superficial fact that New York, like most other States, recognizes the law of the domicile as the law determining the right of universal succession. The domicile naturally must control a succession of that kind. Universal succession is the artificial continuance of the person of a deceased by an executor, heir, or the like so far as succession to rights and obligations is concerned. It is a fiction, the historical origin of which is familiar to scholars, and it is this fiction that gives whatever meaning it has to the saying *mobilia sequuntur personam.* But being a fiction it is not allowed to obscure the facts when the facts become important. To a considerable, although more or less varying, extent, the succession determined by the law of the domicile is recognized in other jurisdictions."

That decision laid the basis for the rule that intangible personal property could be taxed in the State where such intangibles were given birth and protected by the laws of such State.

The general rule of *Blackstone v. Miller* was repeated on numerous occasions by the United States Supreme Court even until the recent case of *Frick v. Pennsylvania,* 268 U. S. 473, 45 Sup. Ct. 603, 69 Lawyers' Ed. 1058, 42 A. L. R. 316, decided in 1925.

In the Frick case the Supreme Court held that the estate of Mr. Frick who had been domiciled in the State of Pennsylvania and who had owned personal property having an actual situs in New York and Massachusetts, could not be charged with a transfer tax imposed under a Pennsylvania statute on the tangible personal property situated in the States of New York and Massachusetts, and that the Pennsylvania tax in that respect was in contravention of the due process clause of the Fourteenth Amendment. The Frick case fixes definitely the rule that tangible personal property can be taxed only in the State where it has its situs.

Subsequently the United States Supreme Court expressly overruled the case of *Blackstone v. Miller* by its decision in the case of *Farmers Loan Company v. Minnesota,* 280 U. S. 204, 50 Sup. Ct. 98, 74 Lawyers' Ed. 371, 65 A. L. R. 1000. The opinion was written by Mr. Justice McReynolds, with Mr. Justice Holmes writing a dissenting opinion in which Mr. Justice Brandeis concurred. The evidence in that case showed that the decedent, Taylor, had been domiciled in New York leaving negotiable bonds and certificates of indebtedness issued by the State of Minnesota and two of her municipalities. The estate was administered in New York and the transfer tax was paid upon the basis of the New York law. Minnesota sought to assess an inheritance tax upon the same transfer but the Supreme Court blocked the gesture upon the ground that the proper situs for taxation was the State of New York.

Seven Justices of that august body spoke as follows through Mr. Justice McReynolds:

> "*Blackstone vs. Miller*, supra, and certain approving opinions lend support to the doctrine that ordinarily choses in action are subject to taxation, both at the debtor's domicile and at the domicile of the creditor; that two States may tax on more or less inconsistent principles the same testamentary transfer of such property without conflict with the Fourteenth Amendment. The inevitable tendency of that view is to disturb good relations among the States and produce the kind of discontent expected to subside after the establishment of the Union. *The Federalist No. VII.* The practical effect of it has been bad; perhaps two-thirds of the states have endeavored to avoid the evil by resort to reciprocal exemption laws. It has been stoutly assailed on principle. Having reconsidered the supporting arguments in the light of our more recent opinions, we are compelled to declare it untenable. *Blackstone vs. Miller* no longer can be regarded as a correct exposition of existing law; and to prevent misunderstanding, it is definitely overruled."

The next important case in the United States Supreme Court involving the validity of a transfer tax upon the part of a State not the domicile of the decedent but the State having jurisdiction over an intangible bank credit, was the case of *Baldwin v. Missouri,* 281 U. S. 586, 50 Sup. Ct. 436, 74 Lawyers' Ed. 1056, 72 A. L. R. 1303. In that case the basic facts were that the testatrix was domiciled in Illinois at the time of her death and had a bank deposit in the State of Missouri, and notes executed by residents of Missouri, secured by mortgages on lands in the State of Missouri. The principle of the Farmers Loan Company case was re-emphasized, the Court holding that the situs of the credits and notes was at the domicile of the testatrix and that the transfer was subject only to the power of the State of Illinois to tax, the property not being within Missouri for such taxation purposes.

Shortly thereafter the United States Supreme Court was confronted with another aspect of the same subject in the case of *Beidler v. South Carolina Tax Commission,* 282 U. S. 1, 51 Sup. Ct. 54, 75 Lawyers' Ed. 131. In that case the decedent, domiciled in the State of Illinois, was the creditor of a South Carolina corporation which was indebted to him on an open, unsecured account appearing on the books of the corporation in South Carolina. Following the principles of the Farmers Loan Company case the Court held that the transfer tax could be lawfully imposed only by the State of the domicile and not by the State of South Carolina.

The last three cases definitely established the rule of the United States Supreme Court that such intangibles as bonds, notes and credits were subject to the imposition of an inheritance tax only by the State of the decedent's domicile, and that this rule prevails in spite of the fact that the bonds are registered in another State and the notes secured by mortgages upon lands situated in another State, which latter State affords the protection and relief necessary to secure payment of the obligation.

The fundamental principles pervading the decisions which establish the foregoing rule, rest upon the thought that property can be transmitted from the dead to the living in one State only, and that State must be the State of the decedent's domicile.

That was the mental outlook with which the Supreme Court took up the recent case of *First National Bank of Boston v. The State of Maine,* 52 Sup. Ct. Reports 174, decided January 4, 1932. In that case the decedent, domiciled in the State of Massachusetts, owned stock in a Maine corporation. The inheritance tax was paid in the State of Massachusetts. The State of Maine sought to impose an inheritance tax upon the stock in the Maine corporation. The Supreme Court held that shares of stock, like other intangibles, can be constitutionally subjected to a death transfer tax by one State only and that consequently the Maine tax was improper. The decision rested again upon the fictional maxim of *mobilia sequuntur personam* but with a different interpretation from that of Mr. Justice Holmes in *Blackstone v. Miller.* It settles definitely a question that has been moot for many years.

Mr. Justice Sutherland, delivering the opinion of the Court, said:

> "This ancient maxim (*mobilia sequuntur personam*) had its origin when personal property consisted in the main of articles appertaining to the person

of the owner, such as gold, silver, jewels and apparel, and less immediately, animals and products of the farm and shop. Such property was usually under the direct supervision of the owner and was often carried about by him on his journeys. Under these circumstances the maxim furnished the natural and reasonable rule. In modern times due to the vast increase in the extent and variety of tangible personal property not immediately connected with the person of the owner, the rule has gradually yielded to the law of the place where the property is kept and used. * * * But in respect of intangible property, the rule is still convenient and useful if not always necessary; and it has been adhered to as peculiarly applicable to that class of property."

Mr. Justice Stone wrote a dissenting opinion supported by Mr. Justice Holmes and Mr. Justice Brandeis.

Had old Pan died in 1904 immediately after the decision in *Blackstone v. Miller,* his estate would have been considerably depleted because of the taxes imposed by the many States which had sovereign jurisdiction over the corporations in which he had stocks and over the lands upon which he had mortgages. And upon the basis of the state of the law existing for about twenty years, Pan knew that the fruits of his labor would be diminished by such inheritance taxes. Consequently in an attempt to save as much of the principal as possible for his beneficiaries, he grudgingly gave them part of his property within two years prior to his death. This was the Move Evasive. He knew that the United States statutes provided that such a transfer made within two years prior to his death shall "be deemed and held to be made in contemplation of death" but he felt that he could postpone that unwished for demise until after two years had elapsed. He knew also that the State of Colorado had passed a Statute providing for a tax if the transfer was made in contemplation of death and that "any transfer of property made by a person within two years prior to death, unless shown to the contrary, shall be deemed to have been in contemplation of death." If those statutes were valid, only the marking of time could save the tax.

That problem has now been settled. The United States Supreme Court in the case of *Heiner v. Donnan,* 76 Lawyers' Ed. 501, decided March 21, 1932, held the quoted portion of the Federal Act unconstitutional on the ground that it created a conclusive presumption which could not be overcome by proof of the most positive character that such transfer was not made in contemplation of death, and that it controverted the Fifth Amendment of the Constitution in the respect that it was a denial of due process.

The Colorado statute is not so objectionable since it permits testimony to show that the transfer was not made in contemplation of death and creates merely a rebuttable presumption.

The obvious result of the foregoing decisions is that the law has become more definitely shaped and the uncertainty diminished. If Pan were to die today he might be more content in the thought that only one State would tax his diversified baskets of eggs, and that he could with impunity give away as much of his property as he pleased without the hideous thought of the Federal Estate Tax assailing him; although the ugly specter of the Colorado tax on gifts made in contemplation of death would disturb his comfort. His spirit would be free to revert to the simple pastoral pleasures of the famous god from whom he took his name, no longer to be burdened with the *mobilia* which no longer follow his person. Those, and the legal principles governing the diposition thereof, he leaves to the living who might find more pleasure in them than did he. *Requiescas in pace,* O Pan!

Myles P. Tallmage is now associated with the firm of Dines, Dines and Holme.

Jack Garrett Scott has removed his law offices to 901 Midland Savings Bldg.

Let your speech be better than silence, or be silent.—*Dionysius.*

He who has learnt on solid grounds to put some value on himself, seems to have renounced the right of undervaluing others.—*Goethe.*

Fame without happiness is but a sorry jest at best. What matters it to a thirsty man if his empty cup be of gold, or silver, or of finest glass.—*Ellen Thorneycroft Fowler.*