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## *The Federal Estate Tax Lien*

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**S**TRANGE as it may seem there is a great dearth of decision dealing with the Federal Estate Tax Lien. The Revenue Act of 1918 contained substantially the same provisions with regard to this lien as did the Revenue Act of 1924 and the present Revenue Act passed February 26, 1926. One would naturally expect that during the time intervening since the passage of the Revenue Act of 1918 and the present date these provisions would have been tested in Court and perhaps in all their phases. But the fact is that those questions which were mooted in the beginning are still mooted and consequently no treatment of this subject can be much more than speculative. As a matter of simplicity this discussion of the Federal Estate Tax Lien will be confined to the lien provisions of the Revenue Act of 1926 and Section 3186 of the Revised Statutes, as amended. Section 315(a) of the Act reads in part as follows:

"Unless the tax is sooner paid in full it shall be a lien for ten years upon the gross estate of the Decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien."

This part of the Statute appears at a glance to be simple enough and indeed it would be simple if the heirs, distributees, devisees or legatees did not part with any property that went to make up that part of the gross estate of a decedent remaining after some Court of competent jurisdiction had allowed claims against the estate and the expense of administration to

be paid out of the estate. It would simply mean that in the hands of any heir, distributee, devisee or legatee property so received was taken subject to the Government's lien which continued thruout a period of ten years from the date of the decedent's death and that the Government could distrain upon any such assets for any part of the Federal Estate Tax remaining unpaid. But unfortunately the recipients of property under such circumstances, as a rule, do not sit tight and simply retain possession of the assets so received but they inconsiderately either mortgage or sell them. And when they do either, if the Federal Estate Tax has not been paid in full or, in some circumstances, even if it has been paid in full, they at once create the circumstances for the birth of a legal question whose complexion, size, general appearance and inherited characteristics no one at the present date can anticipate.

Section 3186 of the Revised Statutes, as amended by the Act of March 1, 1879 and the Act of March 4, 1913, provides:

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the Collector, except when otherwise provided, until paid with the interest, penalties and costs that may accrue in addition thereto upon all property and rights to property belonging to such person: provided, however, that such lien shall not be valid as against any mortgagee, purchaser or judgment creditor until

notice of such lien shall be filed by the Collector in the office of the Clerk of the District Court within which the property subject to such lien is situated: provided further whenever any state by appropriate legislation authorizes the filing of such notice in the office of the Registrar or Recorder of Deeds of the Counties of that state \* \* \* then such lien shall not be valid in that state as against any mortgagee, purchaser or judgment creditor until such notice shall be filed in the office of the Registrar or Recorder of Deeds of the county or counties \* \* \* within which property subject to the lien is situated."

Apparently, the purpose of that part of Section 315(a) of the Revenue Act of 1926 above first quoted was to facilitate collection of estate tax in cases where some one received property thru the estate of a decedent and sold same before the full amount of the Federal estate tax had been determined and assessed but Section 3186 R. S. would make it appear that before such a lien would become valid against a bona fide purchaser for an adequate consideration it would have to be recorded in the office of the Clerk of the Federal District Court for the district within which the property was located and in the proper office of the County in which situated. This would defeat the purpose of Section 315(a) because if it were necessary for the Government to wait until a definite amount of tax were determined to be due so that it might file a lien for that specific amount the recipient of the property thru the estate might very well have previously sold what he received and spent the money. This question has never been passed upon so far as I can find by any Court and is left, therefore, without further com-

ment to the mercies of those sufficiently learned in the law to decide it.

Assuming that the Government's lien would not be enforceable against property purchased for an adequate consideration by somebody from one who received it thru an estate unless, before such purchase, the Government had recorded its lien with the Clerk of the District Court for the district within which the property involved was located and with the proper county official of the county in which the property was situated, would the Government's lien provided for in Section 315(a) be valid and enforceable against any part or all of the vendor's other personal estate in excess of the consideration which he received from the sale of the property? (Apparently, it would be good against the entire consideration in the hands of the vendor.) This question cannot now be decided definitely as it, like the others, has never been passed upon by a Court.

We have thus far talked about the lien with regard to property sold by the party who took thru an estate of a decedent, but practically the same questions would be involved had he mortgaged it or had his creditor secured judgment against it.

Thus far it would appear that an attorney passing on title of any property which had come down thru an estate liable to the Federal estate tax would be at a loss with nothing to guide him so that he might safeguard the interests of his client if his client happened to be a purchaser within ten years from date of the decedent's death and was intending to buy from one who took as heirs, distributee, devisee or legatee. However, there is one ray of hope. The next and only remaining sentence in Section 315(a) reads:

"If the Commissioner is satisfied that the tax liability of an estate

has been fully discharged or provided for he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate releasing any or all property of such estate from the lien herein imposed."

The Commissioner referred to is the Commissioner of Internal Revenue and the Secretary of the Treasury. Such regulations have been issued by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury and appear as Articles 88 and 89 of Regulations 70 Relating to the Federal Estate Tax under the Revenue Act of 1926.

Article 89, entitled "Release of Lien" says that where the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for he may issue his certificate releasing any or all of the property from the lien, if in his discretion, there is actual need therefor and that the tax will be considered fully discharged for the purpose of the issuance of a certificate only when investigation has been made and payment of the tax, including any deficiency finally determined, has also been made. In order to secure a release the executor or administrator must file with the Commissioner of Internal Revenue at Washington Form 791 in duplicate, which is an application for release of estate tax lien and which provides for a description of the property which is to be released, together with a statement as to its present value and the basis of valuation. This release, according to the regulations, will only be issued in the following two cases: where the tax liability has been fully discharged and where it has not been fully discharged but the Commissioner of Internal Revenue is satisfied upon showing made that release would not jeop-

ardize the interests of the Government.

Due to the possible conflict of the various lien provisions of the Act of 1926 and the Revised Statutes it would appear that in passing upon title, in order to be safe, an attorney should request the executor or administrator of the estate of which the property was a part for Federal estate tax purposes or the vendor of such property to furnish him with satisfactory evidence of full payment of the Federal estate tax.

Article 88 of Regulations 70 appears to provide for the automatic release of the estate tax lien and is quoted in part below:

"The lien upon the entire property constituting the gross estate continues for a period of ten years after the decedent's death except:

(1) Where the tax is paid in full before the expiration of such period;

(2) Such portion of the gross estate as is used for the payment of charges against the estate and expenses of its administration allowed by any Court having jurisdiction thereof;

(3) Such portion of the gross estate as has passed to a bona fide purchaser for value after payment of the full amount of tax determined by the Commissioner pursuant to a request of the executor for discharge from personal liability as authorized by Section 313, but there is substituted a like lien upon the consideration received from such purchaser by the heirs, legatees, devisees or distributees."

It is to be noted that paragraph (1) above is to the effect that if the tax is duly paid before the expiration of the ten year period the lien is released as to the entire property con-

stituting the gross estate. But nothing is said about the validity of the lien against any part of such property constituting the gross estate as may have been sold within that period to a purchaser for value, while paragraph (3) is to the effect that the lien is released as against any portion of the gross estate which has passed to a bona fide purchaser for value, provided that the tax as determined by the Commissioner has been fully paid and provided, further, that the tax was determined pursuant to a request of the executor for discharge from personal liability. No reason appears as to why all property constituting the gross estate should not be entirely released from and divested of the Federal estate tax lien if the tax as finally determined has been fully paid before the expiration of the ten year period beginning at the date of the decedent's death even tho such property might have passed to a bona fide purchaser for value and even tho the Commissioner had not determined the amount of tax due pursuant to a request of the executor for discharge from personal liability as authorized by Section 313 of the Act. But still, we have the Regulations to consider which appear to make such request a condition precedent to the release.

There remains for consideration the provisions of Section 315(b) of the Revenue Act of 1926. This section has to do with property received from a decedent as a transfer in trust or otherwise in contemplation of or intended to take effect in possession or enjoyment at or after his death for which there was no adequate consideration paid by the transferee and it also covers insurance which passes under contract executed by the decedent in favor of a specific beneficiary.

In either case the transferee, trustee or beneficiary is personally liable

for the full payment of the Federal estate tax in respect to the property or the benefits of the insurance contract which he received to the extent of the decedent's interest therein at the time such transfer or in case of insurance, to the extent of the beneficiaries interest under such contract of insurance. It is further provided that should a transferee or trustee under such circumstances sell to a bona fide purchaser for an adequate consideration in money or money's worth, the property shall be divested of the lien but that a like lien shall then attach to all the property of such transferee or trustee of which he may be then possessed. In other words, this apparently means that such transferee or trustee is liable in his personal estate for the payment of such part of the total Federal estate tax assessed against the decedent as may be allocated to the value of the property which he receives and the beneficiary of an insurance policy is apparently liable in his personal estate for the total Federal estate tax assessed on the amount of insurance which he received.

The fact that these questions have never been judicially determined, while a handicap to anyone attempting to elucidate the matter of a Federal estate tax lien, is a distinct tribute to the honesty and good intentions—not to say sportsmanship—of the persons called upon to pay Federal estate tax. They have paid and paid and paid and the Government has never been called upon to go into Court under the circumstances delineated in this article. And it is the sincere hope of the writer that nothing in it will make it a Pandora's box from which grief, troubles and all kinds of ills and misfortune may burst forth and fly about in either the legal or revenue world.