1959

Probating a Typical Minnesota Estate

David R. Brink

Probating a Typical Minnesota Estate

By considering a hypothetical case, the author analyzes the step-by-step procedure to be followed in probating a typical estate in Minnesota. He discusses the legal and practical problems of probating an estate as they arise, in three general time-periods: (1) prepartory period; (2) tax planning and waiting period; and (3) closing period.

David R. Brink*

John Q. Adams was vice president of a prosperous small manufacturing corporation when he died unexpectedly on May 1, 1956, just after his forty-eighth birthday. He left surviving him his wife, Jane, and children aged 12, 16 and 18. Since the lawyer who had drawn Adams' will and generally had counselled him had predeceased him by a few months, Jane took the legal problems of the estate to Abraham K. Smith, a lawyer who had been recommended to her as experienced in probating estates.[1] Therefore, when the case first came to Smith, he had no previous familiarity with Adams' estate planning. This Article enumerates the principal *procedural* steps he took in connection with the estate; in general, it does *not* describe the *substantive* considerations involved in each step. It is also primarily an account of *lawyers'* procedures, as distinguished from *executors'* procedures.

Smith held an initial meeting with his clients on May 7, 1956, at which he discovered as many facts pertinent to the estate as possible in light of Jane's emotional condition. At this conference and later, he learned that the estate consisted of approximately the following properties:

ITEM	APPROXIMATE VALUE
Probate Assets	
Lake cottage and two acres of land	$10,000
800 shares common stock in Velcor Company—a fairly closely-held manufacturing business	80,000

* Member of the Minnesota Bar.

1. The phrase "probating an estate" may be offensive to purists, but common usage has yet to supply a better concise term for the peculiar functions performed by the lawyer who "handles" the tax, financial and probate court proceedings currently associated with decedent's estates.

Other stocks	25,000	
U.S. Treasury Bonds (at par)	5,000	
U.S. Savings Bonds, Series G	10,000	
Personal and household effects	2,000	
Two automobiles	3,000	$135,000
Non-probate Assets		
Homestead (joint tenancy with wife)	$25,000	
Savings accounts (joint with wife)	5,000	
Checking accounts (joint with wife)	2,000	
U.S. Savings Bonds, Series E (in co-ownership with wife, funds contributed by her)	3,000	
Insurance on life of Adams (all payable to wife as primary beneficiary—$10,000 of total owned by wife)	65,000	
Death benefit from Velcor Company pension plan (payable to wife as primary beneficiary)	25,000	
Death benefit gratuity (paid to wife by Velcor)	10,000	135,000
Total		$270,000[2]

Smith also inquired about Jane's financial circumstances, and learned that she had a small independent estate which yielded a moderate but steady personal income.

Jane brought a copy of her husband's will to the conference. It was a well-drawn, typical, and fairly recent one, containing the following dispositive provisions: (a) a bequest of the automobiles, the household goods and personal effects to Jane; (b) a devise of all residential real estate to Jane; (c) legacies of $1,500 to each child and to each of Adams' brothers and sisters; (d) a "formula" bequest and devise to the trustees of a marital deduction trust for Jane in an amount just sufficient, when added to all other bequests and transfers qualifying for marital deduction, to equal one-half of Adams' "adjusted gross estate" for federal estate tax purposes;[3] and (e) a bequest and devise of the residue of the estate to a trust,

2. Some of the listed items are not properly subject to death taxes and hence are not parts of the "estate" either in the probate sense or in the tax sense. However, they are listed because they pass at death and therefore are a responsibility of the probate lawyer.

3. This is the familiar "pecuniary" or "legacy" (as distinguished from "residuary") type of marital deduction trust formula clause. For tax requirements of such a trust, see Treas. Reg. § 20.2056(b)-5 (1958).

the income and principal of which might be "sprinkled" between Jane and the children, or accumulated, as deemed advisable by the corporate trustee. Jane and a national bank having trust powers were named executors and trustees.

Smith obtained from Jane copies of Adams' income and gift tax returns for past years. He and the trust officer representing the corporate executor ascertained which life and casualty insurance underwriters and securities dealers Jane wished to employ when needed in the administration of the estate. A division of labors along professional lines was agreed upon by the corporate executor and Smith.

Smith noted Jane's concerns and misconceptions regarding the estate and made plans to try to dispel them at appropriate times early in the probate. At this preliminary conference, he informed Jane that, due primarily to necessary tax clearances, the work in an estate such as Adams' probably could not be completed in less than three years. He explained that the proceedings would fall into three general periods: a preparatory period of approximately six months, a tax planning and waiting period of about two years,[4] and a closing period of perhaps six months, and indicated the necessity of the main steps to be taken in each period, pointing out that they were not mere "legal hocus pocus."

Following this initial conference, the real work of the estate was commenced. Smith (aided in many ways by the trust officer and others) took the following principal legal steps:

I. Preparatory Period

Safe-Deposit Box Opening. (Held May 8, 1956.) Smith arranged for a representative of the county treasurer to take an inventory of the contents of Adams' safe-deposit box.[5] He requested Jane to attend and to be sure to bring the key so as to avoid the expense and difficulty of drilling the lock. At the box opening he checked the accuracy of the Safe-Deposit Box Inventory, making certain that property owned by Jane and irrelevant papers[6] were not included in the list of Adams' property. Finding that Adams' original will and life insurance policies were in the box, Smith arranged

4. The long waiting period is largely occasioned by the desire to take advantage of the alternate valuation date (see text accompanying notes 87 & 94 *infra*) and the delays in completing federal and state death tax audits under present practice.

5. As required by Minn. Stat. § 291.20(1) (1957). (References throughout this article, unless otherwise noted, are to laws currently in effect rather than to those Smith used at the time of probate.)

6. Items of tangible and "bearer" property which are owned by someone other than the box renter should be eliminated from the inventory, if possible. Copies of revoked trust agreements or deeds to property later conveyed away should also be kept out of the inventory in the interests of simplified tax returns and audits.

with the bank for their removal, giving the bank and Jane his receipt. He kept a copy of the completed Safe-Deposit Box Inventory in order to check off its items against the Probate Court Inventory and Appraisal and the Inheritance Tax Return to be filed later. Since the box was leased to Adams alone, further access to the box was denied until the executors were appointed and qualified.

Petition for Probate. (Filed May 8, 1956.) The executors determined that there was no need for a representative prior to the time which would be fixed for their appointment and hence it was decided not to have a special administration.[7] Earlier he had prepared an appropriate Petition for Probate of Will and Appointment of Executors.[8] Since the allegations of the petition were not unusual, it was prepared on a printed form acceptable to the probate court. Smith used such forms whenever good practice did not forbid, since the clerk and judge preferred merely to scan the completed blanks on a familiar form than to study an unfamiliar document.[9] He filed this in the probate court together with the original will.[10] Under the local practice in Smith's county, the clerk prepared the Order for Hearing and arranged for its publication[11] in a legal newspaper.[12] Therefore, Smith did not have to take these steps personally, but he did take pains in setting the hearing date and hour at a time when he, the executors, and the witnesses to the will could all attend court.

Notice of Hearing. (Order date May 8, 1956.) Smith checked the accuracy of the Order for Hearing the Petition to Prove Will as printed by the newspaper. He noted the date of the order, since this also constituted an Order to File Claims and therefore fixed the

7. Special administrations are covered in MINN. STAT. §§ 525.30–.304 (1957). A special administrator would be appointed without notice in order to collect assets, prosecute claims or otherwise represent the estate where necessary during the period for publishing notice of hearing on the appointment of the executors. A special administration would have required an additional inventory, accounting, and other documents substantially duplicating those used in a regular administration.

8. See MINN. STAT. §§ 525.23–.231 (1957), covering requirements of petitioner and petition. See also RULES OF THE PROBATE COURTS OF THE STATE OF MINNESOTA 2.1 [hereinafter cited as PROB. CT. R.]. These rules promulgated under MINN. STAT. § 525.06 (1957), can be found in 27A MINN. STAT. ANN., beginning at 309, or in 2 MASON'S DUNNELL ON MINNESOTA PROBATE LAW, beginning at 1279 (App. 2) [hereinafter referred to as MINN. PROB. L.]

9. The Rules purport to require the use in probate court of forms approved by the Probate Judges Association. PROB. CT. R. 2.15. They further provide that petitions and orders not submitted on the printed forms shall contain the same information in the same sequence as on the forms. PROB. CT. R. 2.16. However, the practitioner finds that many situations are dealt with inadequately, if at all, by forms. In this sphere the practitioner will develop his own set of time-forged and whetted tools.

10. Before filing the petition and will in the probate court, he acquired a number of accurate plain copies for his own file.

11. Requirements of hearing and notice are set forth in MINN. STAT. §§ 525.24, .83 (1957).

12. "Legal newspaper" is defined in MINN. STAT. § 331.02 (1957).

dates for filing claims both as of right and by leave of court.[13] He then sent out a printed copy of the order to each interested person[14] more than fourteen days before the hearing, which had been set for June 4, 1956. At the same time, he sent copies of sections 525.15 and 525.212 of the Minnesota Statutes[15] to Jane, and copies of the former statute to the children.[16] Smith also enclosed his own letter explaining these otherwise confusing documents. Affidavits of Mailing, proving service of the printed copies of the order and of the copies of the statutes, were filed in court with the printer's Affidavit of Publication.

Insurance Settlements. (Completed May 8 to May 31, 1956.) Smith proceeded at once to analyze Adams' insurance policies as to ownership, beneficiaries, amount, available options, underlying guaranteed interest rates and mortality tables, and qualification of the policies for the marital deduction. He reviewed the timing and amount of benefits in light of such factors as available social security payments, the death benefits paid by Velcor Company and the probable college needs of the children. At Jane's request, Smith consulted with Adams' underwriter in these matters. However, he also made a chart showing his own analysis of the policies and the settlements finally effected as to each. This would enable him to answer Jane's questions (and his own) arising later and would provide a convenient review for death tax and income tax purposes. Jane, the bank's representative, the underwriter and Smith then held a conference at which the Claimant's Statements were executed and modes of settlement (in some instances, temporary ones) were decided upon. Smith had procured death certificates from the clerk of district court,[17] which he now used as Proofs of Death in supporting the claims instead of obtaining physicians' and witnesses' statements. Smith then made certain that a photostatic copy of each policy and several counterparts of Federal Form 712[18] were obtained.

Calendar of Events. (Supplied about May 14, 1956.) With the making of the court's Order for Hearing the Petition to Prove Will, it became possible to fix many of the important probate and tax dates and deadlines in the estate. Smith notified the executors of

13. As provided in MINN. STAT. §§ 525.41–.411 (1957).

14. See MINN. STAT. § 525.83 (1957); PROB. CT. R. 2.1.

15. MINN. STAT. § 525.15 (1957) provides for property to be set apart to the spouse or minor children and for reasonable maintenance during administration. MINN. STAT. § 525.212 (1957) gives a surviving spouse the right to renounce the will and to take a statutory share of the estate.

16. As required by PROB. CT. R. 2.1.

17. Adams had not resided within the corporate limits of a city having a population of 100,000 or more. See MINN. STAT. §§ 144.191, .202 (1957).

18. U.S. Treasury Department, Internal Revenue Service, Form 712. This report indicates the taxable incidents of the insurance policy in question.

these dates and suggested that they mark their calendars accordingly. At the same time, he marked his own calendar, a matter of habit which avoided the occasional calamity witnessed in court when the client appears at the hearing and the lawyer fails to appear.

First Half Real Estate Tax. (Due May 31, 1956; paid May 15, 1956.) Smith was careful to see that the first half of the 1955 taxes on the homestead and on the cottage property were paid before May 31, 1956, their due date.[19] The will provided for payment during administration of real estate taxes on both the real estate subject to probate and that not subject to probate. This provision resolved an otherwise possibly vexatious question whether the specific devisee and surviving joint tenant, who was in possession of the property, should pay the accruing real estate taxes — or whether the estate itself should assume this responsibility.[20] A claim of homestead status for the house for real estate tax purposes was filed for the ensuing year.[21]

Hearing on Petition for Probate. (Held June 4, 1956.) At the hearing Smith proved the allegations made in the petition, using Jane's testimony to establish the "jurisdictional facts" and that of an attesting witness to prove the will.[22] There being no court reporter, he filed a completed form of Testimony of Subscribing Witness or Proof of Will which the witness had signed in the court's presence. The court fixed a minimum bond for Jane because of the bond waiver expressed in Adams' will and because a corporate executor was appointed.[23] Since no unusual findings were required in the Order Admitting the Will to Probate, the clerk adhered to the local practice by preparing the order. Smith also decided that there was

19. MINN. STAT. § 279.01 (1957). Since no representative had qualified at the time, Jane advanced the funds, which were later reimbursed to her from the estate.

20. See 1 PATTON, MINNESOTA PROBATE LAW AND PRACTICE § 312 (1955); 1 MINN. PROB. L. § 730 (1949).

21. As provided in MINN. STAT. § 273.13 (1957).

22. In the case of an uncontested probate, testimony of only one witness is required. MINN. STAT. § 525.24 (1957).

23. Bond is required of any individual representative of a decedent by MINN. STAT. § 525.32 (1957). National banks and trust companies which have qualified under MINN. STAT. §§ 48.66–.67 (1957) are exempted from giving bond by MINN. STAT. §§ 48.66, .79 (1957). The amount of the penalty of the individual executor's bond apparently is discretionary under the Probate Code, although PROB. CT. R. 5 provides that the amount must be one which will "protect the interest of all parties in the estate." Rule 5 also indicates that "such bonds shall be required notwithstanding provisions of a will to the contrary." It would appear on principle, however, that a testator (who could, after all, have bequeathed his estate to the executor) could waive any bond other than a nominal one or certainly other than one just sufficient to cover the claims of creditors and the amount of the taxes.

no occasion to serve a Notice of Order for the purpose of shortening the time for appeal from the order.[24]

Issuance of Letters Testamentary. (June 4, 1956.) Smith filed Jane's Bond and Oath (the Bond having first been executed by the corporate surety selected) and the Acceptance of the corporate executor, and obtained the court's written approval of the bond. Thereupon, Letters Testamentary issued,[25] Smith ordering a certified copy of the Letters for his file and sufficient certified copies for the executors' immediate needs.[26]

Preparation of Claims. (Done during period May 8, 1956 to September 8, 1956.) A number of bills had accrued for items for which Adams was obligated at death. Most of these bills remained unpaid until after appointment of the executors, but Jane paid those where she felt the creditor might have real immediate need of the funds. Smith reviewed the items of indebtedness with the executors and prepared Proof of Claim forms on all that they approved, including those in which Jane was the claimant seeking reimbursement for funds advanced on account of the estate. These were all executed by the respective claimants and filed in probate court before September 8, 1956, the last date for filing claims without special leave of court.[27] After that date, Smith checked the court file to determine whether any "strange" claims which the executors had not reviewed had been filed. The check revealed no claims to which either the executors or Smith wished to object.

Estimated Federal Income Tax—Quarterly Installment. (Due June 15, 1956; amended declaration filed June 11, 1956.) A decedent is relieved of the obligation to declare or pay estimated federal income tax.[28] An amended declaration of estimated tax was prepared and filed before the date when Adams' next installment was due. This declaration, which showed a lower estimated tax, was filed for the purpose of insuring that Jane would not be penalized for underestimating the tax on her own income.

Preliminary Notice of Federal Estate Tax. (Due August 4, 1956; filed June 15, 1956.) In preparing and filing the Estate Tax Prelimi-

24. Service of a Notice of Order will shorten the appeal time from six months after the filing of the order to thirty days after the service of notice. MINN. STAT. § 525.712 (1957). Appealable orders are described in MINN. STAT. § 525.71 (1957). Where there is any reason to expect a will contest, notice should probably be given.

25. As provided in MINN. STAT. § 525.25 (1957).

26. Procuring an unneeded number of certified copies of letters can be a waste of funds, because normally transfer agents and others will not honor letters with certificates dated more than six months earlier. See 1 CHRISTY, THE TRANSFER OF STOCK § 85 n.5 (3d ed. 1958). Hence it is best to order only enough for current needs.

27. As provided in MINN. STAT. § 525.41 (1957). In some instances probate courts apparently frown on reimbursement claims like Jane's.

28. Treas. Reg. § 1.6015(b)-1 (1957).

nary Notice, Form 704, required in estates over $60,000,[29] Smith adhered to two objectives: (1) to file the notice on time[30] and (2) to refrain from overstating the value of any category of property.[31]

Order Appointing Appraisers. (Entered June 18, 1956.) Smith obtained a probate court order appointing the two probate appraisers,[32] after discussing their identity and qualifications with the executors. Under the practice prevailing in his county, the court permitted Smith to suggest names of appraisers. The court found those nominated by Smith to be "disinterested" and otherwise suitable and proper.[33]

Decedent's Final Minnesota Income Tax Return. (Due September 15, 1956; filed August 20, 1956.) The final Minnesota income tax return was due three and one-half months after the end of the month in which Adams died.[34] If Jane had not had some separate income, a joint state return for Adams and Jane could have been filed April 15 of the following year, at the same time the final joint federal return was to be filed.[35] To avoid payment of interest on the tax due and the need to submit an affidavit explaining the late filing, Smith filed this return and paid the tax before the due date.

Inventory and Appraisal. (Appraisal held August 29, 1956; filed August 31, 1956.) An Inventory was prepared by the corporate executor and Smith. Under customary practice, the Inventory was not "exhibited to the court" nor filed within a month after the executors' appointment, despite the directory provisions of the Probate Code and the Probate Court Rules.[36] No order extending the time for exhibiting the Inventory was obtained, since the court's practice was to consider additional time granted in all cases even without order. It was also found impossible to complete the appraisal within two months after the appointment of the executors,[37] due primarily to difficulty in assembling complete and up-to-date financial data concerning the value of Adams' stock in Velcor Company. Accrued items and receivables were included. Prior to the

29. U.S. Treasury Department, Internal Revenue Service, Form 704.

30. The notice must be filed within two months of death, unless a representative qualifies within that period, and then within two months of his qualification. See Treas. Reg. § 20.6071–1 (1957).

31. The purpose of this rule was simply to avoid having to explain an early overstatement of values to a revenue agent who might regard it as an admission in a case where values were in issue.

32. It was customary to appoint two appraisers notwithstanding the statutory authority to appoint "two or more." MINN. STAT. § 525.331 (1957).

33. See MINN. STAT. § 525.331 (1957); PROB. CT. R. 2.9.

34. Now governed by Minn. Inc. Tax Reg. § 2042(1)(a)(4) (1957).

35. *Ibid.*

36. See MINN. STAT. § 525.33 (1957); PROB. CT. R. 2.8.

37. As required by MINN. STAT. § 525.331 (1957).

actual appraisal, values of cash and items payable in cash were inserted in the Inventory and Appraisal for the appraisers' convenience. No separate listing of household goods as called for in the Probate Court Rules[38] was required by the court. Further, no title opinion as to the real estate standing in Adams' name was required by the court to be attached to the Inventory.[39] On one copy of the Inventory, the values of those items having an established market value were pencilled in, together with the sources of the valuations. Advisory appraisals by professional appraisers were obtained for those items not having an established market value. When all these materials were ready, they were made available to the appraisers and the formal appraisal was held. In most instances the appraisers accepted the suggested values, finding that the values were fair and based upon a firm foundation of fact. Following the appraisal, the appraisers were paid their fees.[40] Because an accepted standard of appraisers' fees existed in Smith's county, he did not deem it necessary to obtain a court order determining fees in advance of payment.

Inheritance Tax Return. (Executed August 29, 1956; filed August 31, 1956.) The Inheritance Tax Return was executed in duplicate[41] at the same time the appraisal was held.[42] Again, the requirement under the Probate Court Rules, of filing the Inheritance Tax Return within a month[43] was treated as directory rather than mandatory. The United States Savings Bonds, Series E, held in co-ownership form were listed as non-taxable because Jane claimed to have contributed their cost.[44] An affidavit in support of her claim was attached to the return, but other corroborative evidence was held in reserve pending audit of the return. In Schedule II of the Inheritance Tax Return—the schedule applicable to insurance—Smith reported as non-taxable the $10,000 of insurance owned by Jane, which had been assigned to her by Adams in 1947.[45] The death

38. PROB. CT. R. 2.8.

39. As in the case of certain other parts of these rules, this requirement of Rule 2.8, in practice, appears to be treated as merely directory.

40. Courts often appear to be inclined to use a rule of thumb in determining appraisers' fees. In certain of the most populous countries of the state, fees for each appraiser have been fixed by custom at 0.1% of the value of the assets appraised. In other counties, arbitrarily fixed fees in smaller amounts appear to be most common.

41. See Inheritance Tax Return, Form EG 1004 (instructions by commissioner of taxation, item 2).

42. The Inventory and Inheritance Tax Return are required to be filed together. MINN. STAT. § 291.12(2) (1957).

43. PROB. CT. R. 2.8.

44. Consideration claims are covered in MINN. STAT. § 291.01(4)(1) (1957).

45. By the time the inheritance tax was finally determined, Smith's position concerning the non-taxability of this insurance was vindicated. See text following note 135 *infra*. This result was occasioned by the decision in Blue Diamond Poultry Farms, Inc. v. Commissioner of Taxation, 253 Minn. 265, 91 N.W.2d 595 (1958) which determined that the critical date for taxability of the proceeds due to

benefit from the company retirement plan was reported as nontaxable since all of its cost was contributed by Adams' employer.[46] Filing of the Inventory and Appraisal and the Inheritance Tax Return prepared the way for such further steps as joint tenancy clearances,[47] maintenance and "set apart" orders,[48] and orders authorizing sale of securities.[49] Plain copies of Adams' will, the Petition to Prove Will, and the Inventory and Appraisal, and a duplicate original of the Inheritance Tax Return were then sent for filing to the Inheritance and Gift Tax Division of the State Department of Taxation.[50]

Affidavit of Survivorship and Certificate of No Inheritance Tax. (Executed August 29, 1956.) This form,[51] together with an attached death certificate, was prepared in order to clear title to the homestead in Jane as surviving joint tenant. A letter of guaranty of eventual inheritance tax accompanied the application to the Inheritance and Gift Tax Division of the Department of Taxation for a waiver of the inheritance tax lien on the homestead.[52] When the Certificate of No Inheritance Tax comprising a part of the form was duly executed,[53] the form was recorded with the register of deeds of the county in which the homestead was situated.

---

possession of certain rights by the insured was April 26, 1949, rather than July 15 or 16, 1957, as generally supposed. Subsequent to this decision, the Inheritance Tax Suggestions as of August 1, 1956, of the Commissioner of Taxation of the State of Minnesota were modified to reflect the change in critical dates. 2 MINN. PROB. L. following 914 No. 17. See Brink, *Minnesota Inheritance Tax: Some Problems and Solutions*, 43 MINN. L. REV. 443, 449–56 (1959). It is good practice currently to change the date "July 15, 1937," appearing in schedule II of the form, to "April 26, 1949," before completing the blanks in that schedule and filing the return.

46. In Minn. Laws Extra Sess. 1959, ch. 83, the legislature enacted substantially the federal rule (INT. REV. CODE OF 1954, § 2039(c)) relating to death taxation of employee's death benefits from qualified plans. This was in accordance with a recent recommendation by the writer. Brink, *supra* note 45, at 476. The new law was not helpful in the Adams estate, however, because it applies only to benefits received after December 31, 1956. It was ultimately decided in the Adams case not to litigate the non-taxability of the death benefit.

47. See text accompanying note 52 *infra.*

48. See text accompanying notes 54–56 *infra.*

49. See text accompanying note 60 *infra.*

50. This was the practice in Smith's county. In certain other counties, these papers were first supplied by the estate to the court and then forwarded by the court to the Inheritance & Gift Tax Division. This confusion in practice is understandable because: (1) MINN. STAT. § 291.21(2) (1957) requires the copies to be delivered to the commissioner by the representative "under direction of the court"; (2) PROB. CT. R. 7 requires the representative to furnish the copies to the court; and (3) the commissioner of taxation, in his Inheritance Tax Suggestions, 2 MINN. PROB. L. following 914 No. 16, also seems to expect to receive the papers from the court. In any event, the commissioner desires to have the accumulated papers forwarded at this juncture. *Ibid.*

51. Minnesota State Department of Taxation, Form EG 1018.

52. This procedure is set forth in Inheritance Tax Suggestions, 2 MINN. PROB. L. following 914 No. 14.

53. In accordance with MINN. STATE BAR ASS'N, MINN. TITLE STANDARDS, pt. 2, at 44–45 (1954).

Maintenance Order. (Entered September 5, 1956.) Using a printed form of Petition for Maintenance signed by Jane, and exhibiting to the court the Inventory which had been filed, Smith obtained an *ex parte* order authorizing payment of a monthly amount to Jane for maintenance of herself and the children, for a period commencing as of Adams' death and lasting for eighteen months or until earlier closing of the estate.[54] The monthly amount ordered by the court was large enough so that the $5,000 limitation on Minnesota inheritance tax deduction would be exceeded in a year.[55]

Order Setting Apart Personal Property. (Entered September 5, 1956.) Smith obtained an Order Setting Apart Personal Property,[56] which assigned to Jane furniture and household goods valued at $2,000 (being all such property appraised in the estate), all of Adams' wearing apparel and, against the $1,000 of "other personal property" permitted by the statute, some worthless securities;[57] the older automobile, valued at less than $1,000; and cash in an amount which, when added to the value of the automobile, totalled $1,000.

Order Authorizing Transfer of Automobile. (Entered September 5, 1956.) An *ex parte* order obtained by Smith from the probate court permitted transfer of Adams' other automobile to Jane in satisfaction of her legacy under the will. This order was required by the practice of the State Motor Vehicle Bureau, which usually refuses to honor transfers from representatives to one of their own number. A certified copy of this order, together with the executed bill of sale on the title registration card, a certified copy of Letters Testamentary, and the transfer fee, was sent to the Motor Vehicle Bureau and was effective to secure re-registration of the newer automobile in Jane's name. A certified copy of the Order Setting Apart Personal Property, with similar transfer papers, sufficed to secure re-registra-

54. As provided in MINN. STAT. § 525.15(4) (1957). Such maintenance payments normally are considered not to constitute a distribution to the recipient which would carry with it the taxable income of the estate. See Treas. Reg. § 1.661(a)-2(e) (1958). Maintenance since 1950 is not a deduction from federal estate tax. *But see* H.R. 2573, 86th Cong. 1st Sess. (1959), a proposed amendment to INT. REV. CODE OF 1954, §§ 2056(b), (e) which would qualify maintenance for marital deduction under certain conditions. See also 2 FED. EST. & GIFT TAX REP. ¶ 8455 (1959).

55. The allowable deduction for maintenance under MINN. STAT. § 291.07 (1957) is limited by MINN. STAT. § 291.10 (1957) to whichever is less, one year's maintenance or $5,000. Query whether the latter section gives the commissioner the right, notwithstanding the court's determination, to decide how much of the maintenance to be allowed is "reasonably required." Fortunately, such construction has not been given the section as yet. The maintenance in excess of the maximum deduction is usually treated by the commissioner as an additional legacy payable to the wife from principal of the estate.

56. As provided in MINN. STAT. § 525.15(1) (1957).

57. By disposing of presently worthless securities in this manner, title to them was vested in Jane, but the Final Account and Decree were not cluttered with references to them.

tion of the older car. Insurance on both automobiles, which earlier had been endorsed to the executors, was then re-endorsed to Jane.

Hearing on Claims. (Held October 1, 1956.) Smith attended the call of the calendar on claims. The claims he had examined, and which the executors had approved, other than Jane's claim, were allowed summarily as default matters. The court set a time for hearing Jane's claim as executrix,[58] and this hearing was held uneventfully a few days later with Jane appearing as the witness. Most of the claims had actually been paid before the hearing, since their allowance was assured. The remaining ones, including Jane's, were now paid. These claims, unlike promissory notes, were not interest-bearing by their nature, and since all of them had been paid promptly, no interest was paid to the claimants after their allowance.[59]

Order Authorizing Sale of Securities. (Entered October 2, 1956.) When the sale of some of the listed stocks apparently became desirable, Smith prepared an appropriate petition and obtained an Order Authorizing Sale of Stocks covering all of the listed stocks, which waived the state's inheritance tax lien.[60] To support an actual sale of such stocks, certified copies of the order and recently certified copies of Letters Testamentary would be delivered to the broker or transfer agent. The stock certificates, suitably endorsed or accompanied by separate stock powers, would also be delivered with the executors' signatures witnessed and guaranteed. The transfer tax would be paid at the time of each sale, either by deduction from the proceeds or by separate check. When required, certified copies of the will, affidavits of nonresidence, and inheritance tax waivers from the state of incorporation would also be used. The effect of projected sales on federal estate tax values and on income tax was considered.[61]

Order Authorizing Use of Nominee. (Entered October 2, 1956.) The executors determined to register all stocks, except those of Velcor Company, in the name of a nominee of the corporate executor.[62] This was done in order to make possible the sale or distribution of stocks without the delay and expense attendant upon

58. See PROB. CT. R. 4.1; *cf.* MINN. STAT. § 525.35 (1957).

59. Interest on allowed claims is provided for in MINN. STAT. § 525.42(3) (1957).

60. The inheritance tax lien may be waived by order of the probate court authorizing sale under blanket consent filed by the commissioner of taxation, November 5, 1941. See 2 CCH INH., EST. & TAX REP. *Minn.* ¶ 2310 (1957).

61. If date of death values were elected for federal estate tax purposes (see text accompanying notes 87 & 94 *infra*), sales would be subject to income tax on any capital gains realized between the date of death and the date of sale. Such gains would be taxable as long-term gains or short-term gains depending upon the holding period after the date of death. If alternate valuation date values were chosen, the sales during the year following death would establish the federal estate tax values to be used.

62. As authorized under MINN. STAT. § 48.74 (1957).

furnishing the transfer agents with all of the certified copies listed above in connection with the Order Authorizing Sale of Securities, as evidences of the executors' authority to transfer. Because transfer agents sometimes refused to register stocks in the name of the nominee based only on the authority of the Minnesota statute relating to nominees, Smith prepared a Petition for Order Authorizing Use of a Nominee and obtained the order *ex parte* from the probate court. Certified copies of the court's order were supplied only in those cases where required by the issuing companies or their transfer agents.

Payment of Second Half Real Estate Tax. (Due October 31, 1956; paid October 5, 1956.) The second half of the real estate taxes on the two parcels of property was paid before the due date, October 31, 1956.[63] (The real estate taxes on the properties were paid by the estate in subsequent years also, the 1956 taxes due in 1957 on both the homestead and cottage, and the taxes on the homestead alone in the subsequent years of administration, following sale of the cottage.)

Payment of Second Half Minnesota Income Tax. (Due October 15, 1956; paid October 13, 1956.) Adams had paid the first half of his Minnesota income tax as required, before April 15, 1956.[64] The second half was now paid before its due date.

Payment of Legacies. (Accomplished November 8, 1956.) Receipts had been obtained for personal effects set apart to Jane or (as in the case of the newer automobile) otherwise transferred to her. In order to effect payment of the children's legacies, it was necessary to have a guardian of their estates appointed.[65] Jane was appointed guardian of the children's estates and persons. She had petitioned for her appointment in the case of the youngest child, while the older children themselves petitioned for her appointment. Under this procedure, no notice of hearing on the guardianship petitions was required by the court.[66] The legacies to the brothers and sisters were also paid at that time. Such payment of legacies would have been deferred until after lapse of the time for appeal from the order admitting the will to probate and until a decree of partial or final distribution had been obtained, if there had been grounds for expecting a contest, a problem of will construction, or an insufficiency of assets. No interest was added to the legacies.

Redemption of "G" Bonds at Par. (Redeemed as of January 1, 1957.) The United States Savings Bonds, Series G, which Adams

63. See note 19 *supra.*

64. As provided in MINN. STAT. § 290.45 (1957). No claim was filed covering this tax. See MINN. STAT. § 525.44 (1957).

65. See MINN. STAT. § 525.504 (1957) as to legacies to minors under $1,000.

66. See MINN. STAT. §§ 525.541, .55 (1957).

had held, were redeemed at their par value plus interest as of January 1, 1957. The bonds were surrendered to a federal reserve bank with a death certificate and a request for redemption at par prepared by Smith.[67]

II. Tax Planning and Waiting Period

Selecting an Income Tax Year. (Fiscal year ending November 30, 1956; determined on November 15, 1956. Return due March 15, 1957.) As soon as possible, Smith discussed with the executors the selection of an appropriate end-of-month to be the end of the first fiscal year of the estate for income tax purposes.[68] Among the factors considered in making this selection were the tax percentage bracket which would be attained at the different possible endings of the first year, the opportunities for taking deductions for administration expenses in the ensuing fiscal years (federal return primarily), and the anticipated effect of eventual final distribution of the estate on the income of the distributees of the estate for the year in which the distribution most probably would occur. Both state and federal returns became due three and one-half months after November 30, 1956, the end of the fiscal year selected, that is, on March 15, 1957.[69] After due consideration, Smith also determined to ask for prompt audit of the decendent's and estate's returns.[70]

Decedent's Final Federal Income Tax Return. (Due April 15, 1957; filed February 20, 1957.) The joint federal return of Jane and Adams, both of whom had filed returns on a calendar year basis, was due on or before April 15 of the year following Adams' death. The return would cover Jane's income for the entire calendar year and Adams' income for that part of the year which had elapsed prior to his death.[71] A separate Minnesota return for Adams had already been filed, because a lower income tax bracket was realized if Jane's separate income was separately reported.

67. Under Treas. Reg. § 315.36 (1959), the par value of G bonds can be recovered because of the owner's death although the bonds are not mature. Interest is allowed only to the second interest payment date, however. It is probably a part of the lawyer's duty to advise non-professional executors concerning the right to redeem such bonds at par.

68. This privilege is afforded under Int. Rev. Code of 1954, § 441 & Treas. Reg. § 1.441–1(b) (1957); and under Minn. Stat. § 290.07 (1) (1957) & Minn. Inc. Tax Reg. § 2007(1)(a) (1957).

69. The due dates of these returns are set by Int. Rev. Code of 1954, § 6072 & Minn. Inc. Tax Reg. § 2042(1)(a)(3)(A) (1957).

70. Under Int. Rev. Code of 1954, § 6501(d) & Minn. Stat. § 290.49(2) (1957), any deficiency must be assessed within eighteen months after request for audit.

71. Int. Rev. Code of 1954, § 6013(a)(3). Although it was not used in the Adams estate, a similar provision exists under Minnesota law. Minn. Stat. § 290.38 (1957). See also Minn. Inc. Tax Reg. § 2042(1)(a)(4) (1957).

Therefore, a separate Minnesota return for Jane was filed on this date also.

Personal Property Tax. (Due February 28, 1957; paid February 20, 1957.) The personal property tax for 1956 became a lien as of May 1, 1956, and was payable without penalty until February 28, 1957.[72] Since the personal property tax was an accrued lien at the date of death, the estate paid the tax. (In succeeding years any personal property tax was paid by Jane as owner of the property.)

Late Claims. (Due not later than May 8, 1957; actually filed March 18, 1957.) A Proof of Claim form covering an obligation of Adams which had not been discovered during the regular claims period was completed within a year after the date of the Order for Hearing the Petition to Prove the Will and to File Claims.[73] A Petition for Extension of Time to File Claim was prepared, but the executors waived hearing and notice of hearing on the petition and approved the claim in writing. Thereupon, the claim was allowed by the court without requiring a hearing either on the extension of time or on the merits of the claim.[74]

Handling of Real Estate. (Completed March 18, 1957.) Jane decided to sell the cottage property and, in due course, found a buyer. Smith already had examined the abstract to the property. Now he prepared an appropriate purchase agreement, furnished the abstract, and—when the purchaser was satisfied as to title—tendered a probate deed under power of sale contained in the will. The transaction was closed in the same manner as other real estate sales.

Renunciation and Disclaimer. (Due date of renunciation not later than December 4, 1956. Various conferences held July 10, 1956 to May 1, 1957.) A timely review of Jane's right of renunciation was made by Smith, Jane, and the trust officer,[75] as a result of which she concluded that it was preferable not to renounce the will. The possibility of improved tax and estate planning through disclaimers was also studied and rejected.[76]

---

72. As provided in MINN. STAT. § 277.01 (1957). The tax, if over $10, may be paid in two installments.

73. As provided in MINN. STAT. § 525.411 (1957).

74. In this connection, see PROB. CT. R. 4.1, .2.

75. Six months from the admission of the will to probate is allowed as of right for exercise of a spouse's right of renunciation. MINN. STAT. § 525.212 (1957). The death tax effect of renunciation may be summarized as follows: Under federal estate tax law, the property taken by timely renunciation will qualify for marital deduction. Treas. Reg. § 20.2056(e)-2(c) (1958). Under Minnesota inheritance tax law, the spouse will be taxed on what she actually takes after renunciation. State *ex rel.* Pettit v. Probate Court, 137 Minn. 238, 163 N.W. 285 (1917).

76. Disclaimers by a spouse will reduce the marital deduction for federal estate tax purposes. Treas. Reg. § 20.2056(d)–1(a) (1958). Disclaimers by third parties which increase the spouse's share will not increase marital deduction. Treas. Reg. § 20.2056(d)–1(b) (1958). Apparently Minnesota inheritance tax law is that

Planning Administration Expenses. (Completed March 18, 1957.) Enough was now known concerning the value of the estate and the nature of its problems to permit making an accurate estimate of attorneys' and executors' fees. It was determined that such fees would be more advantageously taken as federal income tax deductions than as federal estate tax deductions.[77] The portions of these fees to be taken each year were computed to give the estate and Jane the maximum advantage.[78]

Petition for Allowance of Intermediate Account and Decree of Partial Distribution. (Filed April 1, 1957.) Smith and the executors determined to make advance distributions from the estate to the marital deduction and residuary trusts under the will. Such distributions would make immediately available to the family, through the trusts, educational and other benefits exceeding the maintenance ordered in the estate. The distributions would also split the estate's income for tax purposes among at least three taxpayers: Jane (as to the marital trust, where the income was to be distributed currently); the residuary trust (where income could be accumulated); and the estate (as to amounts of the estate's income exceeding the distributions and hence remaining taxable to the estate). Additional taxpayers could be created in that sums distributed to the children from the residuary trust normally would become taxable to them to the extent of the income in the trust available for distribution. To secure the income tax advantages of

---

the tax will be imposed on the transfers as they exist *after* the disclaimers, at least where the disclaimer is of a share in a *testate* estate. See Inheritance Tax Suggestions, 2 MINN. PROB. L. following 914 No. 51; State *ex rel.* Hilton v. Probate Court, 143 Minn. 77, 172 N.W. 902 (1919). Query as to disclaimer of intestate shares, which presumably do not affect inheritance tax but may constitute taxable gifts. (This article does not discuss directly whether or when disclaimers do constitute taxable gifts.) See Hardenbergh v. Commissioner, 198 F.2d 63 (8th Cir. 1952), *cert. denied*, 344 U.S. 836 (1952); Brown v. Routzahn, 63 F.2d 914 (6th Cir. 1933); *cf.* Treas. Reg. § 25.2511-1(c) (1958). State *ex rel.* Hilton v. Probate Court, *supra*, also shows that bona fide settlements of will contests will be given effect for inheritance tax purposes. *Accord, In re* Estate of Thorson, 150 Minn. 464, 185 N.W. 508 (1921).

77. The right to take administration expenses as federal income tax deductions arose from an interpretation of what is now INT. REV. CODE OF 1954, § 212. The election to use the deduction against one tax or the other is required by INT. REV. CODE OF 1954, § 642(g). Inspection of the estate and income tax tables applicable to an estate such as Adams' will usually reveal the more advantageous use of the deductions against income tax. The maximum net federal estate tax bracket attained is about 28%. Because of the maximum marital deduction obtained in the estate, only half of each dollar of deductions is actually a tax saving. The effective federal estate tax rate for increases or decreases in the estate is therefore approximately 14%. On the other hand, if the deductions in any one income tax year do not exceed the taxable ordinary income, a larger percentage (at least 20%) of the deductions will be paid out of tax savings. The election to take administration expenses as a deduction against income tax is not available under Minnesota law. Minn. Inc. Tax Reg. § 2010(2) (1957).

78. Of course, to entitle the executors to use a part of the deductions in a given income tax year, they must actually expend the monies in question during that year.

having the income taxed to any of these distributees, the sums distributed had to be "properly paid. . . . [or] credited."[79] Smith felt that caution dictated the interpretation that "properly" required the distribution to be made under a Decree of Partial Distribution, since no express power of making distributions in advance of a court decree was contained in the will. An Intermediate Account covering the transactions to date was therefore prepared, and a Petition for Allowance of Intermediate Account and for Decree of Partial Distribution was also prepared. Notice of the hearing was published and mailed as required by the Probate Code.[80] The purposes of the decree were to authorize the proposed distributions, to assign to Jane the proceeds of sale of the cottage in satisfaction of its devise to her, and to ratify the prior payment of other bequests and legacies.

Partial Payment of Minnesota Inheritance Tax. (April 22, 1957.) The Probate Code requires that Minnesota inheritance tax in an amount sufficient to cover the partial distributions be paid before a Decree of Partial Distribution will be entered.[81] Smith computed the tax on the amounts already distributed (which distributions were to be ratified by the decree) and on the amounts yet to be distributed under the decree. In making this computation he assumed no deductions, and included in the taxable amounts the "tax on tax" as to the outright bequests and legacies to Jane and the brothers and sisters and as to the distributions to the marital trust.[82] He used the round figure next above the total resulting tax as the amount of inheritance tax to be prepaid before the decree was to be entered. He drew a petition and an Order Authorizing Partial Payment of Inheritance Tax, by which payment to the county

79. INT. REV. CODE OF 1954, § 662(a)(2); MINN. STAT. § 290.23(9)(b) (1957).

80. MINN. STAT. § 525.482 (1957); see also MINN. STAT. § 525.83 (1957).

81. MINN. STAT. § 525.482 (1957).

82. The theory of the "tax on tax" computation is that the legatee of a legacy, the tax on which is paid from another source (here the residue of the estate), is receiving not only the amount of his legacy but the amount of the tax thereon. See Inheritance Tax Suggestions, 2 MINN. PROB. L. following 914 No. 58. Because the legacy is thus increased by the tax, the tax in turn is increased. Hence the term "tax on tax." A convenient formula for this computation in simple cases is as follows: $X = \frac{(B-E)r}{1-r}$. In this formula X equals the tax plus tax on tax; B equals the value of the bequest or legacy before exemption; E equals the applicable exemption; r equals the applicable percentage rate of tax. Thus, in the case of the bequests under Adams' will to one of the brothers and sisters, the tax plus tax on tax would equal: $\frac{(\$1,500-\$1,000)\ .03}{1-.03} = \frac{\$500 \times .03}{.97} = \$15.46$. Had Adams' death occurred subsequent to July 1, 1959, this legacy would be exempt. MINN. STAT. § 291.05(6) (1957), as amended, Minn. Laws Extra Sess. 1959, ch. 70. More complicated formulas have to be used where a rate of tax other than the minimum rate is encountered or where the tax on tax itself drives the inheritance into the next higher percentage bracket.

treasurer[83] in the amount so arrived at was authorized. When the order had been signed, the clerk served copies on the county treasurer and commissioner of taxation as well as on Smith, and the tax was paid by check to the county treasurer.

Order Confirming Appointment of Trustees. (Entered April 23, 1957.) In order to permit eventual discharge of the executors as to their distributions to the trustees, Smith obtained an *ex parte* order from the district court[84] confirming the appointment of the trustees.[85] As requested in the will, no bond was required of the trustees by the court. Supporting the order was a petition and supplementing it were the papers by which the trustees qualified under the order, namely, the Oath and Acceptance of Jane and the Acceptance alone of the corporate trustee. A true *plain* copy of the trust instrument (Adams' will) was attached.[86] A certified copy of the order was obtained and filed in probate court, the certificate reciting that the trustees had qualified in the manner required by the order.

Decree of Partial Distribution. (Entered April 29, 1957.) After the hearing on the Petition for Allowance of the Intermediate Account and for the Decree of Partial Distribution, the decree was entered approving the payment of legacies already paid and assigning the property specified. The clerk drew the Order Allowing the Intermediate Account which was also entered at this time.

Alternate Valuation Date. (May 1, 1957.) Shortly following May 1, 1957, Smith and the corporate executor assembled further data pertinent to the value of assets remaining in the estate on that date, together with the values at the dates of their distribution or sale, of the properties previously distributed and sold. The values so assembled constituted alternate valuation date values[87] which were compared with the date of death values obtained earlier, for the purpose of determining which values should be used in preparing the federal estate tax return.

---

83. As provided in MINN. STAT. § 291.13 (1957).

84. Such application is made pursuant to MINN. STAT. § 501.33 (1957). Upon granting the relief, the district court assumes jurisdiction *in rem* over the trust. An inventory of trust assets must be filed in due course, and thereafter annual accounts must be rendered to the court. MINN. STAT. § 501.34 (1957).

85. Unless a waiver is contained in the will, qualification in court is required by MINN. STAT. § 525.504 (1957).

86. Under a *present* rule in Hennepin County, a certified copy of the trust instrument must be filed. Further, a certified copy of the Decree of Partial or Final Distribution is to be filed *before* an "application for the appointment of a Trust pursuant to . . . Minnesota Statutes, Section 501.33" will be considered. District Courts — Special Rules of Fourth Judicial District, Rule 14(f) (found in 27A MINN. STAT. ANN. 262, 272 (1958)). Apparently the rule is not enforced strictly in cases where its enforcement creates a problem, such as where partial distributions to trustees are authorized to be made without or in advance of a decree.

87. This date is defined in INT. REV. CODE of 1954, § 2032.

Redemption of Treasury Bonds in Payment of Federal Estate Tax. (Request filed June 3, 1957.) The Treasury Bonds held by Adams were of a series which could be redeemed at par plus accrued interest to pay federal estate tax.[88] In accordance with preferred Treasury practice, these bonds were sent to the Bureau of the Public Debt, Division of Loans and Currency, with a Form PD 1782[89] for redemption at least three weeks before the federal estate tax was to be paid.[90] Because these bonds could be turned in at par instead of at their current market price of 85, they were valued at par in the federal estate tax return.[91]

End of First Year of Administration. (June 3, 1957.) According to the Probate Code and Rules, the estate should have been settled by this date and a Final Account filed.[92] However, under modern tax practice, Smith had discovered that settlement of substantial estates could not be made in the time allowed, and in no county in which he practiced had the court required him to show cause why the time should not be extended. Obviously, the Code provision was regarded as only directory.

Federal Estate Tax Return. (Due August 1, 1957; filed July 17, 1957.) The executors and Smith considered filing the federal estate tax return substantially before the alternate valuation date.[93] If they had filed the return at that time, they would have used date of death values, and would have amended the return to change the election if use of the alternate valuation date values later proved more advantageous.[94] However, they ultimately followed the more conventional practice of waiting until after the alternate valuation date before determining which values they would use. Smith and the executors had also considered the possible advantage of selecting the date on which the values were higher because of savings on income taxes due to capital gains on items sold,[95] but a few computations indicated that this choice would not produce tax savings in this estate.

88. Lists of such bonds can be obtained from federal reserve banks. See also 1 FED. EST. & GIFT TAX REP. ¶ 4220.45 (1954).

89. U.S. Treasury Department, Bureau of the Public Debt, Form PD 1782. These forms are available from this bureau or from federal reserve banks.

90. The practice is set forth in Letter Ruling, 2 FED. EST. & GIFT TAX REP. ¶ 4220.25 (1953).

91. As provided in Rev. Rul. 156, 1953–2 Cum. Bull. 253.

92. MINN. STAT. § 525.47 (1957); PROB. CT. R. 3.3.

93. The due date of the return was August 1, 1957. See INT. REV. CODE OF 1954, §§ 6075(a), 2031–32.

94. A change of election can be made within fifteen months after decedent's death or within the period of any extension granted by the district director. Treas. Reg. § 20.2032–1(b)(2) (1958).

95. The executors are not compelled to select the lower of the date of death or alternate values. Treas. Reg. § 20.2032–1(b)(1) (1958). Concerning the basis for gains or losses, see INT. REV. CODE OF 1954, § 1014(a).

In preparing the return, Smith took care in determining and reporting valuations and in claiming those deductions, such as accrued taxes and interest, which can be taken both for federal income tax purposes and for federal estate tax purposes.[96] Maximum marital deduction was achieved by use of the tax formula clause in the will. Because the major deductible items were taken as income tax deductions, the "adjusted gross estate" was thereby increased and the marital trust was enlarged under the formula. Happily, the draftsman of Adams' will had authorized the executors to make the determination concerning the deductibility of expenses finally, arbitrarily and without recourse. Hence, no latent liability to children remained to haunt the executors as a result of their tax-saving decision.[97] Although suggested by Treasury regulations, no piece-by-piece itemization of household goods was made.[98] The return was filed prior to the fifteen-month due date with the necessary Treasury Forms 712 pertaining to the life insurance and a certified copy of the will.[99] The tax had already been partially paid by surrender of the Treasury Bonds, and the balance was paid by check. At the same time, powers of attorney[100] and a request for early discharge of the executors from personal liability[101] were filed. A copy of the return was sent to the Inheritance & Gift Tax Division of the State Department of Taxation.[102]

Further Partial Payment of Minnesota Inheritance Tax. (Tax began to draw interest November 1, 1957; payment made October 30, 1957.) Since the Minnesota inheritance tax begins to draw interest

96. Certain accrued obligations for business or non-business expenses, interest payable, and taxes on real estate or income may be deductible from income tax (INT. REV. CODE OF 1954, § 691(b)), and also from estate tax (INT. REV. CODE OF 1954, § 2053). The same is true under Minnesota law. See MINN. STAT. §§ 290.77 (3), 291.07 (1957); Minn. Inc. Tax Reg. § 2007.7(2) (1957).

97. Such liability theoretically could result from the executors' determination to pay expenses from income tax. Under the "formula clause," the wife's marital trust would be increased at the expense of those who shared in the residue of the estate. From the standpoint of such persons, the resulting saving of federal estate taxes would not compensate for the decrease in the residue. The action of the executors in so depriving the persons entitled to the residue could possibly subject them to liability to such persons.

98. Smith assembled sufficient material to comply with the stringent provisions of Treas. Reg. § 20.2031–6 (1958) as to valuation or appraisal of household and personal effects if such material were called for by the auditing agent. However, his experience indicated that complete itemization was usually not required by the agent.

99. Only one original of the return, U.S. Treasury Department, Internal Revenue Service, Form 706, need be filed. A certified copy of the will must be submitted with the return. Treas. Reg. § 20.6018–4(a) (1958).

100. U.S. Treasury Department, Internal Revenue Service, Forms 2243 were submitted in duplicate to avoid the necessity of preparing and submitting an authenticated copy of the original. These powers of attorney enable the attorneys qualified to practice before the Treasury Department to represent the taxpayer.

101. Such discharge is provided for in INT. REV. CODE OF 1954, § 2204.

102. As required by MINN. STAT. § 291.12(3) (1957).

eighteen months after the date of death,[103] Smith sought to reduce the estate's liability for interest by prepaying as much of the principal of the tax as was beyond controversy. He therefore computed all inheritance taxes which appeared to be due based on known or estimated deductions, on conservative valuations of the assets, and on transfers which as a matter of law were clearly taxable.[104] The first partial payment of tax[105] was subtracted from the total taxes so computed. The remaining difference was reduced to the next lower round amount, and was paid under a further order of the probate court under a procedure similar to that followed at the time of the first partial payment of tax.[106]

Renewal of Maintenance. (Order obtained October 30, 1957.) Having determined the need for and the advantage of further maintenance payments to Jane after the initial eighteen-month period, Smith obtained an Order Extending Maintenance for an additional twelve months or until an earlier closing of the estate.[107] (A further renewal was made again one year later.)

Redemption of Stock. (Completed October 31, 1957.) While preparing to meet further maintenance payments, expenses of administration, inheritance tax obligations and possible federal tax deficiencies, the executors decided it would be advisable to raise additional cash in the estate. This could have been done either through sales of some of the listed securities which remained in the estate, or by Jane's use of insurance proceeds to buy stock in Velcor Company. However, since Velcor Company stock was an erratic dividend payer, the estate needed greater diversification, and Adams' stock in Velcor was only a minority holding; when Velcor Company offered to buy some of the stock at a fair price per share, the executors were favorably disposed to accept. They discussed with Smith the probable effect of such a sale on the values used for federal and state death tax purposes. Smith also considered the amount of stock of Velcor Company which could be sold to the company without chancing possible treatment as a constructive dividend for income tax purposes.[108] The company was not willing to purchase sufficient stock to effect a termination of interest[109] or a disproportionate re-

103. MINN. STAT. §§ 291.11(1), .15 (1957).

104. If the tax should be overpaid, apparently it would be good practice to make a timely formal application for refund to the commissioner of taxation. See MINN. STAT. §§ 291.18, .32 (1957).

105. See text accompanying note 83 *supra.*

106. *Ibid.*

107. Extensions of maintenance in appropriate cases are contemplated by the Probate Code. MINN. STAT. § 525.15(4) (1957).

108. See INT. REV. CODE OF 1954, § 302; MINN. STAT. § 290.131(2) (1957).

109. As provided in INT. REV. CODE OF 1954, §§ 302(b)(3), (c)(2); MINN. STAT. §§ 290.131 (2)(b)(3), (c)(2) (1957).

demption,[110] since under the "attribution rules" of constructive ownership such purchase would have had to include the shares owned not only by Adams but also by his parents, wife and children or beneficiaries.[111] However, it appeared that a limited redemption of Velcor stock was possible, since the value of that stock in the estate was equal to at least fifty per cent of the taxable estate for federal estate tax purposes.[112] This was true because the taxable estate was cut approximately in half by the use of marital deduction. Therefore, a number of shares having a value just under the total of the estate and inheritance taxes and the expenses of administration was offered by the estate to the company. The company accepted this offer, and the sale was then effected under an Order Authorizing Sale of Stock and other papers similar to those needed in connection with the sale of the listed securities.[113]

Fiduciary Income Tax Returns. (Due March 15, 1958; filed on time.) The federal and state fiduciary returns for the second fiscal year of the estate were prepared and filed. No further partial distribution was needed to reduce the taxes in that year, since the deductions for the fees and expenses paid during the year had largely offset the income of the estate for the year, insofar as the federal return was concerned.[114] (In due course fiscal year end fiduciary returns were also filed for the following year.)

III. Closing Phase

Income Tax Audits. (Completed during 1957 and 1958.) The state and federal tax authorities audited the decedent's income tax returns for all open years[115] and the estate's fiduciary returns filed to date. The only problems raised involved Adams' federal returns, and concerned claimed business expense deductions and the company's gratuity paid to Jane after Adams' death by his employer, insofar as it exceeded $5,000.[116] The government's claim as to expenses was refuted by producing evidence on the point. The claim

110. As provided in Int. Rev. Code of 1954, § 302(b)(2); Minn. Stat. § 290.131(2)(b)(2) (1957).

111. As provided in Int. Rev. Code of 1954, § 318(a); Minn. Stat. § 290.133 (3)(a) (1957).

112. This is one of two tests under both federal and state law. If either is met, a redemption may be had of amounts not exceeding the death taxes and administration expenses. Int. Rev. Code of 1954, § 303; Minn. Stat. § 290.131(3) (1957).

113. See text following note 60 *supra.*

114. Such deductions were not available on the state return. See note 77 *supra.*

115. The period for audit is prescribed by Int. Rev. Code of 1954, §§ 6501(a), (d); Minn. Stat. §§ 290.49(1), (2) (1957).

116. As provided in Int. Rev. Code of 1954, § 101(b) & Minn. Stat. § 290.08(3)(b) (1957). (The $5,000 exclusion would have been apportioned between the retirement plan death benefit, under which no nonforfeitable right had been acquired, and the gratuity. See Treas. Reg. § 1.101–2(c) (1957)).

as to the gratuituous payment to Jane was finally abandoned by the government after conferences with Smith in the Appellate Division.[117]

Federal Estate Tax Audit. (Completed November 10, 1958.) Smith had supplied the Internal Revenue Service with data relating to the values used in the federal estate tax return, such as information regarding the nature of Velcor Company and its financial situation. These were mainly data required by the Service by form letter. When the agent actually appeared in Smith's office, Smith had additional material ready to support the return. In dealing with the agent, Smith employed the methods of negotiation and bargaining which experience had taught him would be most likely to result in a proper tax settlement from the standpoint of the estate. This was one of the principal areas to which he felt his efforts as a probate lawyer should be directed. Eventually a satisfactory settlement was reached—one involving a small deficiency based on a slight increase in the value of Velcor stock originally reported—Smith obtained the approval of the executors and of Velcor Company. Jane's consideration claim was allowed and all other parts of the return were accepted as filed. Within a few days, Smith received an Acceptance of Assessment of Deficiency,[118] which was then signed by the executors and returned. Payment of the deficiency and interest[119] closed the federal estate tax case for all practical purposes,[120] subject to proof that the estate was entitled to the credit for state death taxes paid.[121]

Final Account. (Filed November 19, 1958.) The Final Account[122] was now prepared in detail, the printed form of account being quite insufficient fully to set forth the transactions in the estate. Adjustments, omitted property and liquidations were included. The account contained a Plan of Proposed Distribution consisting of a list of assets having the requisite value to compose the marital trust, and a further list of assets to compose the residuary trust. Since the will contained no provision to the contrary, the plan allocated an appropriate portion of the income earned during probate and not

117. See Treas. Reg. § 601.106 (1955) as to functions and practice of the Appellate Division.

118. U.S. Treasury Department, Internal Revenue Service, Form 890.

119. As to interest, see INT. REV. CODE OF 1954, § 6601.

120. See Treas. Reg. § 601.105(b)(4) (1958).

121. The credit is set forth in INT. REV. CODE OF 1954, § 2011.

122. An accounting is prescribed by MINN. STAT. § 525.48 (1957). This account was not filed earlier because of the necessity for exact determination of the "adjusted gross estate" required by the "formula clause" in the will and the possibility that any federal estate tax deficiency would not be allowed as a Minnesota inheritance tax deduction. See MINN. STAT. § 291.07 (1957). Since the estate could not be completely closed earlier, it seemed advisable to retain the benefits of income tax splitting which flowed from affirmatively having it open.

previously distributed to the marital trust.[123] Vouchers were assembled proving the disbursements shown in the account and were filed with the account.[124] Smith drafted a Petition for Settlement and Distribution which contained appropriate allegations to support the determination of the value and identity of assets to be allocated to the two trusts. He found that a form petition was distinctly inadequate for this purpose. A copy of the Final Account was sent to the commissioner of taxation.[125]

Hearing on Final Account. (December 15, 1958.) The hearing on the Petition for Settlement and Distribution was held upon proper notice as in the case of the Petition for Allowance of Intermediate Account.[126] The trust officer testified in support of the account and plan of distribution. Smith had prepared and left with the court a suitable Decree of Distribution, which he had prepared for eventual entry when an inheritance tax settlement was reached.[127] The clerk prepared and the court entered an Order Allowing the Final Account.

Minnesota Inheritance Tax Order. (Entered February 3, 1959.) The probate court completed a proposed Inheritance Tax Record[128] and sent copies to Smith and the Inheritance and Gift Tax Division of the Department of Taxation. Smith and the Inheritance Tax Division reached agreement on the deductions,[129] and, after a process similar to that used with the examining agent on the federal estate tax audit, on the values.[130] Because of the clause permitting invasion of principal of the residuary trust for Jane's benefit, the probate court declined to compute the tax on the probate property separately,[131] and the Division asked for a Composition Agreement to determine the tax.[132] After study of the alternative possibility of paying a tax computed on the assumption of complete distribu-

123. See *In re* Trust of Koffend, 218 Minn. 206, 15 N.W.2d 590 (1944). As to the residuary trust, Adams' will provided that income during probate should be considered a part of the principal.

124. As required by PROB. CT. R. 3.4.

125. As provided in MINN. STAT. § 291.21(2) (1957).

126. As provided in MINN. STAT. §§ 525.481, .83 (1957).

127. "No final decree shall be entered until after the determination and payment of inheritance taxes. . . . " MINN. STAT. § 525.481 (1957).

128. Such a record is described in Inheritance Tax Suggestions, 2 MINN. PROB. L. following 914 No. 24.

129. Authorized deductions are prescribed by MINN. STAT. § 291.07 (1957).

130. The state had preserved its right to negotiate values by filing objections thereto pursuant to MINN. STAT. § 291.21(3) (1957).

131. The probate courts' power to determine tax on probate property is described in MINN. STAT. §§ 291.21(3), .25 (1957). The procedure when the court does not impose the tax is described in Inheritance Tax Suggestions, 2 MINN. PROB. L. following 914 Nos. 13 & 30.

132. As authorized by MINN. STAT. § 291.30 (1957). (The title of this section as printed in the Minnesota Statutes is misleading as to the scope of the material covered.) See Inheritance Tax Suggestions, 2 MINN. PROB. L. following 914 No. 13.

tion of principal and later claiming a refund,[133] Smith and the executors decided instead to accept the Composition Agreement. Because it was Jane's strong wish not to delay settlement of the tax, they also determined not to resist the taxation of the entire marital trust to Jane even though the remainder of such trust was subject to a power of appointment,[134] nor to object to the taxation of the death benefit from the Velcor Company retirement plan.[135] Jane's consideration claim, the claim of exemption on the life insurance she owned on Adams' life, and all other potential issues involved were settled as Smith proposed. A Composition Agreement determining the tax on both probate and non-probate property was therefore prepared, signed, and served; and the amount of the tax, determined after deducting the amounts paid under the previous Orders Authorizing Partial Payment of Tax, together with the interest thereon, was, under order of the court, paid to the county treasurer. His receipt, as countersigned on behalf of the commissioner of taxation, was filed with the probate court.[136]

Minnesota Estate Tax Return. (Filed February 3, 1959.) With final adjustment of the federal estate tax liability, it had become possible to complete the Minnesota Estate Tax Return.[137] Owing to the marital deduction, the assets of the estate subject to Minnesota inheritance tax had greatly exceeded the taxable estate for federal estate tax purposes. Therefore, the Minnesota inheritance taxes paid substantially exceeded the credit for state death taxes under the federal estate tax law, and the return showed that no Minnesota estate tax was due.[138] The commissioner of taxation issued a certificate to the probate court confirming this.

Final Federal Estate Tax Clearance. (Received March 17, 1959.) Smith had already requested and received from the Commissioner of Taxation of the State of Minnesota a Certificate of Credit on Federal Tax showing the total amount of the inheritance taxes paid under the Orders Authorizing Partial Payment—this being an amount exceeding the federal credit for state death taxes. He had

133. As provided in MINN. STAT. § 291.11(5) (1957).

134. See MINN. STAT. § 291.01(3) (1957). This subsection apparently was intended to impose the inheritance tax on the remainder interest in property subject to a power of appointment only in the hands of the donee. See Brink, *Minnesota Inheritance Tax: Some Problems and Solutions*, 43 MINN. L. REV. 433, 457–59 (1959). *But cf. In re* Bradley's Estate, 241 Minn. 394, 63 N.W.2d 374 (1954).

135. See note 46 *supra*.

136. Such filing is required before the representative will be discharged. MINN. STAT. § 291.13(4) (1957).

137. This return must be filed in duplicate in estates where the gross estate for federal estate tax purposes exceeds $100,000. Inheritance Tax Suggestions, 2 MINN. PROB. L. following 914 No. 19.

138. See MINN. STAT. §§ 291.34, .37 (1957). Query whether technically the sections of Minnesota Statutes imposing the Minnesota estate tax may not now be void owing to the express provisions of MINN. STAT. § 291.36 (1957).

forwarded this to the district director. In due course, a closing letter accepting this proof of credit and accepting the tax as determined and paid was received, thus closing the federal estate tax case.

Final Decree of Distribution. (Entered March 24, 1959.) Upon the determination and payment of Minnesota inheritance tax and the determination of no Minnesota estate tax, the probate court entered the Final Decree of Distribution which Smith had prepared.[139] A certified copy was procured to effect the transfer of the unsold stock of Velcor Company which had never been registered in the name of a nominee. Since there was no remaining real property in the probate estate, recording of the certified copy of the decree was unnecessary.

Final Income Tax Returns. (Due July 15, 1959. Filed April 17, 1959.) The final state and federal fiduciary income tax returns were prepared and filed.[140] In the case of the federal return, the deductions for the remaining fees and other expenses caused a net deduction to be carried over to the trusts which could be offset against their income for the balance of the year.[141] The termination date of the estate was treated as being the date of entry of the final decree.[142]

Discharge of Executors. (Entered May 1, 1959.) There were no remaining outstanding claims of or against the estate. Therefore, Smith now filed the receipts of the distributees with a Petition for Discharge of Executors. An Order Discharging Executors was then procured *ex parte.*[143] A copy of this order was sent to the surety on Jane's bond as notification of its release. The surety company returned a small check payable to the trustees as a refund of the unused premium on the bond.

The handling of the estate was now complete. It appeared that the insurance, trusts and other assets of the estate in combination with Jane's own income would leave the family well cared for. Smith reflected upon both the material and non-material results of his work in the estate. He had earned a substantial monetary fee. The estate had been a routine one, without the complications of

139. The requirements of the decree are stated in MINN. STAT. § 525.481 (1957).

140. Under both federal and Minnesota law, the return must be filed within three and one half months after the end of the month in which the estate was closed. INT. REV. CODE OF 1954, § 6072; Minn. Inc. Tax Reg. § 2042(1)(a)(3)(B) (1957).

141. As provided in INT. REV. CODE OF 1954, § 642(h). The excess deductions did not carry through the trust to Jane as beneficiary, because § 642(h) applies only in the terminal year of an estate or trust, and the trusts were not in their final year.

142. *Cf.* Treas. Reg. § 1.641(b)-3(a) (1956).

143. As provided in MINN. STAT. § 525.504 (1957).

will contests, disputed claims, will construction problems, or tax litigations. It had afforded Smith opportunities for displays of competence more often than brilliance; yet he took pride in the smooth running probate and in his successful solution of the stock valuation problem, the employer's gratuity case, and other tax problems. He had also gained satisfaction from helping to ameliorate the emotional and financial problems of the Adams family, by providing them with a workable permanent arrangement of their financial affairs, secure titles to property, settlement of all adverse claims, and elimination of all latent tax problems.