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Jurisdiction for Ingeritance Taxation

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JURISDICTION FOR INHERITANCE TAXATION.

The scope of this article is necessarily limited to brief statements of the various theories upon which a state imposes an inheritance tax. The citations are not exhaustive. While there have been many theories advanced, and sometimes adopted, as the basis of inheritance taxation, the now generally accepted one is that the inheritance tax imposed by the states in this country is a tax on the *transfer* of the property from dead hands to living ones.[1] It is not considered a tax on the property involved in the transfer, nor is it a tax upon the person to whom the property devolves, although it has sometimes been said to be a tax upon the right to have property transmitted after death; neither is it a tax upon the use of the privilege of making a will, because it is imposed even though there be no will. The later discussions and the expressed theory of the newer statutes are practically in unison in declaring that it is the transfer that is taxed.

At first glance it would therefore seem to be an easy matter to determine what state or jurisdiction had the right to impose a tax in any given case, for the jurisdiction in which the transfer is effected would be the logical place to impose the tax. But this is true only in a most limited sense. In the first place taxing officials and courts too, will differ as to the place where the property is transferred in contemplation of law, and it is a peculiar anomaly that it really makes no difference where the legatee or heir actually obtains possession of his property. The place of getting actual physical possession is an impotent fact and apparently has no bearing on the question. So, although the tax is in theory a tribute levied by the state on the transfer from the dead to the living, the right to impose is based primarily on whether the state has *any* jurisdiction of any of the property involved.

Most of the inheritance tax statutes use as broad and as general language as possible in describing the property, "the transfer" of which is to be taxed: "All property within the

1. Knowlton v. Moore, (1900) 178 U. S. 41, 20 S. C. R. 747, 44 L. Ed. 969.

jurisdiction of the Commonwealth;"[2] "All estates, real, personal and mixed of every kind whatsoever;"[3] "Property shall be within this state;"[4] "Property within the state or within its jurisdiction,"[5] are typical of the scope of the legislative enactments, and these the courts have uniformly held are as broad as the jurisdiction of the state that enacted them. Thus, the question of legislative intent is superseded by the question of whether under *any* theory it can be said that the property under consideration is within the state. Neither the policy adopted by the state, nor as limited by the courts as to the jurisdiction to impose general property taxes on property, is the guide to follow in solving the problem of inheritance tax jurisdiction.[6]

In the very nature of the tenure of real property there can be little or no question as to where its situs is for inheritance taxation. Such taxation must necessarily be limited to the state where the land is located, no matter where the domicile of the owner may have been. Attempts have been made to indulge in theories that might lead to its taxation in another state. These have usually failed. The doctrine of equitable conversion has been invoked to induce the court of decedent's domicile to consider his land in another state as being converted into personalty and thus taxable at the domicile, but the courts have rejected the theory as untenable, one court saying, "The question of jurisdiction of the state is one of fact and cannot turn upon theories of fiction which, as have been observed, have no place in a well adjusted system of taxation."[7] It will be seen later that the courts do not have the same hesitancy in adopting theories in imposing such taxes on personalty.

All personal property, tangible and intangible, no matter where actually located, and whether it has ever been within the state or not, is subjected to an inheritance tax in the state of the domicile of the decedent. This proceeds upon the prin-

2. Mass. Acts 1909 Chap. 527 Sec. 1.
3. Pa. Statutes 1887 Chap. 37 Sec. 1.
4. Ill. Laws 1909 p. 312.
5. Minn. G. S. 1913 Sec. 2271 (3).
6. Estate of Stanton, (1905) 142 Mich. 491, 105 N. W. 1122.
7. Estate of Swift, (1893) 137 N. Y. 77, 32 N. E. 1096. See also, Estate of Curtis, (1894) 142 N. Y. 219, 36 N. E. 887; Connell v. Crosby, (1904) 210, Ill. 380, 71 N. E. 350; McCurdy v. McCurdy, (1908) 197 Mass. 248, 83 N. E. 881, 16 L. R. A. (N. S.) 329.

ciple, which is theory only, that movables follow the person of the owner, and are therefore to be considered as being where the owner lives. A Minnesota resident dies owning a steam yacht in Florida or a herd of cattle in Texas, and the value thereof is taken into consideration in determining the Minnesota inheritance tax. The probate court of the domicile has undoubted jurisdiction over such personalty, and the domiciliary representative would administer that property and effect a transfer of the title to the living owners. The state of the domicile is where the transfer in theory takes place; that is, where the rule of succession is established. But it is plain that such tax rests wholly upon theory for its justification, if the property is permanently physically absent from the domicile.

The determining that the state of the domicile has jurisdiction does not lead to the conclusion that the taxable situs has been located there to the exclusion of any other situs. Finding it in one place does not mean that it is not at the same time in another place. The state where tangible personal property is found also has jurisdiction to impose a tax, though the late owner was a non-resident. This is based upon fact and not upon theory. A ground for the exercise of such jurisdiction is that the property has the protection of the laws of the state where it is located and such laws are invoked "for the reducing of it to possession when the change of ownership is to be effected."[8] The new owner or the representative of the decedent must go to such state to get the property and perchance use the courts of that state to obtain the beneficial use and enjoyment thereof. If the state where the property of a non-resident decedent is found has such jurisdiction of the property as would enable a resident creditor, for instance, to have the property subjected to the payment of his debt against the estate through probate proceedings, such property can there be subjected to an inheritance tax. It must be conceded though, that such a tax is not in reality a tax on the transfer of the property in the same sense that the tax is imposed on the transfer of the property of a resident decedent. It really becomes analogous to a tax on the property itself for the transfer takes place in the state of the domicile and the laws of descent of that state determine the succession, and other laws

8. Callahan v. Woodbridge, (1898) 171 Mass. 595, 51 N. E. 176.

of that state determine the validity and legal effect of any testamentary disposition. Some courts assert that it is only by the law of comity that this is true and that any state has the right and power to determine the succession of all property within its borders upon the death of the owner.

When intangible personalty of a non-resident is considered, still other theories and arguments are used to legally justify the tax. Corporate stock, or the transfer of it, is taxed in the state of the domicile of the corporation and the fact that the office of the transfer agent or registrar is in the state of the late owner's domicile, probably would make no difference. The tax is here imposed upon the theory that such stock represents an interest in property within the taxing state,[9] but whether the corporation has any property within the state of its creation is not a factor in determining the taxability of the transfer of its shares. The taxing officials of some states, particularly Illinois and Wisconsin, assert the right to impose a tax on the transfer of property owned by the estate of a non-resident in a *foreign* corporation, if any of the tangible property of the corporation is within that state. No reported case has as yet confirmed such right. If the corporation is incorporated in more than one state as are many railroad companies, each state of incorporation imposes a tax on the transfer of the stock owned by a non-resident decedent, but here again another theory is used, for instead of taking the full value of the stock into consideration, only such proportion of the value is used as equals the proportion of the tangible property of the company within that state, as compared with all of its tangible property everywhere; and this is true, no matter where the transfer office may be. This division of the value of the stock is probably a concession toward substantial justice rather than a logical conclusion. Such a corporation is doubtless a domestic corporation in every state in which it is incorporated and it does not detract from that character by being incorporated in more than one commonwealth.

Stock in a national bank is subjected to an inheritance tax in the state where the bank is located, although the owner lives in another state.[10] This is upon the theory that such a cor-

9. State ex rel. Graff v. Probate Court, (1915) 128 Minn. 371, 150 N. W. 1094.

10. State ex rel. Graff v. Probate Court, supra. Greeves v. Shaw, (1899) 173 Mass. 205, 53 N. E. 372.

poration is in a sense a citizen of the state where its place of business is fixed by the law of its creation, though the state has nothing to do with granting the franchise.

The situs of a book account or promissory note due the estate of a non-resident is considered to be at the domicile of the debtor, no matter where the evidence of the debt may be kept. The familiar principle that such claims have a situs at the domicile of the creditor fails here, for the theory is that while the claim followed the creditor in his life time, immediately upon his death the debt follows the debtor. It is where the debtor lives that the claim is enforcible. This reasoning places this class of property on the same basis as tangible personalty and the "transfer" is taxable where the property is found, or can be sued for, if it cannot be reduced to possession by other means.[11] But a state can impose a tax on the indebtedness evidenced by a note even if the owner of the note and the maker thereof are non-residents and the note was never in that state, if it is secured by a mortage on real property in such state.[12] It can be safely said that this right has not yet been established beyond all question and it may be that where a mortgage does not pass title to the land that the mortgage lien will not finally be considered sufficient to justify a tax in the state where the land only is located.

A divided court in a recent Minnesota case[13] held that where the creditor's estate could enforce a corporate bond secured by real estate without going into the state where the real property is located and where the corporation is domiciled, that neither such domicile of the debtor nor location of the realty gave sufficient jurisdiction to sustain a tax. This would seem to make jurisdiction depend wholly upon whether the debt could be enforced or the security realized upon in any other state, and if it could, then the state of the debtor's domicile or of the location of the mortgaged property must yield its jurisdiction to the stronger claims of the other states. But this probably does not go to the extent of introducing a doctrine of "comparative jurisdiction" nor of any reciprocal yielding by one state to the stronger claims of another state.

11. Blackstone v. Miller, (1903) 188 U. S. 189, 23 S. C. R. 277, 47 L. Ed. 439.

12. Rogers Estate, (1907) 149 Mich. 305, 112 N. W. 931.

13. State v. Chadwick, (1916) 133 Minn. 117, 157 N. W. 1076.

Intangible property of some classes such as bonds, notes and mortgages have been discovered to have still another situs for inheritance tax purposes. If they are kept habitually within a state for investment or safe-keeping in a state that is not the domicile of the owner, nor of the debtor, they become subject to a tax in the state where so kept. This view has the effect of giving such evidences of intangible property a sort of independent situs of their own.[14]

There is still another though somewhat rare condition of affairs to legally justify the state in imposing an inheritance tax on the transfer of property where it may also be taxed by other jurisdictions. The exercise of a power of appointment by will, no matter where the property is situate, nor where the donor of the power resided, nor where the beneficiaries of the donor of the power lived, is taxable at the domicile of the testator exercising the power.[15] This is upon the theory that it is the exercise and not the creation of the power that actually makes the "transfer", hence the tax is imposed where the transfer takes place,—and that takes this discussion back "to the point of beginning".

These more or less inconsistent theories necessarily lead to the taxation of legacies and inheritances in two or more states involving the same property, thus making double or repeated burdens of taxation though not legally considered as double taxation in the constitutional sense.[16] There is no difference of opinion about the real injustice of these conditions; there is much difference as to the best way to remedy it. Mutually satisfactory reciprocating statutes or a uniform law as to "which situs" should control are the only classes of remedies yet suggested. A discussion of the variations within such classes and their apparent merits or defects would be beyond the scope of this article.

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14. Estate of Tiffany, (1911) 143 N. Y. App. Div. 327, 128 N. Y. Supp. 106; Wheeler v. New York, (1914) 233 U. S. 434, 34 S. C. R. 607, 58 L. Ed. 1030.

15. State ex rel. Smith v. Probate Court, (1914) 124 Minn. 508, 145 N. W. 390.

16. Blackstone v. Miller, supra.