1942

Taxation--Due Process--Multi-State Taxation of Transfers of Intangible Personal Property at Death

Minn. L. Rev. Editorial Board

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TAXATION — DUE PROCESS — MULTI-STATE TAXATION OF
TRANSFERS OF INTANGIBLE PERSONAL PROPERTY AT DEATH.—The
restrictive effect of the due process clause of the Fourteenth
Amendment on multi-state taxation of transfers of intangible per-
sonal property at death has undergone considerable fluctuation in
United States Supreme Court decisions. Since 1939 the Court
has followed a policy announced in Curry v. McCanless,\(^1\) the
scope and direction of which is indicated to some extent in two
recent decisions, Graves v. Schmidlapp\(^2\) and State Tax Commission
of Utah v. Aldrich.\(^3\) It is the purpose of this note to outline briefly
the history of the law on multi-state taxation of the transfer of

\(^1\)(1939) 307 U. S. 357, 59 Sup. Ct. 900, 83 L. Ed. 1339, discussed in
(1939) 24 MINNESOTA LAW REVIEW 136; (1939) 53 Harv. L. Rev. 68, 69.


\(^3\)(1942) ........ U. S. ........, 62 Sup. Ct. 1008, 86 L. Ed. 911.
intangible property at death, to indicate the present state of that law, to point out the current trend and suggest the extent to which it is likely to be pursued by the Court in the future.

During the first three decades of this century the leading case on the subject was Blackstone v. Miller, which was authority for the proposition that multi-state taxation of the transfer of choses in action at death does not, in itself, violate the due process clause of the Fourteenth Amendment. After the Blackstone Case, the bases upon which the Supreme Court sustained multi-state taxation of these transfers were various, and the result was that several states were permitted to tax the same transfer. However, the due process clause furnished one notable restriction on multi-state taxation during this era when the doctrine of Blackstone v. Miller prevailed. In the case of Wachovia Bank and Trust Co. v. Doughton the Court decided that the domiciliary state of a donee of a

4For a complete analysis of the problem of multi-state taxation up to 1931 see Rottschaefer, The Power of the States to Tax Intangibles, (1931) 15 MINNESOTA LAW REVIEW 741.

5(1903) 188 U. S. 189, 23 Sup. Ct. 277, 47 L. Ed. 439. This case specifically held, that a New York tax be sustained, where it was imposed on a transfer at death by an Illinois resident of bank deposits in New York and personal debts due from residents of New York. At page 204 the Court said, “No doubt this power on the part of two States to tax on different and more or less inconsistent principles, leads to some hardship . . . but these inconsistencies infringe no rule of constitutional law.” And on page 206, “Power over the person of the debtor confers jurisdiction, we repeat. And this being so we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the State at the time of the death. The maxim mobilia sequuntur personam has no more truth in the one case than in the other. When logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way.”

6For example: The domicile of the decedent, Bullen v. State of Wisconsin, (1916) 240 U. S. 625, 36 Sup. Ct. 473, 60 L. Ed. 830; Blodgett v. Silberman, (1928) 277 U. S. 1, 48 Sup. Ct. 410, 210, 50 Sup. Ct. 98, 74 L. Ed. 371, 65 A. L. R. 1000 and note; but see Rhode Island Hospital Trust Company v. Doughton, (1926) 270 U. S. 69, 46 Sup. Ct. 256, 70 L. Ed. 475, 43 A. L. R. 1374 and note, discussed in (1926) 10 MINNESOTA LAW REVIEW 632, where the state in which the corporate assets were situated was not allowed to tax the transfer at death of shares owned by a non-resident. For a criticism of this situation, see Farmers’ Loan & Trust Co. v. Minnesota, (1930) 280 U. S. 204, 210, 50 Sup. Ct. 98, 74 L. Ed. 371, 65 A. L. R. 1000 and note, discussed in (1930) 14 MINNESOTA LAW REVIEW 799, “If each State can adopt any one of these [bases for taxation] and tax accordingly, obviously, the same bonds may be declared present for taxation in two, or three, or four places at the same moment. Such a startling possibility suggests a wrong premise.”

7(1926) 272 U. S. 567, 47 Sup. Ct. 202, 71 L. Ed. 413.
power of appointment could not validly tax the exercise of that
power by will where the power was created by a non-resident with
respect to intangibles in another state.

In 1930 the Court adopted an entirely different approach to the
matter and expressly overruled the Blackstone Case in Farmers' Loan & Trust Co. v. Minnesota. Recognizing the evils and oppress-
ive character of multi-state taxation and the character of modern
business, Mr. Justice McReynolds laid down the general principle
that the due process clause of the Fourteenth Amendment limits
the taxation of the transfer of intangibles to the domiciliary state,
with the possible exception of the state of business situs; Justices
Holmes and Brandeis dissented. The scope of this decision was
clarified by three subsequent cases. In the case of Baldwin v. Missouri, the Court applied the doctrine of Farmers' Loan & Trust Co. v. Minnesota to an attempt by a non-domiciliary state to tax bank accounts and notes which were present in that state at the time of decedent's death. Some of these notes were secured by mortgages on realty within the taxing state, and some were also notes by debtors domiciled therein. This decision determined that inheritance taxation based solely on the power of the state over the debtor is unconstitutional as applied to bank accounts and ordinary notes, whether or not secured by property within the taxing state.

In Beidler v. South Carolina Tax Commission immunity from inheritance taxation by non-domiciliary states was extended to open accounts. Shortly thereafter, in the case of First National Bank of Boston v. Maine the Court decided that the state of

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8(1930) 280 U. S. 204, 50 Sup. Ct. 98, 74 L. Ed. 371, 65 A. L. R. 1000 and note, discussed in (1930) 14 MINNESOTA LAW REVIEW 799.
9The Farmers Loan & Trust Co. Case specifically determined that the due process clause of the Fourteenth Amendment prohibits the state of the debtor's domicile from placing an inheritance tax on a transfer of bonds merely on that basis.
10Mr. Justice Holmes, dissenting, stated at page 216, "It seems to me that the law of Minnesota is a present force necessary to the existence of the obligation, and that therefore, however contrary it may be to enlightened policy, the tax is good."
11See Rottschaefer, The Power of the States to Tax Intangibles, (1931) 15 MINNESOTA LAW REVIEW 741, 744.
13Here again, Mr. Justice Holmes' argument in Blackstone v. Miller, (1903) 188 U. S. 189, 23 Sup. Ct. 277, 47 L. Ed. 439, and his dissent in Farmers Loan & Trust Co. v. Minnesota, (1930) 280 U. S. 204, 50 Sup. Ct. 98, 74 L. Ed. 371, 65 A. L. R. 1000 and note, discussed in (1930) 14 MINNESOTA LAW REVIEW 799, is answered and rejected.
14(1930) 282 U. S. 1, 51 Sup. Ct. 54, 75 L. Ed. 131, discussed in (1931) 15 MINNESOTA LAW REVIEW 254.
a corporation's domicile could not, on that basis alone, tax a transfer at death of corporate shares owned by a non-resident.

In 1939 the Court took another tack on the problem. Its decisions in *Curry v. McCanless* and *Graves v. Elliot*, a companion case, sharply departed from the doctrine of the *Farmers' Loan & Trust Co. v. Minnesota*. In the *Curry Case* the Court took the view that where intangibles receive benefit and protection from the laws of more than one state, each state may levy a tax on the transfer of such property at death without violating the due process clause of the Fourteenth Amendment. Thus the Court rejected the doctrine that the Fourteenth Amendment precludes multi-state taxation, only nine years after the birth of that view in the *Farmers' Loan & Trust Co. Case*.

The decisions in two recent cases, *Graves v. Schmidlapp* and *State Tax Commission of Utah v. Aldrich*, indicate the purport of the *Curry Case* and the possible future of the doctrine expressed therein. The issue presented in the *Graves Case* was the same as in *Wachovia Bank & Trust Co. v. Doughton*; that is, whether the due process clause of the Fourteenth Amendment precludes a state from taxing the exercise, by a domiciled resident, of a general testamentary power of appointment where the power was created by a non-resident with respect to intangibles in another state. By expressly overruling the *Wachovia Bank & Trust Co. Case*, the court sustained the constitutional power of the domiciliary

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16(1939) 307 U. S. 357, 59 Sup. Ct. 900, 83 L. Ed. 1339, discussed in (1939) 24 MINNESOTA LAW REVIEW 136. In this case a resident of Tennessee had created an inter vivos trust by a transfer of stocks and bonds to an Alabama trustee, reserving a power to dispose of the trust estate by her will. At the settlor's death the power was exercised in this manner by appointing the trust res to the same trustee but upon different trusts. Appeal was taken from a decree of the Supreme Court of Tennessee declaring the property to be subject to succession or transfer taxation by Tennessee but not by Alabama. The United States Supreme Court held, that the decree of the Tennessee court be reversed so far as it denied the power of Alabama to tax the transfer.

17(1939) 307 U. S. 383, 59 Sup. Ct. 913, 83 L. Ed. 1356; see (1939) 24 MINNESOTA LAW REVIEW 136; decided the same day and on the authority of the *Curry Case*.

18This reasoning is consistent with Mr. Justice Stone's concurring opinion, and to some extent with Mr. Justice Holmes' dissent in *Farmers Loan & Trust Co. v. Minnesota*, (1930) 280 U. S. 204, 50 Sup. Ct. 98, 74 L. Ed. 371, 65 A. L. R. 1000 and note, discussed in (1930) 14 MINNESOTA LAW REVIEW 799. It was also on this basis that Mr. Justice Stone dissented in *Baldwin v. Missouri*, (1930) 281 U. S. Sup. Ct. 436, 74 L. Ed. 1050, 72 A. L. R. 1303 and note, and in *First National Bank v. Maine*, (1932) 284 U. S. 312, 52 Sup. Ct. 174, 76 L. Ed. 313, 77 A. L. R. 1401 and note, discussed in (1932) 16 MINNESOTA LAW REVIEW 327.


state to impose this tax. The Court took the position that, "For purposes of estate and inheritance taxation the power to dispose of property at death is the equivalent of ownership."22 And that, "Taxation of such enjoyment of the power to dispose of property is as much within the constitutional power of the state of his [donee's] domicile as is the taxation of the transfer at death of intangibles which he owns."23 Thus the Court has taken this opportunity to wipe out the one important exception to multistate taxation as it existed in the era of Blackstone v. Miller.24

In State Tax Commission of Utah v. Alarich25 a resident of New York owned and held in New York at the time of his death four hundred shares of stock in the Union Pacific Railroad, a Utah corporation. Respondents, executors of the decedent's estate, obtained a declaratory judgment, affirmed by the Utah Supreme Court, determining that the transfer at death was not subject to taxation by Utah.26 On a writ of certiorari, the Supreme Court reversed the judgment, Justices Jackson and Robert dissenting. The court held that Utah was not precluded by the Fourteenth Amendment from taxing the transfer at death of stock in a Utah corporation. In reaching this recision the Court expressly overruled First National Bank v. Maine.27 So the Court has now either specifically overturned or rejected the basis of every important case decided upon the theory that due process precludes multi-state taxation, with the sole exception of the Farmers' Loan & Trust Co. Case. A vigorous criticism of the majority's position is expounded in Mr. Justice Jackson's dissenting opinion. He points out the fictitious basis of the doctrine of benefit and protection,28 and discusses two other objections to the result reached by the majority, namely, the friction which ensues between states and the unjustified discrimination against intangible property in relation to other forms of wealth. Mr. Justice Jackson predicts

24(1903) 188 U. S. 189, 23 Sup. Ct. 277, 47 L. Ed. 439.
"When Utah was admitted to statehood in 1896, the Union Pacific Railroad was already old as a national institution ... If it had only the 'opportunities' and 'benefits' conferred by Utah and only the properties protected by her laws, the Union Pacific would cut little figure either in transportation or finance."
that, "Our tomorrows will witness an extension of the taxing power of the chartering or issuing state to corporate bonds and bonds of states and municipalities (by overruling Farmers' Loan and Trust Co. v. Minnesota, 280 U. S. 204, 50 S. Ct. 98, 74 L. Ed. 371, 65 A. L. R. 1000), to bank credits for cash deposited (by overruling Baldwin v. State of Missouri, 281 U. S. 586, 50 S. Ct. 436, 74 L. Ed. 1056, 72 A. L. R. 1303), and to choses in action (by overruling Beidler v. South Carolina Tax Comm., 282 U. S. 1, 51 S. Ct. 54, 75 L. Ed. 131."

These predictions concerning the future of the Baldwin and Beidler Cases seem well justified, as the doctrine of the Curry Case appears to have already brushed those two cases aside. His speculation on the Farmers' Loan & Trust Co. Case is quite appropriate as the present status of this case is one of the open questions in inheritance taxation today. At present it still represents the law, as the Court so far has treated bonds differently from other intangibles. If this case is overruled the cycle will be complete and a full restoration of the doctrine of Blackstone v. Miller will have been accomplished. Mr. Justice-Jackson further suggests that, "...since the Due Process Clause speaks with no more clarity as to tangible than as to intangible property, the question is opened whether our decisions as to taxation of tangible property are not due to be overhauled." This argument seems to amount more to a reductio ad absurdum than to a serious suggestion, as the principles of "situs" have too long governed the taxation of tangibles to be likely to be rejected on the "benefit and protection" doctrine.

It is suggested that the Court may continue to treat bonds differently and allow the Farmers' Loan & Trust Co. Case to remain an exception, or it may overrule that case and make a complete return to the doctrine of Blackstone v. Miller, but they are not likely to go further and disturb the law of taxation of tangibles on this reasoning.

30See Rottschaefer, The Power of the States to Tax Intangibles, (1931) 15 MINNESOTA LAW REVIEW 741.