

DISTRICT OF COLUMBIA TAX COURT

FILED

AUG 10 1979

Director of Revenue
Tax Court

Estate of)
 CHARLES S. WISE, Deceased,)
 IRENE B. WISE, Executrix,)
)
 Petitioner,)
)
 v.)
)
 DISTRICT OF COLUMBIA,)
)
 Respondent.)

DOCKET NO. 2104

FINDINGS, CONCLUSIONS, and OPINION

At the date of the untimely death of Charles S. Wise, M.D., -- November 23, 1967 -- he left two retirement annuity policies, on which he had paid the premiums, and which would have matured May 1, 1981. His wife Irene B. Wise was named primary beneficiary of death benefits under the policies as well as beneficiary and executrix of his Will; she qualified and was assessed inheritance tax of \$1,989.83.

The facts, none of which are in dispute, show that the aggregate value of the two policies was \$43,693.72, and the tax thereon, included in the paid assessment noted above, came to \$1,023.33, for the return of which this suit was duly filed. Under both policies, Dr. Wise retained the right to change the beneficiary. The issue is whether the value of the policies was properly included in the total inheritance attributed to and assessed against Mrs. Wise.

The statute (title V, Art. I, sec. 1 of the D. C. Revenue Act of 1937, D. C. Code 47-1601(a)) is of course very broad. The tax is to reach --

All real property and tangible and intangible personal property, or any interest therein, having its taxable situs in the District of Columbia, transferred from any person who may die seized or possessed thereof, either by will or by law, or by right of survivorship * * *.

There follows a lengthy provision covering inheritance taxation of property conveyed inter vivos by decedent, in terms that are for the most part identical with section 811(c) of the 1939 Internal Revenue Code^{*/} covering "Transfers in Contemplation of, or Taking Effect at, Death". Accordingly, Federal authorities construing the identical language of the Federal law are in point. D. C. v. Lewis, 109 U.S. App. D.C. 353, 356, 288 F.2d 137.

Under the applicable Federal authorities, where decedent purchases an annuity for himself with payments to go at his death to the beneficiary he may name, the value of the annuity is taxable in his estate under section 302(c) of the Revenue Act of 1926 as amended in 1932 and codified in section 811(c) of the 1939 I.R.C. Comm'r. v. Clise, 122 F.2d 998 (CA 9), Comm'r. v. Wilder's Estate, 118 F.2d 281 (CA 5), Mearkle's Estate v. Comm'r., 129 F.2d 386 (CA 3). The central idea as applied to the facts sub judice is, that when Dr. Wise paid down his annuities which had death benefits for his nominee, he "transferred" property which would "take effect in possession or enjoyment" after his death, while he retained "the right, either alone or in conjunction with any person", to select the beneficiary. The central idea is equally applicable in determining what Mrs. Wise inherited as it is in determining what Dr. Wise left in his estate. See discussion of prior law in Higgs

^{*/} Deriving in turn from section 803(a) of the Revenue Act of 1932, (Act of June 6, 1932, 47 Stat. 279), amending section 302(c) of the Revenue Act of 1926.

Estate v. Comm'r., 184 F.2d 427 (CA 3), and cf. discussion of improvements of prior law incorporated in the 1954 I.R.C., in Garner, "Income and Estate Taxation of Annuities", N.Y.U. 13th Annual Institute on Federal Taxation (1955), characterizing 811(c) of the 1939 Code as "often erratic in operation".

Petitioner pitches its case on the "Regulations Pertaining to Inheritance and Estate Taxes", the latest issue of which is dated "as of January 1, 1970". The applicable part of the Regulations, in its entirety, is as follows:

Sec. 5. Insurance and Annuities

(a) The following transfers of the proceeds of insurance on the life of the decedent and of annuity contract benefits are taxable under Article I:

- (1) Where payable, directly or indirectly, to the estate.
- (2) Where taken out to provide for the payment of taxes (including estate and inheritance taxes) or other charges against the estate, or to be used for the benefit of the estate of the insured.
- (3) Where made payable to a named beneficiary who has predeceased the insured.
- (4) Annuity policies or contracts upon which the decedent received benefits during his lifetime and upon which the full value did not terminate with his death.
- (5) Policies written by the United States Government to which any of the foregoing circumstances applies.

If considered as an interpretation of the extent to which one who inherits the residual values of annuities is subject to tax (as, for instance, do the Federal Regulations issued under section 7805 of the Internal Revenue Code), then it is clear that the D. C. Regulations purport to (a) severely limit the reach of the inheritance tax as imposed by Code section 47-1601, and (b) exempt the inheritance we now consider.

The source of and purpose of the D. C. Regulations on this subject are not revealed in the record. Under title V, Art. III, sec. 3 of the Act of August 17, 1937 (Code sec. 47-1618) the

"commissioners" (now the Mayor and City Council) "shall have the power to make such rules and regulations, consistent with this chapter, as may be necessary for enforcement of this chapter and efficient administration." (Emphasis added.) It is perfectly evident that, construed to define the reach of the inheritance tax on annuities, such Regulations are inconsistent with the substantive provisions of Code section 47-1601(a) and must be disregarded. Cf. dictum in Bahin's Estate v. U. S., 305 F.2d 827, 829, to the effect that regulations may not violate the statute they seek to implement, and note the leading case on long-continued administrative construction of provisions of successive revenue acts, Helvering v. R. J. Reynolds Tobacco Co., 306 U.S. 110.

Our Regulations under the Inheritance and Estate Tax Law are (a) obsolete, (b) in some respects, contrary to the decided cases, and (c) confusing to the public. They should be rewritten.

Decision will be entered
for Respondent.



Robert M. Weston
Judge