

FILED

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District of Columbia
Tax CourtESTATE OF HELEN S. ROCKWELL, deceased,)
RICHARD P. WILLIAMS, Executor,)

Petitioner,)

v.)

DISTRICT OF COLUMBIA,)

Respondent.)

DOCKET NO. 2113

FINDINGS, CONCLUSIONS, AND OPINION

Decedent's gross estate included 950 shares of International Nickel Company of Canada, Limited, valued at \$105,212.50 for purposes of Federal estate tax and District of Columbia inheritance tax. This amount was duly reported in the death tax returns filed for decedent in February, 1969. Federal estate tax was then assessed and paid, and D. C. inheritance tax in the amount of \$7,168.20 was assessed and paid April 7, 1969.

In June, 1969, decedent's executor was advised by International Nickel's New York transfer agent that it would not be possible to transfer the stock to decedent's residuary legatees until receipt of a certificate evidencing payment of Canadian estate tax on the value of the stock. Note that for purposes of Canadian estate tax, the situs of the stock is deemed to be in Canada, thus estate taxable there, because International Nickel is incorporated there. See 1 CCH Canada Estate & Gift Tax Rep. secs. 2050, 3092 and 3104. Under the Canada-United States Estate Tax Convention of 1961, the country where the corporation is organized is entitled to the death taxes on such transfers of stock. 5 Merten's Law of Federal Gift & Estate Taxation sec. 41.72 and Table 8.

Consequently, the executor necessarily paid \$15,830.31 to discharge the Canadian estate tax and accomplish the transfer of title to the stock to decedent's three residuary legatees. The executor then filed an amended Federal estate tax return reflecting the additional credit for foreign death taxes, and the Internal Revenue Service allowed a refund in the amount of \$6,449.48.

On February 24, 1970, the executor filed claim for refund of D. C. inheritance tax in the amount of \$506.64, based on the adjusted deductions from gross estate resulting from the Canadian tax less the Federal tax refund. (\$15,830.31 less \$6,499.48 equals \$9,380.83 net reduction in the amounts inherited by decedent's legatees.) The claim was denied by the Department of Finance and Revenue on February 27, 1970. On April 2, 1970, the U. S. District Court for the District of Columbia, holding probate court, approved the executor's second account, which included the \$15,830.31 paid out for the Canadian estate taxes. The case at bar was filed April 8, 1970.

The statute and regulations. The text of our inheritance tax statute says nothing on the subject of deductions from the gross value of transfers by reason of death in computing net taxable transfers. Nor are there any provisions for credits against such inheritance taxes. Title V, Art. I of the D. C. Revenue Act of 1937; D. C. Code sections 47-1601 - 1607 inclusive. As we shall see, deductions and credits are allowed, deriving from statutory construction. Our estate tax statute, D. C. Code sections 47-1608 - 1615 inclusive, specifically sets out as a credit "the amount of any estate, inheritance, legacy, or succession tax lawfully imposed by any State or Territory of the United States, in respect of any property included in the gross estate for Federal estate tax purposes", with an

immaterial proviso. Title V, Art. II of the D. C. Revenue Act of 1937, D. C. Code section 47-1609.

The Regulations of the D. C. Department of Finance and Revenue, January 1, 1970 edition, contain a variety of "deductions from valuation of gross estate" (p. 24), including \$1,000 for funeral expenses (unless more is provided by will) and actual and necessary administration expenses. Sec. 6(a) and (b). Section 9(a) of the Regulations allows as a credit against the District's estate tax "the amount of any inheritance tax imposed by the District of Columbia". Section 9(b) thereof provides that credits against the D. C. estate tax (secs. 1 and 5 of Art. II, supra) for "estate, inheritance, legacy, or succession taxes lawfully imposed by any state or territory of the United States" must be substantiated by a certificate "of the proper officer of the taxing state or territory", with additional provisos not material to the present situation.

Contentions. The District finds that neither "in the regulations nor in the statute is there any provision for a deduction from the gross estate or for a credit against District taxes for taxes paid to a foreign country. * * * Since Congress had not allowed the deduction of Canadian taxes for District tax purposes, as it could have done, the denial of the claim for refund was correct." (Br. 2, 9.)

Petitioner contends that the inheritance tax, by its inherent nature and thus by Congressional intent, is assessed on the value of the property that the beneficiaries actually receive -- here, \$9,380.83 less than the value returned and assessed; in the alternative, that the Canadian estate tax is an actual and necessary expense incurred in the administration of the estate within Section 6(b) of the Regulations (supra).

Discussion. The apparent anomaly of our two separate death tax statutes, one on the transfer to the beneficiaries (inheritance tax) and one on the transfer from the decedent (estate tax) disappears when the nature of the so-called "estate tax" is understood. The "estate tax" on residents exists for the sole and exclusive purpose of absorbing the "credit allowed under the provisions of section 301(c) of title III of the Revenue Act of 1926, as amended, or as hereafter amended or re-enacted, to the extent that the District may be entitled * * * [to such credit], by imposing additional taxes, and the same shall be liberally construed to effect such purpose." Code sec. 47-1611. As stated in H.Rep. 1016, 75th Cong., 1st Sess. on H.R. 7472, p. 5: "The purpose of article II [the estate tax] is to secure the District of Columbia its share of the 80 percent credit allowed under the provisions of the Federal Revenue Act of 1926." Even without the "liberal construction" prescribed by statute it is plain that our estate tax is merely ancillary and supplemental to the basic inheritance tax. Since it is measured entirely by the 80% Federal estate tax credit, without any direct or indirect relation to decedent's estate or total Federal and District tax payable thereon, it is not really an estate tax at all. It has been called a "pick-up" tax to equal the maximum credit under the 1926 Federal statute. Lewis, "The Estate Tax", p. 157. There is no contention that the D. C. estate tax was the source of the \$7,168.20 assessment in the case at bar. The assessment was entirely on account of inheritance tax. Consequently the credit provision of Code section 47-1609 relied on by respondent as the basis for disallowing estate tax paid to a foreign country (under the "expressio unius" rule) is not relevant. The real issue is, whether or not such payment should be allowed as a deduction from gross estate for purposes of our inheritance tax.

Two significant decisions of our U. S. Court of Appeals strongly indicate that the deduction should be allowed. The first is D. C. v. Payne, 126 U.S. App. D.C. 47, 374 F.2d 261, when decedent's executor spent \$1,089.78 on funeral expenses and a grave marker and the Department of Finance and Revenue, pursuant to section 6(a) of the regulations, supra, disallowed the deduction to the extent of \$89.77. The court sustained the D. C. Tax Court ruling for taxpayer, citing (126 U.S. App. D.C. at 50) --

the fact that, for reasons deemed proper by it, the Probate Court, in approving the final account of the Executor had allowed the deduction of \$1,089.78 as a proper charge against the gross estate, thus reducing the amount coming to the beneficiary, resulting, if the District were sustained, in taxing her on more than the value of what she received. * * * The taxing authority's action would result in her being required to pay an inheritance tax on an amount which she never actually received. This was error, and the Tax Court was correct in its ruling on this point.

The second case in point is Hyman v. D. C., 101 U.S. App. D.C. 179, 247 F.2d 585, where decedent left real estate to her brother subject to an outstanding claim. Held: the District's inheritance tax is to be assessed on the net value after deduction of the amount of the claim. The court observed (101 U.S. App. D.C. at 181) --

* * * Any other construction of the statute could lead to absurd results which we cannot believe Congress intended. For example, to say it was legislatively intended that a devisee of realty worth \$10,000 subject to a mortgage of \$9,500 must pay an inheritance tax on \$10,000 strains credulity; for, if the devisee were a brother of the testator, he would be required to pay a tax of \$24 although he received property worth on the market and worth to him only \$500. Examples might be given where, on that basis, the tax would devour the whole devise.

[3] It therefore seems to us that the only sensible view of the Congressional intention is that it was to require the tax to be computed on the value of what the beneficiary actually receives. * * *

Thus, it is clear that despite the absence of provision for deductions from gross estate in assessing inheritance taxes, items of expense or debt allowed in the probate and reducing the value or amount the beneficiary receives should be subtracted in the computation of tax. In cases where the District's inheritance tax does not absorb the Federal 80% credit against what was called the "basic tax" in the 1939 Internal Revenue Code (now set out in a specific rate schedule in the 1954 Code, and resulting in a State and District share of about 20% of total death taxes), the amount assessed and paid as inheritance tax is a credit against the District's estate tax. D. C. v. Safe Deposit & Trust Co., 72 App. D.C. 197, 116 F.2d 21; Forsberg's Estate v. D. C., 95 U.S. App. D.C. 90, 220 F.2d 197.

The case having been heard on motion by both parties for summary decision under Rule 20(c),

Decision will be entered for refund
to petitioner.



Robert M. Weston
Judge