

OPINION NO. 982

FILED

DISTRICT OF COLUMBIA TAX COURT MAR 2 1951

District of Columbia
Tax Court

ETHEL CLYDE,
Petitioner,
vs.
DISTRICT OF COLUMBIA,
Respondent.

DOCKET NO. 1721

WILLIAM P. CLYDE, JR.,
Petitioner,
vs.
DISTRICT OF COLUMBIA,
Respondent.

DOCKET NO. 1722

MARSHALL H. CLYDE, JR.,
Petitioner,
vs.
DISTRICT OF COLUMBIA,
Respondent.

DOCKET NO. 1723

HUNTER B. CLYDE,
Petitioner,
vs.
DISTRICT OF COLUMBIA,
Respondent.

DOCKET NO. 1724

GEORGE H. CLYDE,
Petitioner,
vs.
DISTRICT OF COLUMBIA,
Respondent.

DOCKET NO. 1725

MARY B. CLYDE WILSON,
Petitioner,
vs.
DISTRICT OF COLUMBIA,
Respondent.

DOCKET NO. 1726

FINDINGS OF FACT AND OPINION

These six cases involve the same issue and were consolidated for hearing and disposition. The petitioners complain of inheritance taxes assessed against them in relation to transfers to them under a trust in which the decedent appeared as the grantor and was the life beneficiary. Several grounds for relief are stated, the principal one being that in reality the decedent was not the grantor. The respondent, on the other hand, insists that the taxes were valid.

Findings of Fact

- 1(a) The petitioner, Ethel Clyde, is an individual residing at No. 1 Fifth Avenue, New York, New York.
- (b) The petitioner, William P. Clyde, Jr., is an individual residing at the Mayflower Hotel, Washington, D. C.
- (c) The petitioner, Marshall H. Clyde, Jr., is an individual residing at Pregny, Geneva, Switzerland.
- (d) The petitioner, Hunter B. Clyde, is an individual residing at No. 26 O'Farrell Street, San Francisco, California.
- (e) The petitioner, George H. Clyde, is an individual residing at 17 East Carrillo Street, Santa Barbara, California.
- (f) The petitioner, Mary B. Clyde Wilson, is an individual residing at the Webb School, Claremont, California.
- (g) The six petitioners are the only blood next of kin of Mabel Clyde Hinshaw.

2. Mabel Clyde Hinshaw, hereinafter called "the decedent", died domiciled in the District of Columbia on January 25, 1959.

3. In November, 1923, William P. Clyde, a wealthy domiciliary of New York, delivered to his agent and attorney in fact, John Gemmell, Jr., \$300,000 par value of bearer bonds of the United States with instructions to deliver them to trustees named in the draft of a trust agreement, then prepared at the direction of William P. Clyde, upon the signing or execution of

the trust agreement by the decedent, his daughter, as grantor. The trust agreement was signed or executed by the decedent as grantor on November 13, 1923, and the \$300,000 par value of bearer bonds of the United States were delivered to the trustees and became the trust fund under the trust agreement. The trust fund is the subject matter of these six cases.

4. The trust agreement of November 13, 1923, besides the conventional trust provisions, provided that the trustees pay the net income from the trust fund to the decedent during her life, and after her death divide the principal between her issue, if any; and

"If the first party (the decedent) leave no issue her surviving to transfer and pay over the principal to and among her next of kin excluding, however, any person other than such as may be related by blood to the first party, any provision of law to the contrary notwithstanding."

5. The decedent left no issue surviving her, and upon her death the principal of the aforesaid trust fund was paid over to the petitioners as the decedent's next of kin.

6. During the decedent's lifetime the trust created in the aforesaid agreement was administered by courts of the State of New York; and upon her death and the termination of the trust the final accounting and distribution to the petitioners in accordance with the trust agreement was made and done under the direction of the Supreme Court of the State of New York in and for the County of Kings.

7(a) On August 26, 1960, the assessing authority of the District of Columbia assessed the petitioners inheritance taxes upon the transfers to them of the portions of the trust fund payable to and received by them under the terms of the trust agreement as follows:

<u>Taxpayer</u>	<u>Inheri- tance Tax</u>	<u>Interest</u>	<u>Total</u>
Ethel Clyde	\$1,873.83	\$103.06	\$1,976.89
William P. Clyde, Jr.	1,873.83	103.06	1,976.89
Marshall H. Clyde, Jr.	3,225.75	177.42	3,403.17
Hunter B. Clyde	834.40	45.89	880.29
George H. Clyde	834.40	45.89	880.29
Mary B. Clyde Wilson	834.40	45.89	880.29

(b) There is no controversy as to the mathematical computation of the taxes, and interest, that is to say, the petitioners concede that that computation was correct, if the transfers were taxable.

(c) The inheritance taxes and interest as above set forth were paid, respectively, by the petitioners on September 21, 1960.

8. These cases were filed on November 23, 1960.

Opinion

The sole question here presented is whether transfers to the petitioning beneficiaries under a trust agreement in which the person named therein as "grantor" was a domiciliary of the District of Columbia at the time of her death were taxable under the inheritance tax law of the District, which imposes an inheritance tax upon the transfer at death of "property of which the decedent has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from such property * * *."

In 1923, William P. Clyde, the father of the decedent, Mabel Clyde Hinshaw, hereinafter called "the decedent", delivered to John Gemmell, Jr., his business agent and attorney in fact, United States bearer bonds of the par value of \$300,000, with instructions to deliver them to the trustees named in a draft of a trust agreement which Mr. Clyde had caused to be prepared upon the execution of the trust agreement by the decedent as "grantor" therein. The decedent executed the agreement as directed or required. The bonds were delivered to the trustees and became the trust fund under the agreement. That fund is the subject matter of these six cases.

(1) Section 47-1601, D. C. Code, 1951 Edition.

The trust agreement provided that the decedent should receive the net income from the trust fund for life, and at her death the corpus was to be paid to her surviving issue. The agreement further provided that, if the decedent not have issue surviving her, the corpus, at her death would be payable to her blood next of kin. She had no issue, so when the decedent died on January 25, 1959, the principal was distributed or transferred to the petitioners in these cases as the decedent's next of kin. It is upon or in relation to those transfers that the inheritance taxes here involved were assessed and of which the petitioners here complain.

The petitioners contend that the taxes here involved were⁽²⁾ invalidly assessed for several reasons. Because of the ruling which the Court will make, it does not seem necessary to consider any ground or basis for the petitioners' contention other than that in fact and law the trust agreement was not made by the decedent but by her father, William P. Clyde, in other words, that the decedent never transferred the bonds; and that in reality she never owned the bonds or had any interest in them other than the right to receive the net income therefrom during her lifetime.

The position of the petitioners seems well supported by reason and by the authorities.

It is clear from the evidence that the decedent's father did not intend to make her an outright gift of the \$300,000 of United States bonds. She never had the right to do with the bonds as she might have wished or to deal with them as the absolute owner. All that her father intended to do or did was to give her a life interest in the corpus, which could have been accomplished as easily by a trust of which he was the nominal grantor. The father actually created the trust. The daughter was merely his instrument or agency.

(2) (a) That the decedent was not the real grantor of the trust; (b) Trust was created prior to enactment of inheritance tax law, and not subject thereto; and (c) the trust has no taxable situs in the District of Columbia.

The leading case on the point of law here involved is Lehman v. Commissioner, 109 F.2d 99, certiorari denied, 310 U.S. 637, 60 S.Ct. 1080, 84 L.Ed. 1406. It is true that the case related to reciprocal trusts, but ^{the} principle therein announced is applicable in this case. The trusts were created by each of two brothers for the benefit of the other and resulted from the exchange of assets of equal value. When one of the brothers died the corpus of the trust of which he was beneficiary and which was nominally created by his brother was included in the decedent's estate by the Commissioner of Internal Revenue for Federal estate tax purposes. Such action was approved by the United States Tax Court, and on appeal that decision was affirmed by the Circuit Court of Appeals for the Second Circuit on the ground that the decedent had supplied the corpus of the trust and, therefore, was actually the grantor, the Court citing with approval Scott on Trusts, Section 156.3 that "A person who furnishes the consideration for the creation of a trust is the settlor, even though in form the trust is created by another." The Lehman case has been cited with approval in a great many cases, Federal and State, and is still, as above observed, the leading case on the subject.

In Estate of Frederick S. Fish, 45 B.T.A. 120, a husband and his wife created reciprocal trusts in favor of each other. In respect of the assessment of an estate tax upon the death of the husband in relation to the trust in his favor, Judge Oppen had this to say:

"The two trusts were clearly reciprocal; the property of the wife was in effect exchanged for that of the husband; and the rights each received under the trust created by the other were of the unrestricted character not essentially to be distinguished from complete ownership. See Adriance v. Higgins (C.C.A., 2d Cir.), 113 Fed. (2d) 1013. It is our view, therefore, that for estate tax purposes decedent should be regarded as the creator of the trust of which his wife was the nominal grantor." (Emphasis supplied)

Lorenz Iverson, 3 T.C. 756, involved a trust for which a father supplied the funds and in which his daughter was the nominal grantor. There it was held:

"Since this trust was created with funds which the petitioner furnished for that purpose, we must conclude that he is the grantor of the trust. Lehman v. Commissioner, 109 Fed. (2d) 99; certiorari denied, 310 U.S. 637. * * *

In Estate of George W. Sweeney, 4 T.C. 265, affirmed, 152 F.2d 102, a father created a trust in which his daughter was beneficiary and in which she was required to join him to effect termination thereof. The trust was terminated in that manner and the corpus was delivered to the daughter who thereupon created a trust in which she was named as grantor. Upon the death of the father the corpus was included in his estate by the Commissioner, with the appropriate assessment of an estate tax. That action was sustained by Judge Disney, who on pages 267 and 268, stated the following:

" * * *. The father furnished all of the consideration for the first trust and no other property was placed in the second trust at the time of its creation. We do not think the mere fact of necessity that the daughter consent to the termination of the first trust militates against the fact that the father furnished the trust corpus. The decedent furnished the consideration for the trust and it was not error for the respondent to regard him as grantor thereof. Lehman v. Commissioner, 109 Fed. (2d) 99; certiorari denied, 310 U.S. 637; Estate of Frederick S. Fish, 45 B.T.A. 120; Purden Smith Whiteley, 42 B.T.A. 316; Lorenz Iversen, 3 T.C. 756."

Judge Black in Estate of George W. Hall, 6 T.C. 933, 939, announced the same rule, saying:

"The parties have stipulated that the securities which the decedent's two children conveyed to the respective trustees 'had been received by them for that purpose from the decedent immediately prior to the creation of the respective trusts and in the case of each trust, the two transfers were simultaneous.' In view of this stipulation we hold that for the purposes of this proceeding the decedent must be regarded as the grantor of the two trusts here in question. Lehman v. Commissioner, 109 Fed. (2d) 99. In that case the Second Circuit quoted with approval from Scott on Trusts, sec. 156.3, as follows: 'A person who furnishes the consideration for the creation of a trust is the settlor, even though in form the trust is created by another.' We, therefore, agree with the respondent on the first point relied upon by him."

The facts, in Estate of Grace D. Sinclair, 13 T.C. 742, were that a daughter, the decedent, transferred property to her father who thereupon executed a trust for her benefit. Upon her death the corpus was held by the Commissioner to be includible in her

estate for estate tax purposes. Recourse was had to the United States Tax Court to have the resulting deficiency assessment cancelled. It was held, however, that the determination was correct, the Court through Judge LeMire saying:

"We think that in substance and reality decedent was the settlor of the trust and that her father acted only as her agent in its creation. CF Lehman v. Commissioner, 109 Fed. (2d) 99; Estate of Frederick S. Fish, 45 B.T.A. 120; Lorenz Iversen, 3 F.C. 756; Estate of George W. Sweeney, 4 T.C. 265; affirmed 152 Fed. (2d) 102."

The opinion in National Bank v. Clauson, 127 F. Supp. 386, 391 is to the same effect and where we find this language:

"Furthermore, the relinquishment of her statutory right to waive the provisions of her husband's will was the consideration she furnished for the creation of the inter vivos trust. It is well established that the person who furnishes the consideration for the creation of a trust is the settlor even though in form the trust is created by another. Lehman v. Commissioner, 2 Cir. 109 F.2d 99; certiorari denied, 310 U.S. 637, 60 S.Ct. 1080, 84 L.Ed. 1406; Buhl v. Kavanagh, 6 Cir. 118 F.2d. 315; Blackman v. United States, 48 F.Supp. 362."

The rule is clearly stated in Guaranty Trust Co. v. New York Trust Co., 297 N.Y. 45, 74 N.E. 2d 232, where a trust was created nominally by two attorneys on behalf of an undisclosed principal. The question arose as to whether upon the death of one of the attorneys he was a grantor of the trust. He was held not to be the grantor, the New York court saying at pages 50 and 51:

"As already indicated, the trust was created at the behest of Sullivan's undisclosed client, its corpus formed from securities supplied by him. There can be no doubt that the person who furnishes the consideration for the creation of a trust is the settlor, even though, in form, the trust is created by another. (Morgan v. Fiduciary Trust Co., 290 N.Y. 615; Maynard v. Farmers' Loan & Trust Co., 208 App. Div. 112, affd. 238 N.Y. 592; 1 Bogert on Trusts and Trustees, § 41; 1 Scott on Trusts, § 17; 3 Scott on Trusts, §§ 422A-425; Griswold on Spendthrift Trusts [2d ed.] §§ 487-491; cf. Matter of Blake, 226 App. Div. 580, affd. 252 N.Y. 613). Since the client was thus, in legal effect, the settlor of the trust, it follows that Sullivan can hardly be regarded as 'grantor' of the self-same trust. Certainly, the word 'grantor', as used in the statute, must be given substantial meaning; it should not be construed to include a purely technical conveyancer, a mere conduit or dummy through whom title passes from the true owner to the ultimate grantee. * * *"

See also: Commissioner v. Warner, 127 F.2d 913, 915; Estate of Elizabeth D. Hill v. Commissioner, 229 F.2d 237, 240; Blackman v.

United States, 48 F.Supp. 362, 368, 98 Ct. Cl. 413; Ottillie B. Kuehner, 20 T.C. 871, 875; Herman Hohensee, 25 T.C. 1258, 1262; Estate of Laura Carter, 31 T.C. 1148, 1151, 1152; Estate of Robert J. Cuddihy, 32 T.C. 1171, 1173; In re Jones Estate, 350 Pa. 124, 38 A.2d 30, 32; Security Trust Co. v. Sharp, 32 Del. Ch. 12, 77 A.2d 543, 547; Newberry v. Walsh, 20 N.J. 484, 491, 494, 120 A.2d 242; Rabkin and Johnson, Federal Income, Gift and Estate Taxation, Sec. 55.07(1), CF District of Columbia v. Wilson, 94 U.S. App. 399, 401, 216 F.2d 630, 631.

As above indicated by the Court it is of the opinion that the decedent was not the grantor of the trust here involved, and that the transfers to her next of kin at her death were actually and really from her father, who must be considered the grantor of the trust.

Because of the ruling just made it is not necessary for the Court to consider and decide the other two issues raised by the petitioners.

For the reasons stated the Court holds as follows:

Docket No. 1721: That an inheritance tax in the amount of \$1,873.83, plus interest in the amount of \$103.06, or a total of \$1,976.89, assessed against the petitioner, Ethel Clyde, in relation to the estate of Mabel Clyde Hinshaw, Deceased, was invalidly assessed and must be cancelled; and that the petitioner is entitled to a refund of the total amount, with interest thereon at the rate of 4 per centum per annum from September 21, 1960, to date of payment of the refund.

Docket No. 1722: That an inheritance tax in the amount of \$1,873.83, plus interest in the amount of \$103.06 or a total amount of \$1,976.89, assessed against the petitioner, William P. Clyde, Jr., in relation to the estate of Mabel Clyde Hinshaw, Deceased, was invalidly assessed and must be cancelled; and that the petitioner is entitled to a refund of the total amount with interest thereon at the rate of 4 per centum per annum from September 21, 1960, to date of payment of the refund.

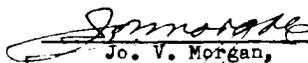
Docket No. 1723: That an inheritance tax in the amount of \$3,225.75, plus interest in the amount of \$177.42, or a total amount of \$3,403.19, assessed against the petitioner, Marshall H. Clyde, Jr., in relation to the estate of Mabel Clyde Hinshaw, Deceased, was invalidly assessed and must be cancelled; and that the petitioner is entitled to a refund of the total amount, with interest thereon at the rate of 4 per centum per annum from September 21, 1960, to date of payment of the refund.

Docket No. 1724: That an inheritance tax in the amount of \$834.40, plus interest in the amount of \$45.89 or a total amount of \$880.29, assessed against the petitioner, Hunter B. Clyde, in relation to the estate of Mabel Clyde Hinshaw, Deceased, was invalidly assessed and must be cancelled; and that the petitioner is entitled to a refund of the total amount, with interest thereon at the rate of 4 per centum per annum from September 21, 1960, to date of payment of the refund.

Docket No. 1725: That an inheritance tax in the amount of \$834.40, plus interest in the amount of \$45.89 or a total amount of \$880.29, assessed against the petitioner, George H. Clyde, in relation to the estate of Mabel Clyde Hinshaw, Deceased, was invalidly assessed and must be cancelled; and that the petitioner is entitled to a refund of the total amount, with interest thereon at the rate of 4 per centum per annum from September 21, 1960, to date of payment of the refund.

Docket No. 1726: That an inheritance tax in the amount of \$834.40, plus interest in the amount of \$45.89 or a total amount of \$880.29, assessed against the petitioner, Mary B. Clyde Wilson, in relation to the estate of Mabel Clyde Hinshaw, Deceased, was invalidly assessed and must be cancelled; and that the petitioner is entitled to a refund of the total amount, with interest thereon at the rate of 4 per centum per annum from September 21, 1960, to date of payment of the refund.

Decisions will be entered for petitioners.


Jo. V. Morgan,
Judge.

DISTRICT OF COLUMBIA TAX COURT FILED

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District of Columbia
Tax Court

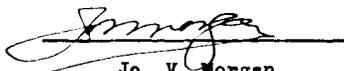
ETHEL CLYDE,
Petitioner,
vs.
DISTRICT OF COLUMBIA,
Respondent.

DOCKET NO. 1721

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing on said petition, it is by the Court, this 2nd day of March, 1961,

ADJUDGED AND DETERMINED, that an inheritance tax in the amount of \$1,873.83, plus interest in the amount of \$103.06 or a total amount of \$1,976.89, assessed against the petitioner, Ethel Clyde, in relation to the estate of Mabel Clyde Hinshaw, Deceased, was invalidly assessed and is hereby cancelled; and that the petitioner is entitled to a refund of the total amount, with interest thereon at the rate of 4 per centum per annum from September 21, 1960, to date of payment of the refund.

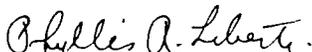

Jo. V. Morgan,
Judge.

Findings of Fact, Opinion &
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