

DISTRICT OF COLUMBIA TAX COURT

ANNE NICHOLS )  
 and )  
 JACK NICHOLS )  
 and )  
 THEODORE NICHOLS, )  
 Petitioners, )  
 v. )  
 DISTRICT OF COLUMBIA, )  
 Respondent. )

FILED

OCT 20 1989

District of Columbia  
Tax Court

DOCKET NO. 2073

OPINION AND ORDER

This is a suit for refund of inheritance taxes levied on petitioners, who are the legatees in equal one-third shares of the unincorporated business of decedent John Nichols. The business is known as Nichols Wholesale Produce, and is located at 1328-30 Fifth Street, N. E., Washington, D. C. 20002. The value of the unincorporated business inherited by petitioners as of January 29, 1967, the date of decedent's death, was \$153,100, of which \$15,687.75 consisted of tangible personal property located at the business site. Petitioners and decedent at all material times were domiciled and residing in the State of Maryland.

The District of Columbia assessed inheritance taxes against the three legatees based on the total value of the business, \$153,100, and the resulting taxes (including minor penalties and interest) of \$5,939.28 have been paid. The legatees have also paid inheritance taxes on this same \$153,100 to the State of Maryland. The issue is whether the D. C. inheritance taxes were validly imposed; petitioners stating the issue in constitutional terms directed at the "vagueness" of the taxing statute.

D. C. Code section 47-1629 provides in pertinent part:

Situs of intangibles - Trust estates - Aliens.  
Credits, securities, and other intangible personal property within the District not employed in carrying on any business therein by the owner shall be deemed to be located at the domicile of the owner for purposes of taxation under this chapter, and, if held in trust, shall not be deemed to be located in the District for purposes of taxation under this chapter solely because of the trustee being domiciled in the District \* \* \*.

Petitioners would have it that this provision "clearly states that intangible personal property acquires a taxable situs in the District of Columbia only when it is 'not employed in carrying on any business therein by the owner' \* \* \* Section 47-1629, taken at face value specifically alluded to intangible personal property 'not employed' in carrying on the business. It said nothing about intangible personal property 'employed' in carrying on the business. If Congress intended to cover this, it would have said so. \* \* \*"

Petitioners thus read Section 47-1629 as if it imposed the inheritance tax, and either (a) exempts intangibles with a business situs here (a reading impossible to follow as a matter of grammar)<sup>\*/</sup> or (b) omits a provision imposing the tax on such intangibles. However, Section 47-1629 does not impose the tax, it creates an exemption from the tax.

Section 47-1601, "Imposition of tax", provides in pertinent part:

Taxes shall be imposed in relation to estates of decedents, the shares of beneficiaries of such estates, and gifts as hereinafter provided:

(a) All real property and tangible and intangible personal property, or any interest therein, having its taxable situs in the District of Columbia \* \* \*.

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<sup>\*/</sup> The clause "not employed in carrying on any business therein by the owner" modifies the subject, and the subject is credits, securities, and other "intangible personal property within the District." It follows that intangibles within the District which are part of the owner's business therein are not to be deemed to be located at the owner's domicile for purposes of D. C. taxation. They are taxed here because they are located here.

The familiar issue is, whether petitioners' inheritance of \$137,412.25 of intangibles and \$15,687.75 of tangibles, total \$153,100 -- both an integral part of Nichols Wholesale Produce -- is taxable by the District, because this property has its "taxable situs in the District of Columbia."

Respondent's presumptively valid Regulations Pertaining to Inheritance and Estate Tax Law make the determining factors as to "taxable situs" of a decedent's intangibles quite clear: ordinarily, "the place where such decedent is domiciled at the time of his death", but --

where the decedent during his lifetime caused such intangible personal property to become an integral part of a business, trade, profession or vocation carried on by the owner and localized in the District, such intangible personal property acquires a 'business situs' in the District and is considered as having a taxable situs in the District. Whether such intangible personal property shall have acquired a business situs in the District shall be determined by the Assessor, and in determining such fact, the Assessor may consider such evidence as affidavits, bank records, court records, agreements, and any other evidence which to him shall appear material. (Regulations, Section 3(c).)

Petitioners concede that the Regulations, if valid, cover the situation in the case at bar, and argue that they go beyond the "plain meaning" of D. C. Code section 47-1629. But the provisions of the regulation in question also interpret Code section 47-1601 by specifying what property has "its taxable situs in the District."

The history of sections 47-1601 and 47-1629 make the Congressional intent crystal clear. Section 47-1601 -- part of the District's Inheritance and Estate Tax Act -- became effective August 17, 1937. At that time, tangibles were taxable where found, and intangible personal property was taxable only in the State of decedent's domicile, with the exception that stocks and other such property "may be so used in a state

other than that of the owner's domicile as to give them a situs analogous to the actual situs of tangible personal property." First Nat. Bank v. Maine, 284 U.S. 312, 331 (1932); see also Farmer's Loan & T. Co. v. Minnesota, 280 U.S. 213 (1930). The central idea was, that the "transmission from the dead to the living of a particular thing, whether corporeal or incorporeal, is an event which cannot take place in two or more states at one and the same time." 284 U.S. at 326. Thus, even at that time, the non-domiciliary State could tax intangibles connected with business carried on in that State -- e.g. the District of Columbia in the case at bar -- but such values were exempt in the State of domicile.

This was the controlling case-law on May 4, 1937, when the House Subcommittee on Fiscal Affairs (of the Committee on the District of Columbia) was considering a draft of a bill for a District inheritance tax, the substance of which ultimately became Code section 47-1601. The draft in question, H.R. 6035, made all "intangible personal property having its situs in the District", as well as "tangible and intangible personal property owned by a non-resident of the District \* \* \* which has an actual situs within the District" subject to tax. Asked by Congressman Nichols for the meaning of this provision, Assistant Corporation Counsel Raymond Sparks replied --

Mr. SPARKS. One instance of that may well be where a man dies not a resident of the District of Columbia, but he had a business here, had accounts receivable that were derived from that business in the District of Columbia. Those would be intangibles derived from business in the District of Columbia. (See Hearings on H.R. 6035, 75th Cong., Committee Print pp. 300 - 302.)

Thus, in 1937 as at present, intangibles appurtenant to a business located in the District were considered to have a "business situs", thus a taxable situs, within the District

making them subject to inheritance tax here, under the provisions of what has been codified as 47-1601.

Thereafter, in 1939, the Supreme Court ruled that intangibles may be considered to have a taxable situs in any State (or in the District, presumably) which gives some measure of direct protection to the owner's rights in such intangibles. Curry v. McCannless, 307 U.S. 357; Graves v. Elliot, 307 U.S. 383; see Tax Commission v. Aldrich, 316 U.S. 174 (1942); Greenough v. Tax Assessors, 331 U.S. 486 (1947). The ruling was very broad, and covered far more than intangibles with a "business situs" in the local taxing jurisdiction. "In holding that death taxes may be imposed with respect to the same items of intangible personal property by the state of decedent's domicile and by the state in which decedent had created a trust controlling such property, it was said that there are many circumstances in which more than one state may have jurisdiction to impose a tax and measure it by some or all of the taxpayer's intangibles. \* \* \*" CCH State Tax Cases Reporter, sec. 431.

Under these circumstances, the District's Corporation Counsel ruled that "the corpus of revocable trusts created or existing under agreements between District of Columbia fiduciaries [e.g., local banks and trust companies] and non-resident creators of such trusts" were "subject to District of Columbia inheritance tax." H.R. Report No. 2650, 76th Cong., 2d Sess., p. 1. It followed, according to the same Report, that "the same corpus would also be subjected to inheritance taxation in the jurisdiction of the residence of the creator upon his death, thereby subjecting such property to double taxation. The result is the withdrawal of such trusts from District of Columbia fiduciaries by non-residents \* \* \* the trust companies lose otherwise valuable trust business." (id.)

On this basis, the amendment of the D. C. Revenue Act of 1939, codified as section 47-1629, became effective July 10, 1940. The amendment was not intended to, and does not, change the rule that intangibles "employed in carrying on any business" in the District have a "business situs", consequently a taxable situs, in the District.

There being no issue of fact concerning the \$153,100 of business assets of decedent John Nichols which at the time of his death had a business situs and a taxable situs in the District of Columbia,

Judgment will be entered for respondent.

A handwritten signature in cursive script, appearing to read "Robert M. Weston", written over a horizontal line.

Robert M. Weston  
Judge