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TAXATION -TAXABILITY OF INSURANCE POLICIES UNDER THE FEDERAL ESTATE TAX WHERE POSSIBILITY OF REVERTER TO INSURED

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TAXATION — TAXABILITY OF INSURANCE POLICIES UNDER THE FEDERAL ESTATE TAX WHERE POSSIBILITY OF REVERTER TO INSURED — In 1920 decedent purchased a fifty-thousand-dollar life insurance policy, making his wife beneficiary and providing that if she predeceased him the proceeds should be payable to the executors of his estate. No power to revoke the policy or to change the beneficiary was expressly retained. The decedent predeceased the beneficiary and, in the assessment of the federal estate tax, the proceeds were included as part of his gross estate. The tax was paid, and plaintiff executor brought suit to recover an alleged overpayment of the estate tax because of the inclusion in the gross estate of the proceeds of the policy. The district court held that the commissioner erred in including the policy in the gross estate, since the decedent after an irrevocable assignment had no interest in it. *Held*, that the possibility of reverter of the proceeds to decedent's estate was a sufficient interest to require their inclusion therein. *Chase National Bank of New York v. United States*, (C. C. A. 2d, 1940) 116 F. (2d) 625.

As a general rule, the proceeds of an insurance policy on the life of a decedent payable to a designated beneficiary, not being part of decedent's estate, are not subject to a death tax unless specifically made so by statute.¹ Although the language in the provision in the Federal Revenue Act is broad enough to include all insurance policies² on decedent's life, the statute has been restricted in its application by judicial decisions³ and treasury regulations.⁴ The federal

¹ *In re Fay's Estate*, 25 Misc. 468, 55 N. Y. S. 749 (1898); *In re Bullen's Estate*, 143 Wis. 512, 128 N. W. 109 (1910).

² 44 Stat. L. 71, § 302 (1926), 26 U. S. C. (1934), § 411(g): "The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal . . . (g) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life."

³ *Nelson v. Commissioner of Internal Revenue*, (C. C. A. 8th, 1939) 101 F. (2d) 568; *Robinson v. United States*, (D. C. N. Y. 1935) 12 F. Supp. 550; *Helvering v. Parker*, (C. C. A. 8th, 1936) 84 F. (2d) 838.

⁴ TREAS. REG. 80 (1937 ed.), art. 25; Paul, "Life Insurance and the Federal Estate Tax," 52 HARV. L. REV. 1037 (1939).

estate tax is applied to such insurance policies only where the decedent has retained some incidents of ownership of the policy.⁵ Incidents sufficient to allow inclusion of policies in decedent's estate are the rights to change the beneficiary, to cancel the policy, to assign the policy, or to pledge the policy for a loan.⁶ Prior to the decision in the principal case, the possibility of reverter of the policy to decedent if he survived the beneficiary was held not to be such an incident of ownership as to require inclusion of the policy in the decedent's gross estate.⁷ The death of decedent was held not to result in a transfer of a greater interest to the beneficiary than he had before the decedent's death.⁸ The basis of these decisions is that the death tax is an excise tax on the privilege of transfer, and since nothing passed upon decedent's death, there was nothing to tax.⁹ Inconsistent with this line of reasoning is the established rule that the relinquishment at death of the power to revoke a trust is an interest transferred and thus taxable.¹⁰ Further, the decedent's death conceivably eliminates the possibility that the beneficiary may not receive the proceeds and to that extent increases the beneficiary's interest even though the possibility is dependent upon an event not within the control of the decedent. The holding of the principal case is an extension to insurance policies of the rule in *Helvering v. Hallock*¹¹ that the possibility of reverter of the corpus of an irrevocable inter vivos trust is an incident of ownership which is transferred upon death of the settlor.¹² The result of these two cases indicates that the courts will not make fine distinctions between the various property interests,¹³ but that in order to prevent evasions of the estate tax law will regard as a testamentary disposition anything short of an absolute inter vivos transfer free of all contingencies.

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⁵ *Walker v. United States*, (C. C. A. 8th, 1936) 83 F. (2d) 103; *Helburn v. Ballard*, (C. C. A. 6th, 1936) 85 F. (2d) 613; *Keefe v. Broderick*, (D. C. R. I. 1939) 25 F. Supp. 957; annotation, 118 A. L. R. 324 (1939). Contra: *Bailey v. United States*, (Ct. Cl. 1939) 27 F. Supp. 617, noted in 38 MICH. L. REV. 271 (1939).

⁶ TREAS. REG. 80 (1937 ed.), art 25; *Nelson v. Commissioner of Internal Revenue*, (C. C. A. 8th, 1939) 101 F. (2d) 568; *Walker v. United States*, (C. C. A. 8th, 1936) 83 F. (2d) 103; *Bingham v. United States*, 296 U. S. 211, 56 S. Ct. 180 (1935); *Gaither v. Miles*, (D. C. Md. 1920) 268 F. 692.

⁷ *Walker v. United States*, (C. C. A. 8th, 1936) 83 F. (2d) 103; *Bingham v. United States*, 296 U. S. 211, 56 S. Ct. 180 (1935); *Industrial Trust Co. v. United States*, 296 U. S. 220, 56 S. Ct. 182 (1935); *Keefe v. Broderick*, (D. C. R. I. 1939) 25 F. Supp. 957. Contra: *Bailey v. United States*, (Ct. Cl. 1940) 31 F. Supp. 778.

⁸ *Helburn v. Ballard*, (C. C. A. 6th, 1936) 85 F. (2d) 613; *Chase National Bank of New York v. United States*, (D. C. N. Y. 1939) 28 F. Supp. 947.

⁹ *Keefe v. Broderick*, (D. C. R. I. 1939) 25 F. Supp. 957 at 962; *Chase National Bank of New York v. United States*, (D. C. N. Y. 1939) 28 F. Supp. 947.

¹⁰ *Reinecke v. Northern Trust Co.*, 278 U. S. 339, 49 S. Ct. 123 (1929); *Saltonstall v. Saltonstall*, 276 U. S. 260, 48 S. Ct. 225 (1928).

¹¹ 309 U. S. 106, 60 S. Ct. 444 (1940).

¹² 309 U. S. 106, 60 S. Ct. 444 (1940), noted in 38 MICH. L. REV. 1350 (1940). This case expressly overrules *Helvering v. St. Louis Union Trust Co.*, 296 U. S. 39, 56 S. Ct. 74 (1935), and *Becker v. St. Louis Union Trust Co.*, 296 U. S. 48, 56 S. Ct. 78 (1935).

¹³ *Helvering v. Hallock*, 309 U. S. 106 at 117, 60 S. Ct. 444 (1940).