TAXATION - FEDERAL ESTATE TAX - TRANSFERS IN WHICH DECEDEENT HAD RESERVED A CONTINGENT REVERSIONARY INTEREST - ST. LOUIS UNION TRUST CASES OVERRULED

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Taxation — Federal Estate Tax — Transfers in Which Decedent Had Reserved a Contingent Reversionary Interest — St. Louis Union Trust Cases Overruled — In 1919 decedent transferred property in irrevocable trust, income to be paid to X for life and on X's death, the corpus and accumulated income to be returned to the settlor, if he should then be living; but if he should then be dead, remainder to Y. The settlor pre-deceased the life beneficiary and the commissioner included the trust property in decedent's gross estate under section 302 (c) of the federal estate tax. The board of tax appeals reversed this determination, and the board was upheld by the United States Circuit Court of Appeals for the Sixth Circuit, on the authority of the St. Louis Union Trust cases. Held, the "untenable diversities" of the St. Louis Union Trust cases must be rejected and those cases are overruled. In accordance with Klein v. United States, dispositions by way of trust which provide for return or reversion of the corpus to the donor upon a contingency terminable at his death are properly included in decedent's gross estate as transfers "intended to take effect in possession and enjoyment at or after his death" under section 302 (c) of the Revenue Act of 1926. Helvering v. Hallock, 309 U. S. 106, 60 S. Ct. 444 (1940).

Repudiation of the St. Louis Union Trust cases eliminates the confusion

1 Hallock v. Commissioner, 34 B. T. A. 575 (1936).
5 44 Stat. L. 70, now Internal Revenue Code of 1939, § 811 (c), 53 Stat. L. 121.
6 Chief Justice Hughes concurred on the ground that the case was controlled by Klein v. United States. Justices Roberts and McReynolds dissented.
concerning taxability of transfers that provide for the return or reversion of the corpus to the donor upon a contingency terminable at his death. In *Klein v. United States*, the grantor conveyed a life estate to *X*, reserving the fee, which was to remain vested in the grantor if he survived *X*; and if the grantor did not survive *X*, then to *X* in fee. Justice Sutherland, speaking for a unanimous court, rejected the “niceties of the law of contingent and vested remainders,” and held the death of the grantor to be the “event which brought the larger estate into being for the grantee,” thus justifying inclusion in decedent’s gross estate under section 302 (c).

The *St. Louis Union Trust* cases involved transfers in trust to *X* for life, remainder to *Y*; but if *X* should predecease the grantor the property to be transferred to the grantor absolutely. Here the Court, with Justice Sutherland speaking for the majority in two five-to-four decisions, held that the death of the grantor neither passed an interest to the beneficiaries nor enlarged their interests. Contrary to the views expressed in the *Klein* case, the majority relied upon distinctions between vested and contingent remainders to hold the interest reserved by the grantor to be a mere “possibility,” which death converted into an “utter impossibility.” The *St. Louis Trust* cases occasioned widespread criticism. In view of the purpose of the statute, i.e., to include in the gross estate inter vivos gifts which may be resorted to as a substitute for testamentary disposition, the position taken by the majority seemed incorrect. As stated by the justices who there dissented, the purpose of the state makes it immaterial “what particular conveyancers’ device—what particular string—the decedent selected to hold in suspense the ultimate disposition of his property until the moment of his death.” Only technicalities of the law of conveyancing distinguish these cases from the *Klein* case, and such a basis for distinction makes taxability turn upon linguistic refinements and diversities in local conveyancing law. The principal case is in accord with recent decisions emphasizing the determination of the present Court to construe modern fiscal measures according to practicalities rather than by “recondite learning of ancient property law.” However, judicial, rather than legislative, repudiation of the

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7 283 U. S. 231, 51 S. Ct. 398 (1931).
13 The dissenting justices felt stare decisis must govern and that the proper course was application to Congress for amendment of the statute. In view of the conflict in the decisions, Congress’ failure to amend the statute to obviate the effect
St. Louis Trust cases presents the problem of retroactive application to trusts created prior to the principal decision. Since both the transfer and the death of the settlor in the principal case took place prior to the decisions in the St. Louis Trust cases, no hardship was occasioned the principal estate by overruling those cases. But the prevailing opinion implies that transfers created since the date of the St. Louis Trust decisions will be likewise taxable. Such a result will cause hardship when applied to transfers made in reliance upon the overruled cases. Legislative repudiation of the doctrine of the St. Louis Trust cases would have avoided hardship in such cases. There is much to commend in Justice Roberts’ dissenting view that this was preeminently a case calling for application of the doctrine of stare decisis.

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of the St. Louis Trust cases is difficult to explain. See 53 Harv. L. Rev. 884 (1940).
In the past, the treasury has promptly applied to Congress to undo constructions given the estate tax by the Supreme Court. Cf. Joint Resolution of March 3, 1931, 46 Stat. L. 1516, enacted to obviate the effect of May v. Heiner, 281 U. S. 238, 50 S. Ct. 286 (1930), holding the reservation by decedent of a life interest in property conveyed inter vivos to fall outside § 302 (c). And to undo White v. Poor, 296 U. S. 98, 56 S. Ct. 66 (1935), construing § 302 (d), Congress enacted § 805 of the Revenue Act of 1936, 49 Stat. L. 1744.

14 “We have not before us interests created or maintained in reliance on those cases. We do not mean to imply that the inevitably empiric process of construing tax legislation should give rise to an estoppel against the responsible exercise of the judicial process.” Principal case, 309 U. S. 106 at 119. And at p. 122: “Our problem then is not that of rejecting a settled statutory construction. The real problem is whether a principle shall prevail over its later misapplications.”

15 As stated in Justice Roberts’ dissenting opinion: “If there ever was an instance in which the doctrine of stare decisis should govern, this is it. Aside from the obvious hardship involved in treating the taxpayers in the present cases differently from many others whose cases have been decided or closed in accordance with the settled rule, there are the weightier considerations that the judgments now rendered disappoint the just expectations of those who have acted in reliance upon the uniform construction of the statute by this and all other federal tribunals; and that, to upset these precedents now, must necessarily shake the confidence of the bar and the public in the stability of the rulings of the courts and make it impossible for inferior tribunals to adjudicate controversies in reliance on the decisions of this court.” Principal case, 309 U. S. 106 at 129. The principal case is also noted in 24 Minn. L. Rev. 882 (1940).