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TAXATION - FEDERAL ESTATE TAX - CLAIMS ARISING OUT OF AN ANTENUPTIAL AGREEMENT AS DEDUCTIONS FROM GROSS ESTATE

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TAXATION — FEDERAL ESTATE TAX — CLAIMS ARISING OUT OF AN ANTENUPTIAL AGREEMENT AS DEDUCTIONS FROM GROSS ESTATE — An antenuptial agreement provided that in the event the wife survived her husband she would receive $50,000 in lieu of her dower rights. After his death the executors paid this sum, and then sought to deduct it from the gross estate as a claim against the estate. In affirming the Board of Tax Appeals,[1] the court *held* that marriage and relinquishment of dower were not "an adequate and full consideration in money or money's worth" and hence the claims were not deductible under the Revenue Act of 1926.[2] *Empire Trust Co. v. Commissioner of Internal Revenue,* (C. C. A. 4th, 1938) 94 F. (2d) 307.

Marriage is clearly a sufficient consideration to support a contract.[3] So where the antenuptial agreement provides for payment to the surviving spouse, that party has a claim which is enforceable against the estate. Some courts have even held that an antenuptial contract providing for payment to the widow on the death of the husband is substantially the same as her dower.[4] Where the payment is in lieu of dower, as is common in these agreements, this result is even more obvious. As dower interests are taxable under the federal estate tax

[1] 35 B. T. A. 866 (1937). The agreement is set out verbatim in this report.

[2] 44 Stat. L. 9, § 303 (a) (1) (1926), 26 U. S. C., § 412 (b) (1935): "For the purpose of the tax the value of the net estate shall be determined—(a) In the case of a resident, by deducting from the value of the gross estate—(1) . . . claims against the estate . . . to the extent that such claims . . . were incurred or contracted bona fide and for an adequate and full consideration in money or money's worth. . . ."

[3] Matter of Vanderbilt, 226 N. Y. 638, 123 N. E. 893 (1919).

[4] In re Oppenheimer's Estate, 75 Mont. 186, 243 P. 589, 44 A. L. R. 1470 at 1475 (1926); People v. Field's Estate, 248 Ill. 147, 93 N. E. 721, 33 L. R. A. (N. S.) 230 (1910).

law,[5] one might conclude that any claims which are substitutes for dower should also be taxed. But under early statutes allowing deductions from gross estate for all enforceable claims, payments under contract given in lieu of dower were proper deductions though dower was not.[6] The courts reasoned that though such an agreement might evade the tax on dower interests, the statute allowed deductions without distinction as to the nature of the consideration exchanged for the promise, and the courts had no right to go beyond the express statutory provisions. This rule led to further abuse because of the distribution of the estate, tax free, through claims supported only by a technical consideration.[7] To meet this situation Congress provided in the Revenue Act of 1926 that in calculating the net estate only claims "incurred or contracted bona fide and for an adequate and full consideration in money or money's worth" are deductible.[8] Thus something more than a technical consideration in the contract sense is necessary, but this provision is sufficiently vague to permit a wide latitude of discretion in the courts. Some authorities assert that the tenor of this provision limits its application to claims arising out of "financial bargains." [9] Though the courts have not consistently accepted this proposition,[10] any claims not arising out of business-like transactions are of doubtful character as not being for "money or money's worth." Especially is this true when there is any suspicion on the part of the courts that the claim is serving as a substitute to a testamentary disposition.[11] Consequently, there has been much doubt as to the status of any indebtedness incurred in consideration of marriage. This doubt is apparently settled in the immediate case.[12] But because dower has a pecuniary value, where

[5] 44 Stat. L. 9, § 302 (b) (1926), 26 U. S. C., § 411 (b) (1935). The section is annotated in 3 CCH FEDERAL TAX SERVICE, ¶ 3405, p. 4883 (1938).

[6] 40 Stat. L. 1057, § 403 (a) (1) (1919), provided for deduction of all enforceable claims. The same statute taxed dower rights. In Jacobs v. Commissioner, (C. C. A. 8th, 1929) 34 F. (2d) 233, noted in 39 YALE L. J. 436 (1930) and 30 COL. L. REV. 132 (1930), the court assumes without discussion that such a claim is deductible under the Revenue Act of 1921. But the court there requires the payment to be in satisfaction of the claim without any substitution, indicating a willingness to limit strictly the right to have a deduction.

[7] MONTGOMERY and MAGILL, FEDERAL TAXES ON ESTATES, TRUSTS, GIFTS 240 (1936): "To allow the deduction of substitutes for testamentary bounty would seriously impair the operation of the estate tax law."

[8] See note 2, supra. This provision is annotated in 3 CCH FEDERAL TAX SERVICE, ¶ 3503 (1938).

[9] Glaser v. Commissioner, (C. C. A. 8th, 1934) 69 F. (2d) 254, sets down the rule that it must be a "business transaction on the part of the decedent or a contract intended to augment his estate." Even such a test as this might possibly include release of dower on the basis of augmenting the estate. See also MONTGOMERY and MAGILL, FEDERAL TAXES ON ESTATES, TRUSTS, GIFTS 240 (1936).

[10] Taft v. Commissioner, (C. C. A. 6th, 1937) 92 F. (2d) 667, noted in 24 VA. L. REV. 453 (1938).

[11] This suspicion has often resulted in litigation over business transactions between members of a family. See United States v. Mitchell, (C. C. A. 7th, 1934) 74 F. (2d) 571; Carney v. Benz, (C. C. A. 1st, 1937) 90 F. (2d) 747; and note 7, supra.

[12] This statement is not entirely correct. There is a possibility that a court might distinguish a case where part of the consideration was not the release of dower, as that

there is the further consideration of release of dower, the claim would still seem within the statutory provisions for deductions. However, since the test laid down by Congress shows an intention to prevent tax evasion through the use of claims against the estate, the court in the immediate case was willing to look beyond the literal meaning of the statute and base its conclusion on the ultimate result. It is submitted that the decision is consonant with the intentions of Congress as evidenced by a later statute providing that relinquishment of any marital right in decedent's property is not a consideration in "money or money's worth," [13] and that the approach will aid greatly in tax enforcement.

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is the point with which this court seemed mostly concerned. The question may some day arise on a breach of promise suit, where there could be no argument of attempted testamentary disposition. The Board of Tax Appeals has held that a deduction could not be allowed from the father's estate where he promised to make the payment in consideration of the marriage of his daughter. Central Union Trust Co. v. Commissioner, 24 B. T. A. 296 (1931). See Seitz v. Commission, 262 N. Y. 32, 186 N. E. 193 (1933).

[13] 47 Stat. L. 169, § 804 (1932), 26 U. S. C. (1935), § 412 (b): "For the purposes of this title, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration 'in money or money's worth.' "