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## TAXATION - PROPERTY SUBJECT TO INHERITANCE TAX - EFFECT OF RESERVATION OF LIFE INCOME

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**TAXATION — PROPERTY SUBJECT TO INHERITANCE TAX — EFFECT OF RESERVATION OF LIFE INCOME** — A father conveyed real estate to his daughter three years before his death by warranty deeds, absolute on their face but with the oral understanding that the father was to have all the income from the property during his lifetime. In a letter which the daughter wrote to her father several years later the terms of this oral agreement are given, but this letter, set forth in the statement of facts, is apparently not relied on by the court since no mention of it is made in the opinion. *Held*, that the gift was taxable under the inheritance tax law. *In re Ogden's Estate*, 209 Wis. 162, 244 N. W. 571.

Gifts with a reservation of a life income or of a life estate are generally held taxable as gifts intended to take effect in possession or enjoyment at or after death.<sup>1</sup> Taxation cannot be avoided by the use of several instruments to effect the reservation, as by an absolute conveyance with the execution of a lease back to the donor for life at a nominal rent or without rent,<sup>2</sup> or by a grant back of the right to the dividends from securities for life.<sup>3</sup> A lease back for a term of years is equivalent to the reservation of a life estate if at the time of the gift it appears that the lease will extend beyond the donor's life and does so in fact.<sup>4</sup> However, a mere chance extension of the lease in fact beyond the life of the donor is not sufficient to establish a gift with a life income reserved.<sup>5</sup> A transfer in consideration of a promise to support the grantor for life is not a gift with a life income reserved,<sup>6</sup> and a similar result is usually reached where the promise is to pay an annuity to the donor for life, if the transferred property in no way secures the payment of the annuity.<sup>7</sup> If the securities are put up as collateral for the payment of the annuity or if the securities are transferred in trust with a provision that the annuity be paid out of the income, one view is that so much of the property as is necessary to yield the annuity is taxable;<sup>8</sup> but, by other authority,

<sup>1</sup> Rottschaefer, "Taxation of Transfers Intended to Take Effect in Possession or Enjoyment at Grantor's Death," 14 MINN. L. REV. 453 at 461 (1930).

<sup>2</sup> *In re Dobson's Estate*, 73 Misc. 170, 132 N. Y. S. 472 (1911).

<sup>3</sup> *Matter of Brandreth*, 169 N. Y. 437, 62 N. E. 563 (1902).

<sup>4</sup> *In re Russell's Estate*, (N. J. Prerog. Ct. 1929) 146 Atl. 361.

<sup>5</sup> *In re Bell's Estate*, 150 Iowa 725, 130 N. W. 798 (1911).

<sup>6</sup> *In re Thorne's Estate*, 44 App. Div. 8, 60 N. Y. S. 419, *aff'd* 162 N. Y. 238, 56 N. E. 625 (1899); *Lamb's Estate v. Morrow*, 140 Iowa 89, 117 N. W. 1118 (1908).

<sup>7</sup> *People v. United Christian Missionary Society*, 341 Ill. 251, 173 N. E. 132 (1930); *Polk v. Miles*, (D. C. Md. 1920) 268 Fed. 175; *Hirsh v. United States*, (Ct. of Claims 1929) 35 F. (2d) 982.

<sup>8</sup> *Tips v. Bass*, (D. C. W. D. Tex. 1927) 21 F. (2d) 460; *People v. Kelley*, 218 Ill. 509, 75 N. E. 1038 (1905); *In re Schuh's Estate*, 66 Mont. 50, 212 Pac. 516 (1923).

the tide is not turned in favor of taxation because of the security arrangement.<sup>9</sup> In the principal case the court allowed the arrangement in regard to the real estate to be shown by parol evidence and did not require that it be enjoyed as a matter of right to allow taxation. A few decided cases go even further and require only factual enjoyment by the donor during his lifetime, from which it is inferred that the understanding of the parties was that the donor was to retain a life interest.<sup>10</sup> One case takes the position that an agreement may or may not be inferred from factual enjoyment.<sup>11</sup> Other cases, however, lay down the requirement that the donor shall have enjoyed the property as a matter of right by virtue of an enforceable agreement before the property is subject to an inheritance tax.<sup>12</sup>

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<sup>9</sup> *In re Edgerton's Estate*, 35 App. Div. 125, 54 N. Y. S. 700 (1898), *aff'd* 158 N. Y. 671, 52 N. E. 1124 (1899); *Matter of Seaich's Estate*, 136 Misc. 201, 240 N. Y. S. 524 (1930).

<sup>10</sup> *People v. Shaffer*, 291 Ill. 142, 125 N. E. 887 (1920); *In re Scharer's Estate*, 36 Misc. 502, 73 N. Y. S. 1057 (1901); *People v. Estate of Moir*, 207 Ill. 180, 69 N. E. 905 (1904).

<sup>11</sup> *Kelly v. Woolsey*, 177 Cal. 325, 170 Pac. 837 (1918).

<sup>12</sup> *In re Bullard's Estate*, 76 App. Div. 207, 78 N. Y. S. 491 (1902); *Nichols v. Coolidge*, 274 U. S. 531, 47 Sup. Ct. 710 (1927).