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TAXATION OF TRUST ESTATES-RESERVATION OF LIFE INCOME

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TAXATION OF TRUST ESTATES — RESERVATION OF LIFE INCOME.— Settlor executed a deed of trust, retaining a life income, but no power of revocation. *Held*, that the State of Connecticut could tax the transfer as a gift to take effect in possession or enjoyment at or after death without violating the federal constitution. *Guaranty Trust Co. of New York v. Blodgett*, (U. S. 1933) 53 Sup. Ct. 244.

The constitutionality of taxing this transfer depends on whether it is *inter vivos* or testamentary in character. If *inter vivos*, to tax it when other *inter vivos* gifts are not taxed would be a denial of the equal protection of the laws as guaranteed by the Fourteenth Amendment, and so would preclude taxation by the States under the inheritance tax laws, and for the federal government to do so under the federal estate tax would be a deprivation of property without due process and therefore offensive to the Fifth Amendment. If a gift of a remainder interest is made and the donor retains both a life estate and a power of revocation, the transfer is taxable as a testamentary disposition of property.¹ If only a power of revocation is retained, the state decisions on the question of taxability are conflicting,² but the Supreme Court of the United States has held that to tax such a transfer is constitutional.³ Where only a life income has been retained, the state courts have almost invariably held the acquisition of the remainder interest

¹ *Bullen v. Wisconsin*, 240 U. S. 625, 36 Sup. Ct. 473 (1916).

² Taxable — *New England Trust Co. v. Abbott*, 205 Mass. 279, 91 N. E. 379 (1910); *In re Fulham's Estate*, 96 Vt. 308, 119 Atl. 433 (1923). *Contra*, *Dolan's Estate*, 279 Pa. 582, 124 Atl. 176 (1924); *People v. Northern Trust Co.*, 289 Ill. 475, 124 N. E. 662 (1920).

³ *Saltonstall v. Saltonstall*, 276 U. S. 260, 48 Sup. Ct. 225 (1928).

taxable.⁴ In *May v. Heiner*,⁵ the Supreme Court of the United States held the transfer of the remainder interest non-taxable, not on constitutional grounds but on the ground that the Revenue Act of 1918 did not reach it, but Justice Reynolds intimated that such a transfer is not testamentary. Dictum in the subsequent case of *Coolidge v. Long*⁶ suggested that a proper statute could reach the transfer of the remainder interest. In the principal case the Supreme Court adopted the dictum from *Coolidge v. Long*. There are two tests which are applied to determine whether a transfer of property is *inter vivos* or testamentary. One is, when does the interest vest irrevocably? In the principal case it vests during the lifetime of the donor and he can dispose of it; it is therefore, under this rule, *inter vivos*. "This has supposedly been the federal view."⁷ If the settlor in addition to his gift of a remainder interest, had donated a life estate measured by his own life to another, it would probably be considered *inter vivos* and therefore unconstitutional to tax it,⁸ and so it is arguable that if he retains the life estate himself, this should not be enough to change the character of the gift. The other test is, when does physical enjoyment of the property pass? In the principal case it passes at the death of the donor, and under this second test it is testamentary. Not to allow taxation in this situation would allow much evasion of the inheritance tax laws, and the view taken here is justifiable on this practical consideration. The trust involved here was created in 1926. The Supreme Court of Connecticut had decided that taxability rested on the taxing act of the State enacted in 1923.⁹ The Supreme Court of the United States adopted this holding and rejected the contention of the appellants that it was in fact based on a 1929 taxing statute. If the trust deed had antedated the taxing statute, the change taking place at the death of the settlor in itself would not be enough to permit taxation, and any attempted taxation would be retroactive taxation and therefore offensive to due process.¹⁰

M. S.

⁴ Rottschaefcr, "Taxation of Transfers Intended to Take Effect in Possession or Enjoyment at Grantor's Death," 14 MINN. L. REV. 453 at 461 (1930), and cases there cited.

⁵ 281 U. S. 238, 50 Sup. Ct. 286 (1930).

⁶ 282 U. S. 582, 51 Sup. Ct. 306 (1931).

⁷ Runk, "Differing Federal and State Interpretations of the Transfer Inheritance Tax Applied to Trusts Inter Vivos," 79 UNIV. PA. L. REV. 185 at 200 (1930).

⁸ *Reinecke v. Northern Trust Co.*, 278 U. S. 339, 49 Sup. Ct. 123 (1929). Decision rests on statutory grounds but one of the reasons given for construing the statute so as to exclude such a transaction is the doubtful constitutionality of a statute that did reach it.

⁹ *Blodgett v. Guaranty Trust Co.*, 114 Conn. 207, 158 Atl. 245 (1932).

¹⁰ *Nichols v. Coolidge*, 274 U. S. 531, 47 Sup. Ct. 710 (1927); *Coolidge v. Long*, 282 U. S. 582, 51 Sup. Ct. 306 (1931).