

1934

TAXATION-FEDERAL ESTATES TAX-JOINT TENANCIES AND TENANCIES BY THE ENTIRETY

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Taxation-Federal Estate and Gift Commons](#)

Recommended Citation

TAXATION-FEDERAL ESTATES TAX-JOINT TENANCIES AND TENANCIES BY THE ENTIRETY, 32 MICH. L. REV. 868 (1934).

Available at: <https://repository.law.umich.edu/mlr/vol32/iss6/13>

This Recent Important Decisions is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

TAXATION — FEDERAL ESTATES TAX — JOINT TENANCIES AND TENANCIES BY THE ENTIRETY — *H* and *W* acquired title to realty in Illinois in 1909 as joint tenants. *H* died in 1923. *Held*, that one-half of the value of this property should be included in the valuation of *H*'s gross estate for purposes of the federal estates tax, per sec. 402(d) of the Revenue Act of 1921.¹ *Griswold v. Helvering, Comm'r of Int. Rev.*, (U. S. 1933) 54 Sup. Ct. 5, 78 L. ed. 14.

Taxation under the Federal Estates Tax of property held by the decedent and another person as joint tenants or tenants by the entirety has been well discussed.² On the basis of results, the cases may be arranged in a very neat scheme.³ (1) If decedent died before the passage of the first federal estates tax

¹ 42 Stat. 277, sec. 402: "That 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 . . . :

"(d) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person. . . ."

² 1 GEO. WASH. L. REV. 258 (1933); 46 HARV. L. REV. 718 (1933); 21 CAL. L. REV. 286 (1933); 27 MICH. L. REV. 593 (1929); 30 MICH. L. REV. 811 (1932). See also the annotations in 69 A. L. R. 766 (1930); 84 A. L. R. 180 (1933).

³ To avoid repetition, discussion of the constitutional and property problems arising in these cases will not be attempted. Resort to the references herein cited will afford adequate treatment of these matters. A general tabulation of the results of these cases is the extent of this note. No attempt has been made to deal with cases falling within the exceptions provided for in the applicable provisions of the statute.

act (1916), of course no part of the joint tenancy or tenancy by the entirety may be taxed.⁴ (2) If the death occurred between the passage of the Act of 1916 and the passage of the Act of 1924, then: (a) If the joint tenancy or tenancy by the entirety was created before the Act of 1916, one-half of the estate so created was taxed.⁵ The Court has regarded one-half of the estate as an estate created in the survivor before any federal estates tax was imposed. The Court has felt that the statute should not be made retroactive in the absence of explicit provisions to that effect.⁶ (b) If the estate was created after the Act of 1916 was passed, the value of the whole estate was taxed.⁷ Where the estate was created and taxed while the same act was in force, this result is natural. However, the objection to retroactive operation of the statute again presents itself where the applicable tax statute was enacted after the estate was created. But the Court in such a case has said that the estate was created in contemplation of just such a tax system as that in force at the date of death since there was no material change (1916 to 1924) in those provisions of the statute with which we are concerned.⁸ The Court has said that in such a case, rights and liabilities accruing under the former statute are preserved by its successor despite a repealing clause.⁹ (3) Where the death occurred after the passage of the Act of 1924, or subsequent acts, the whole estate was taxed without regard to the date of its creation.¹⁰ This follows from what has already been said in those cases where

⁴ The statutes apply only to estates of persons dying after their passage. See sec. 201 of the Act of 1916, 39 Stat. 777.

⁵ *Knox v. McElligott*, 258 U. S. 546, 42 Sup. Ct. 396, 66 L. ed. 760 (1922); *Walker v. Grogan*, (D. C. E. D. Mich. 1922) 283 Fed. 530, cert. denied, *Grogan v. Walker*, 266 U. S. 603, 45 Sup. Ct. 91, 69 L. ed. 463 (1924); *Griswold v. Helvering*, Comm'r of Int. Rev., 54 Sup. Ct. 5, 78 L. ed. 14 (1933). *Whitehead v. Comm'r of Int. Rev.*, (C. C. A. 8th, 1933) 64 F. (2d) 118, is to be distinguished as an exceptional case under the statute of 1921 since the joint tenants inherited the property. See sec. 402(d), 42 Stat. 278 (1921).

⁶ In the *Knox* case Mr. Justice McKenna quotes the lower court: "It is true section 201 provides that the tax is imposed upon the transfer of the net estate of 'every decedent dying after the passage of this Act'; but the assumption must be that this relates to estates thereafter created and not to then existing property." To this effect see *Shwab v. Doyle*, 258 U. S. 529, 42 Sup. Ct. 391, 66 L. ed. 747 (1922), in connection with *Knox v. McElligott*, 258 U. S. 546, 42 Sup. Ct. 396, 66 L. ed. 760 (1922).

⁷ *Tyler v. United States*, 281 U. S. 497, 50 Sup. Ct. 356, 74 L. ed. 991 (1930); *Comm'r of Int. Rev. v. Emery*, (C. C. A. 7th, 1932) 62 F. (2d) 591.

⁸ Act of 1916: 39 Stat. 777, sec. 202(c); Act of 1918: 40 Stat. 1096, sec. 402(d); Act of 1921: 42 Stat. 277, sec. 402(d).

⁹ *Comm'r of Int. Rev. v. Emery*, (C. C. A. 7th, 1932) 62 F. (2d) 591. See also *Milliken v. United States*, 283 U. S. 15, 51 Sup. Ct. 324, 75 L. ed. 809 (1931), as to the constitutionality of applying the statute in this manner.

¹⁰ *Estate created before 1916*: *Third Nat. Bank & Trust Co. of Springfield v. White*, (D. C. Mass. 1930) 45 F. (2d) 911, aff'd (C. C. A. 1st, 1932) 58 F. (2d) 1085, aff'd without opinion, 287 U. S. 577, 53 Sup. Ct. 290, 77 L. ed. 505 (1932); *Robinson v. Comm'r of Int. Rev.*, (C. C. A. 6th, 1933) 63 F. (2d) 652, cert. denied, 289 U. S. 758, 53 Sup. Ct. 790, 77 L. ed. 1501 (1933); *Levy's Estate v. Comm'r of Int. Rev.*, (C. C. A. 2d, 1933) 65 F. (2d) 412. The case of *Gwinn v. Comm'r of*

the estate was created after the Act of 1916. This result in cases where the creation was prior to 1916 may be explained by the inclusion of an express provision for retroactive operation of the statute in the 1924 and subsequent enactments of the statute.¹¹ The instant case took its place under 2(a) of this scheme without disrupting the symmetry of the situation.

J. I. L.

Int. Rev., 287 U. S. 224, 53 Sup. Ct. 157, 77 L. ed. 270 (1932), though apparently within this class, is an exceptional case under the statute — 43 Stat. 303, sec. 302(e), U. S. C. tit. 26, sec. 1091 (1926) — since in that case the joint tenancy in the property was the result of equal contributions by the joint tenants.

Estate created after 1916: Phillips v. Dime Trust & S. D. Co., 284 U. S. 160, 52 Sup. Ct. 46, 76 L. ed. 220 (1931); O'Shaughnessy v. Comm'r of Int. Rev., (C. C. A. 6th, 1932) 60 F. (2d) 235, cert. denied, 288 U. S. 605, 53 Sup. Ct. 397, 77 L. ed. 980 (1933). The case of Phillips v. Dime Trust & S. D. Co., supra, expressly left open the question of whether the whole estate could be taxed where the estate was created before 1916. The only utterance by the Supreme Court on that question is its affirmance without opinion in Third Nat. Bank & Trust Co. of Springfield v. White, (D. C. Mass. 1930) 45 F. (2d) 911. The District Court Judge in that case felt that the case of Tyler v. United States, 281 U. S. 497, 50 Sup. Ct. 356, 74 L. ed. 991 (1930), bound him to approve taxation of the whole estate, though he felt such practice to be improper. He failed to see that the Tyler case involved a tenancy created after 1916, while the tenancy in the case before him had been created in 1915. See 1 GEO. WASH. L. REV. 258 (1933); 46 HARV. L. REV. 718 (1933).

¹¹ 43 Stat. 303, sec. 302(h), U. S. C. tit. 26, sec. 1094(h) (1926): "Except as otherwise specifically provided therein subdivisions (b), (c), (d), (e), (f), and (g) of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act."

This provision has been retained, 26 U. S. C. A. 1094 (1926.) This section meets the difficulty as to retroactive operation of the statute in our first group of cases. See Knox v. McElligott and Shwab v. Doyle, note 6, supra. But the constitutionality of such retroactive application as to estates created before 1916 appears to be still in doubt. See Nichols v. Coolidge, 274 U. S. 531, 47 Sup. Ct. 710, 71 L. ed. 1184 (1927), and 46 HARV. L. REV. 718 (1933).