Michigan Law Review

Volume 52 | Issue 7

1954

TAXATION-FEDERAL ESTATE TAX-RELEVANCE OF MARITAL DEDUCTION TO COMPUTATION OF WIDOW'S DISTRIBUTIVE SHARE OF HUSBAND'S ESTATE WHERE SHE ELECTS TO TAKE AGAINST WILL

Alice Austin
University of Michigan Law School

TAXATION—FEDERAL ESTATE TAX—RELEVANCE OF MARITAL DEDUCTION TO COMPUTATION OF WIDOW'S DISTRIBUTIVE SHARE OF HUSBAND'S ESTATE WHERE SHE ELECTS TO TAKE AGAINST WILL—A widow electing to take against her husband's will claimed to be entitled to have her one-third share of decedent's net personal estate computed without deduction of federal estate taxes, on the theory that Congress in allowing the marital deduction intended that a widow's share qualifying for such deduction should be free of the impact of

the federal estate tax. The state had no statute providing for apportionment of federal estate taxes. *Held:* Congress did not intend, by allowing the marital deduction, to change the rule that state law is determinative of the impact of the federal estate tax. Since apportionment of federal estate taxes is a matter of policy for the state legislature, a widow electing to take against the will is not entitled to have her one-third share of decedent's net personal estate computed without deduction of federal estate taxes where the state has no apportionment statute. *In re Uihlein's Will,* 264 Wis. 362, 59 N.W. (2d) 641 (1953).

The marital deduction is an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, to the extent that such interest is included in determining the value of the gross estate.[1] It is to be subtracted from the gross estate in computing the taxable estate for the purpose of determining the federal estate tax.[2] Prior to the enactment in 1948 of the marital deduction provisions, it was settled that the ultimate impact of the federal estate tax was to be determined by state law, the presumed intention of Congress being that the federal estate tax should be paid out of the estate as a whole.[3] In five of the thirty-one states which have enacted no statute relating to equitable apportionment of federal estate taxes, the issue in the principal case has been resolved.[4] Two of these states hold that the widow's distributive share of her husband's estate is computed prior to deduction of federal estate taxes.[5] The rationale is that the purpose of the marital deduction was to free from the burden of the federal estate tax all those whose shares of the estate do not create or add to the tax, and since the statutory marital allotment qualifies for the marital deduction, it is deductible from the gross estate in arriving at the taxable estate, and hence does not add to the tax. In three states it has been held that the widow's distributive share is computed after deduction of the federal estate tax.[6] The theory of these cases, including the principal case, is that notwithstanding the allowance by Congress of the marital deduction, apportionment of federal estate taxes is a matter of policy for the state legislature. In the absence of an apportionment statute, the inheritance statute must determine whether the widow's distributive share is computed before or after deduction of the tax.[7] It would appear that the

[1] I.R.C., §812(e)(1)(A).

[2] I.R.C., §812(e)(2)(A).

[3] Riggs v. Del Drago, 317 U.S. 95, 63 S.Ct. 109 (1942), holding valid a New York statute providing for equitable apportionment of the federal estate tax among the beneficiaries of the estate.

[4] Decisions involving community property will not be discussed.

[5] Lincoln Bank & Trust Co. v. Huber, (Ky. 1951) 240 S.W. (2d) 89; Miller v. Hammond, 156 Ohio St. 475, 104 N.E. (2d) 9 (1952).

[6] Northern Trust Co. v. Wilson, 344 Ill. App. 508, 101 N.E. (2d) 604 (1951); Wachovia Bank & Trust Co. v. Green, 236 N.C. 654, 73 S.E. (2d) 879 (1953); and the principal case.

[7] Northern Trust Co. v. Wilson, note 6 supra (widow's share determined after payment of "all just claims," and federal estate tax considered a just claim); Wachovia Bank & Trust Co. v. Green, note 6 supra (widow's share distributable out of the "surplus" of the estate, and surplus is not determinable until after payment of federal estate taxes); principal case (widow's share is one-third of *"net* personal estate," and net personal estate is what remains after payment of *all* charges against the estate).

decision in the principal case is correct, and that allowance by Congress of the marital deduction is irrelevant, except as a matter of policy, to the question of whether a widow's distributive share qualifying for the marital deduction shall escape the impact of the federal estate tax. The marital deduction is a deduction from the entire value of the gross estate,[8] and no specific provision is made under federal law for exemption from the federal estate tax of a widow's share qualifying for the marital deduction. Furthermore, since it is specifically provided that in evaluating the interest passing to the surviving spouse for the purpose of computing the marital deduction, the effect which *any* estate tax has on the net value of such interest to the surviving spouse must be taken into account,[9] it would seem that the allowance by Congress of the marital deduction did not change the rule that the impact of the federal estate tax is to be determined by state law, with Congress intending that the federal estate tax should be paid out of the estate as a whole.[10] Indicative of this is the fact that of the sixteen state statutes providing for apportionment of federal estate taxes, eleven specifically provide, in effect, that in apportioning the amount of the federal estate tax among the beneficiaries of the estate, the surviving spouse is to have the benefit of the marital deduction.[11] The statutes of two other states could be so interpreted.[12] In three of these states it has been held that where a widow elects to take against her husband's will, her distributive share is computed before deduction of federal estate taxes from the estate and no apportionment of the federal estate tax is made against her share.[13] But in only one of these states did the court find that the intent of Congress in allowing the marital deduction was to allow the surviving spouse to take a certain portion of the decedent's estate entirely free of federal estate taxes.[14] The decisions in the other two states were based entirely upon the intentions of the state legislatures.[15] In two of the three remaining states which have enacted apportionment statutes, it has been held that the widow's distributive share of the estate is computed after deduction of the federal estate tax.[16] One state, moreover, has

[8] I.R.C., §812(e)(2)(A).

[9] I.R.C., §812(e)(1)(E).

[10] Riggs v. Del Drago, note 3 supra.

[11] Cal. Probate Code (Deering, 1953) §§970-972; Conn. Gen. Stat. (1949 Rev.) §2076, as amended, Conn. Gen. Stat. (1951 Supp.) §449(b), and Conn. Gen. Stat. (1953 Supp.) §938c; Del. Code Ann. (1953) tit. 12, §2901; Fla. Stat. (1951) §734.041; Neb. Rev. Stat. (1943 reissue) §§30-101, 77-2108, as amended by Neb. Laws (1953) c. 95; N.H. Laws (1947) c. 102; N.J. Stat. (1951 rev.) §3A:25-33; 13 N.Y. Consol. Laws Ann. (McKinney, 1949) §124, as amended by N.Y. Laws (1950) c. 822; Pa. Stat. Ann. (Purdon, 1953 Supp.) tit. 20, §884; Tenn. Code Ann. (Williams, 1952 Supp.) §8350.7; Va. Code (1950) §64-151, as amended by Va. Acts (1952) c. 294.

[12] Mass. Laws Ann. (1953) c. 65A, §5; Ore. Laws (1949) c. 475, as amended by Ore. Laws (1951) c. 386.

[13] Kuchel v. Cushing, (Cal. 1952) 248 P. (2d) 482; In re Buckhantz' Estate, (Cal. 1953) 260 P. (2d) 794; In re Fuchs' Estate, (Fla. 1952) 60 S. (2d) 536; In re Peters' Will, 88 N.Y.S. (2d) 142 (1949), affd. 275 App. Div. 950, 89 N.Y.S. (2d) 651 (1949).

[14] In re Peters' Will, note 13 supra.

[15] Kuchel v. Cushing, note 13 supra; In re Buckhantz' Estate, note 13 supra; In re Fuchs' Estate, note 13 supra.

[16] Terral v. Terral, 212 Ark. 221, 205 S.W. (2d) 198 (1947); Weinberg v. Safe Deposit & Trust Co. of Baltimore, (Md. 1951) 85 A. (2d) 50.

a statute specifically providing against apportionment of the federal estate tax.[17] Since in the principal case the widow's distributive share was to be one-third of decedent's *net* personal estate, it would appear that in the absence of an apportionment statute the only argument against computing her share after deduction of the federal estate tax is one of policy. And here "the public policy of the state is a matter for the legislative branch of the government and not for the courts."[18]

Alice Austin

[17] Ala. Code (1940, 1951 Cum. Supp.) tit. 51, §449(1).
[18] Wachovia Bank & Trust Co. v. Green, note 6 supra, at 659.