

Washington University Law Review

Volume 28 | Issue 4

January 1943

Taxation—Federal Estate Tax—Priority of Federal Tax Lien over Mortgage Lien and State Liens for Taxes

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Recommended Citation

Taxation—Federal Estate Tax—Priority of Federal Tax Lien over Mortgage Lien and State Liens for Taxes,
28 WASH. U. L. Q. 293 (1943).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol28/iss4/7

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TAXATION—FEDERAL ESTATE TAX—PRIORITY OF FEDERAL TAX LIEN OVER MORTGAGE LIEN AND STATE LIENS FOR TAXES—[Federal].—The United States brought this action to foreclose an asserted lien¹ for estate taxes assessed upon certain parcels of real estate presently owned by the petitioner. The real estate had been owned at the time of his death by decedent and his wife as tenants by the entirety. Following his death the real estate was not included as a part of the decedent's estate in computing the federal estate tax.² Prior to assessment or payment of the tax but after the death of the decedent, the real estate was mortgaged to the petitioner who acted without knowledge of the government's asserted lien or claim for taxes, and subsequently petitioner acquired the real estate as the result of a foreclosure of the mortgage. Petitioner contended that the tax was upon the gross estate and did not attach to the land held by the entirety. *Held*, that the tax lien, although unrecorded, was superior to the mortgage lien and to local, state and county liens for taxes, which had accrued after the death of decedent. *Detroit Bank v. United States*.³

The law is well settled that one having an interest in property by the entirety has such an interest as will be subject to a federal estate tax at his death.⁴ This tax becomes a lien on the decedent's property at his death⁵ and continues until such lien is satisfied either by payment or by a foreclosure sale.⁶

The power of taxation has always been regarded as a necessary and

1. (1868) 15 Stat. 167, as amended by (1926) 44 Stat. 123, c. 27 §1127, 26 U. S. C. A. §§3678, 3679.

2. Internal Revenue Act (1926) 44 Stat. 71, c. 27 §302(e), 26 U. S. C. A. §811(e).

3. (1943) 63 S. Ct. 297.

4. In *Levy's Estate v. Commissioner of Internal Revenue* (C. C. A. 2, 1933) 65 F. (2d) 412, the court expressed its view as follows: "It is authoritatively established that the death of a tenant by the entirety results in the enjoyment of property rights in the survivor and furnishes the occasion for the imposition of the tax, if that event takes place after the passage of the taxing statute regardless of when the tenancy was created." The same view was adopted by other courts in *Tyler v. United States* (1930) 281 U. S. 497, 69 A. L. R. 758; *Richardson v. Helvering, Com'r. of Internal Revenue* (App. D. C. 1935) 80 F. (2d) 548, 65 App. D. C. 105; *Bowers v. Commissioner of Internal Revenue* (C. C. A. 7, 1937) 90 F. (2d) 790; *Putnam v. Burnet* (App. D. C. 1933) 63 F. (2d) 456, 61 App. D. C. 398; *Third Nat. Bank & Trust Co. of Springfield v. White* (D. C. Mass. 1930) 45 F. (2d) 911.

5. *Hertz v. Woodman* (1910) 218 U. S. 205; *Page v. Skinner* (C. C. A. 8, 1924) 298 Fed. 731. Under 26 U. S. C. A. §811(e), estates by the entirety are not taxed to their full extent, but simply to the extent of the value which was not furnished by the survivor. The amount of the estate subject to the estate tax varies in direct proportion to the extent of the decedent's original contribution. *Tyler v. United States* (1930) 281 U. S. 497, 69 A. L. R. 758; *Levy's Estate v. Commissioner of Internal Revenue* (C. C. A. 2, 1933) 65 F. (2d) 412; *Bowers v. Commissioner of Internal Revenue* (C. C. A. 7, 1937) 90 F. (2d) 790.

6. *Rosenberg v. McLaughlin* (C. C. A. 9, 1933) 66 F. (2d) 271; *United States v. Cruikshank* (D. C. S. D. N. Y. 1931) 48 F. (2d) 352; *Baumgartner v. Commissioner of Internal Revenue* (C. C. A. 9, 1931) 51 F. (2d) 473.

indispensable incident of sovereignty. The United States and each state as a sovereignty has this power, the one independent of the other.⁷ The States as well as the Congress of the United States may prescribe the procedure and effect of liens on real estate of the person assessed,⁸ and it is the general tendency of the states to enact legislation providing that such liens shall have priority over subsequent and unrecorded liens.⁹ By statute, the federal government has provided that "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount * *, * * * shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person."¹⁰ As amended, this section provides that the lien will not be valid against any mortgagee, purchaser, or judgment creditor until notice thereof has been filed by the collector.¹¹ In the instant case, a very serious question of the priority of an unrecorded federal estate tax lien would arise under the above statute, which requires recordation of the lien. To cover situations similar to the one presented here and to qualify the existing statute, the federal government found it necessary to pass another statute which related specifically to estate tax liens and required no demand or recordation thereof.¹²

The differences between the two statutes and their legislative history as separate enactments, indicate that each was intended to operate inde-

7. In *United States v. Snyder* (1893) 149 U. S. 210, the court said: "A government that cannot, by self-administered methods, collect from its subjects the means necessary to support and maintain itself in the execution of its functions is a government merely in name. If the United States, proceeding in one of their own courts, in the collection of a tax admitted to be legitimate, can be thwarted by the plea of a state statute prescribing that such a tax must be assessed and recorded under state regulation, and limiting the time within which such tax shall be a lien, it would follow that the potential existence of the government of the United States is at the mercy of state legislation." If this were true it would be wholly inconsistent with the theory of the Constitution. The tax system of the United States is regulated by federal statutes and practice, and is not controlled by state enactments.

8. Hackman, *The Lien of Federal Court Judgments* (Nov. 1927) Title News 3.

9. R. S. Mo. 1939 §§3542, 3543. *Rhea v. Smith* (1925) 308 Mo. 422, 272 S. W. 964. Comment (1926) 35 Yale L. J. 637. Even as early as 1805, in the case of *United States v. Fisher* (U. S. 1805) 2 Cranch 358, the court upheld the constitutionality of the priority of claims of the United States over those of the states. The soundness of the court's reasoning has been upheld and it has been the tendency of the federal courts to follow this doctrine.

10. (1866) 14 Stat. 107, as amended (1928) 45 Stat. 875, c. 852 §613, 26 U. S. C. A. §§3670-3677.

11. (1928) 45 Stat. 875, c. 852 §613 of the Internal Revenue Act, 26 U. S. C. A. §3672.

12. Internal Revenue Act (1926) 44 Stat. 80, c. 27 §315(a), as amended by (1932) 47 Stat. 283, c. 209 §809, 26 U. S. C. A. §827. This statute provides that, "Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. * * * * *"

pendently of the other.¹³ The recording of tax liens based on the earlier provision refers only to general tax liens,¹⁴ which attach to all of the property, intangible as well as tangible, in possession of the taxpayer to the extent of his interest in and rights thereto.¹⁵ Under the procedure of this statute the lien does not attach until notice is filed by the collector,¹⁶ but when once recorded it continues until it is paid.¹⁷ The statutory lien of estate tax¹⁸ attaches only to property included in and taxed as the gross estate not used to pay administration expenses,¹⁹ and continues for only ten years from the death of the decedent.²⁰ Under this specific lien, there is no way of learning that a tax is due, short of an extensive investigation or until some type of return is made by the estate's legal representative.²¹

13. *United States v. Bank of Los Angeles* (D. C. S. D. Cal. 1939) 30 F. Supp. 113; *United States v. Long Island Drug Co.* (D. C. E. D. N. Y. 1939) 29 F. Supp. 737; *United States v. McGuire* (D. C. N. J. 1941) 42 F. Supp. 337.

14. *United States v. Western Union Telegraph Co.* (C. C. A. 2, 1931) 50 F. (2d) 102; *City of Winston-Salem v. Powell Paving Co. of North Carolina* (D. C. M. D. N. C. 1934) 7 F. Supp. 424; *Exchange National Bank of Tulsa v. Davy* (D. C. N. D. Okla. 1936) 13 F. Supp. 226; *United States v. Turner* (C. C. S. D. Ohio 1873) Fed. Cas. No. 16548; *United States v. Pacific Railroad* (C. C. E. D. Mo. 1880) 1 Fed. 97; *United States v. Curry* (D. C. D. Md. 1912) 201 Fed. 371.

15. *United States v. Turner* (C. C. S. D. Ohio 1873) 23 Fed. Cas. 232; *United States v. Curry* (D. C. D. Md. 1912) 201 Fed. 371; *United States v. Bank of Shelby* (C. C. A. 5, 1934) 68 F. (2d) 538; *United States v. Bank of United States* (D. C. S. D. N. Y. 1934) 4 F. Supp. 942; *United States v. Long Island Drug Co.* (D. C. E. D. N. Y. 1939) 29 F. Supp. 737; *Metropolitan Life Ins. Co. v. United States* (C. C. A. 6, 1939) 107 F. (2d) 311; *United States v. Bank of Los Angeles* (D. C. S. D. Cal. 1939) 30 F. Supp. 113; *MacKenzie v. United States* (C. C. A. 9, 1940) 109 F. (2d) 540; *United States v. Taft* (D. C. S. D. Cal. 1942) 44 F. Supp. 564; *Citizens State Bank of Barstow v. Vidal* (C. C. A. 10, 1940) 114 F. (2d) 380 (a claim for work, labor and material furnished, *held*, "property or rights to property" within the meaning of 45 Stat. 875, though such claim is intangible in character.)

16. *United States v. Pacific Railroad* (C. C. E. D. Mo. 1877) Fed. Cas. No. 15,984; *In re Baltimore Pearl Hominy Co.* (D. C. D. Md. 1923) 294 Fed. 921; *United States v. Beaver Run Coal Co.* (C. C. A. 3, 1938) 99 F. (2d) 610; *United States v. Long Island Drug Co.* (D. C. E. D. N. Y. 1939) 29 F. Supp. 737; *United States v. Bank of Los Angeles* (D. C. S. D. Cal. 1939) 30 F. Supp. 113; *Citizens State Bank of Barstow v. Vidal* (C. C. A. 10, 1940) 114 F. (2d) 380; *United States v. Rosebush* (D. C. E. D. Wisc. 1942) 45 F. Supp. 664.

17. *Page v. Skinner* (C. C. A. 8, 1924) 298 Fed. 731; *United States v. City of Greenville* (C. C. A. 4, 1941) 118 F. (2d) 963.

18. Internal Revenue Act (1926) 44 Stat. 80, c. 27 §315(a), as amended by (1932) 47 Stat. 283, c. 209 §809, 26 U. S. C. A. §827.

19. The court in *United States v. Bank of Los Angeles* (D. C. S. D. Cal. 1939) 30 F. Supp. 113, held that attorney fees were "expenses of the administration" and not subject to the estate tax.

20. *Neustadter v. United States* (C. C. A. 9, 1937) 90 F. (2d) 34; *United States v. Cruikshank* (D. C. S. D. N. Y. 1931) 48 F. (2d) 352; *United States v. Bank of Los Angeles* (D. C. S. D. Cal. 1939) 30 F. Supp. 113.

21. *Dollar Savings Bank v. United States* (U. S. 1873) 19 Wall. 227; *Rosenberg v. McLaughlin* (C. C. A. 9, 1933) 66 F. (2d) 271; *Metropolitan Life Insurance Co. v. United States* (C. C. A. 6, 1939) 107 F. (2d) 311.

The lien, although unqualified and broad, requires all persons dealing with such estates to investigate at their peril the condition of the estate with respect to federal estate taxes.²² Notice of the federal estate tax lien need not be recorded²³ or filed as required under the general tax lien statute²⁴ in order for said lien to prevail against subsequent mortgages, judgments and other general tax liens.

The history and the differences between the provisions already noted would compel one to conclude that the two statutes, one providing a general lien and the other providing a specific lien for estate taxes, are distinct and separate, and tend to operate independently. It appears from the analogy thus drawn, the Supreme Court has wisely adopted the theory that the legislature had both statutes in mind when it enacted the latter, and thus intended the federal estate tax lien to work independently of the other.

S. F. W.

TORTS—PROXIMATE CAUSE—RESCUE DOCTRINE—[Federal].—At 6 A. M. on a foggy morning, defendant collided with the rear end of a truck driven by one Elias and caused the truck to become stalled on the highway. Shortly thereafter, plaintiff, a driver of a tow-truck, passing the scene, offered to pull the Elias truck off the highway because of its danger to other motorists. While plaintiff was connecting a tow-line, a fourth car collided with the rear end of the Elias truck and crushed the plaintiff between the two trucks. Plaintiff brought an action against the defendant, the original wrongdoer, who contended that his negligence in colliding

22. Under §411 of the Internal Revenue Act of 1942 amending Internal Revenue Code §827(b) it is provided, "If the tax herein imposed is not paid when due, then the spouse, transferee, trustee, surviving tenant, * * * * *, who receives, or has on the date of the decedent's death, property included in the gross estate under section 811(e), to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property sold by such spouse, transferee, trustee, surviving tenant, * * * * *, to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien provided in section 827(a) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, * * * * *, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth." This amended provision tends to remedy the problem in part by making the surviving tenant personally liable for any unpaid estate tax on property received at or after the death of the decedent. In the case of *John Hancock Mut. Life Ins. Co. v. Helvering* (App. D. C. 1942) 128 F. (2d) 745, where insurance passed under a contract in favor of special beneficiary, the court held that an insurance company, holding proceeds of life policies after decedent's death, is not a "transferee" within the meaning of the statute but such beneficiary is the only person personally liable for the tax.

23. *United States v. National Surety Co.* (U. S. 1920) 254 U. S. 73; *Spokane County v. United States* (U. S. 1929) 279 U. S. 80; *United States v. San Juan County* (D. C. W. D. Wash. 1922) 280 Fed. 120; *United States v. McGuire* (D. C. D. N. J. 1941) 42 F. Supp. 337.

24. (1866) 14 Stat. 107, as amended (1928) 45 Stat. 875, c. 852 §613, 26 U. S. C. A. §§3670-3677.