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Taxation—Deductions from Federal Estate Tax—Use of Mortality Tables

jurisdictions provide in their statutes that convictions had in other states for offenses punishable in the state where the offense is perpetrated shall on conviction for any subsequent offense within that state be subject to the same punishment as though such first conviction had taken place in that state.[9]

A minority of states hold that a pardon reaches both the punishment prescribed for the offense and the guilt of the offender thus releasing the punishment and blotting out the existence of the guilt so that, in the eyes of the law, the offender is as innocent as if he had never committed the offense.[10] It has been explained [11] that the minority rule grew out of a misinterpretation of the statement by Bracton in giving the English law of pardon.[12] Upon closer examination of Bracton's treatise it is seen that his views do not support decisions of the minority group. He only intended a pardoned man to be entitled to restoration of his citizenship, to the right to testify, and to the rights of suffrage.

Nebraska has provided in its habitual criminal act that if the convicted person had been previously convicted and pardoned for the reason that he was found innocent then he shall not come under the provisions of the statute.[13] This provision places Nebraska on middle ground and would seem to be the most just and equitable method of handling the situation. Both the majority and the minority rule work an injustice to a fairly great extent, the majority rule in not taking cognizance of the fact that there are pardons granted to people found completely innocent, and the minority rule in being too liberal with hardened criminals.

L. R. K.

TAXATION—DEDUCTIONS FROM FEDERAL ESTATE TAX—USE OF MORTALITY TABLES—[Federal].—Deceased devised the residue of his estate to his nephew to be held in trust until he was 29 years of age. If the nephew died before reaching that age the trust fund was to be used for the erection

9. R. S. Mo. (1929) sec. 4462; Ky. Carroll's Stats. Ann. (1936) sec. 1130; Neb. Comp. Stats. (1929) sec. 29-2217; Okl. Stats. Ann. (1936) Penal Code ch. 15, art. 6, sec. 1817-1820; State v. Christup (1935) 337 Mo. 776, 18 S. W. (2d) 1024; McDonald v. Commonwealth of Mass. (1901) 180 U. S. 311, 21 S. Ct. 389 45 L. ed. 542; Kan. Gen. Stats. (1935) sec. 21-107, 21-108; Cross v. State (1928) 96 Fla. 768, 119 So. 380.

10. Ex Parte Garland (1867) 4 Wall 33, 32 How. Prac. 241; Ex Parte Collins (1925) 32 Okl. Crim. App. 6, 239 Pac. 693; State v. Martin (1898) 59 Ohio St. 212, 52 N. E. 188, 43 L. R. A. 94; Edward v. Commonwealth (1883) 78 Va. 39; Kelley v. State (Ind. 1933) 185 N. E. 453.

11. Samuel Williston, Does a Pardon Blot Out Guilt? (1915) 28 Harv. L. Rev. 647.

12. Zwess' Translation, Vol. 2, p. 371: "Pardoned man is like a new born infant and a man as it were lately born."

13. See Neb. Comp. Stats. (1929) sec. 29-2217, where an habitual criminal is defined and it is said that "if person so convicted shall show to the satisfaction of the court before whom such conviction was had, that he was released from imprisonment upon either of said sentences, upon a pardon granted for the reason that he was innocent, such conviction and sentence shall not be considered as such under this act."

of a high school. The plaintiff, the executor, claimed a deduction in computing the federal estate tax under the Revenue Act of 1926,[1] providing for exemption from tax where the estate is to be used for a charitable purpose. He contended that the value of the contingent remainder in the trust fund, which would go to the school board should be calculated by the use of the American Mortality Tables.[2] *Held*, that the school board had no contingent interest sufficient to justify a deduction from the gross estate of the deceased.[3]

The use of mortality tables was firmly established in computing the present worth of life interests in personal property for the purpose of the succession tax imposed under Federal Revenue Acts, as early as 1898.[4] The amount of deduction for bequests to charities in computing the estate tax should be only the value, determined by mortality tables, of the remainder's interest at the time of the death of the decedent.[5] Deductions from the gross estate are allowable for bequests of future interests to charity, only if such bequests are, at the testator's death, reasonably certain to vest in possession and enjoyment.[6]

In *Ithaca Trust Co. v. United States*,[7] the Supreme Court permitted the

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1. (1926) 44 Stat. 72, 26 U. S. C. A. sec. 1095 (a) (3). The statute provides that the net estate subject to the estates tax should be determined by deducting from the value of the gross estate the amount of all bequests for the use of corporate organizations, operated exclusively for charitable purposes.

2. (1936) American Almanac 274.

3. Wood v. United States (D. C. W. D. Ark. 1937) 20 F. Supp. 197. The nephew was 17 years of age at the date of the testator's death.

4. See Simpson v. United States (1920) 252 U. S. 550, 40 S. Ct. 367, 64 L. ed. 709, where the court stated: "It is much too late to assail a method so generally applied." See also United States v. Fidelity Trust Co. (1911) 222 U. S. 158, 32 S. Ct. 59, 56 L. ed. 137; Mead v. Welch (D. C. S. D. Cal. 1935) 13 F. Supp. 981; City Bank Farmers' Trust Co. v. United States (C. C. A. 2, 1935) 74 F. (2d) 692; Milliard v. Humphrey (D. C. W. D. N. Y. 1934) 8 F. Supp. 784; United States v. Provident Trust Co. (1933) 291 U. S. 272, 54 S. Ct. 389, 78 L. ed. 793; Hidden v. Durey (1929) 34 F. (2d) 174; Sanderson v. Commissioner of Internal Revenue (1929) 18 B. T. A. 221; Herdeback v. Commissioner of Internal Revenue (1928) 14 B. T. A. 1317; First Nat. Bank of Birmingham v. Snead (C. C. A. 5, 1928) 24 F. (2d) 186; Ithaca Trust Co. v. United States (1928) 279 U. S. 151, 48 S. Ct. 347, 73 L. ed. 647; Dugan v. Miles (C. C. A. 4, 1923) 292 Fed. 131.

5. Herdeback v. Commissioner of Internal Revenue (1929) 14 B. T. A. 1317. The court held that in determining the amount of the deduction for a bequest to a charity, the Commission of Internal Revenue should reduce the value of the gift to the charity by the value of the life estate as computed by the mortality tables.

6. McDonald v. Welch (D. C. D. Mass. 1936) 17 F. Supp. 549; City Bank Farmers' Trust Co. v. United States (D. C. S. D. N. Y. 1934) 5 F. Supp. 871, aff'd (C. C. A. 2, 1935) 74 F. (2d) 692; Lucas v. Mercantile Trust Co. (C. C. A. 8, 1930) 43 F. (2d) 39; Sanderson v. Commissioner of Internal Revenue (1929) 18 B. T. A. 221; Ithaca Trust Co. v. United States (1928) 279 U. S. 151, 48 S. Ct. 347, 73 L. ed. 667.

7. (1928) 279 U. S. 151, 48 S. Ct. 347, 73 L. ed. 667. The court stated there was no uncertainty appreciably greater than the general uncertainty that attends human affairs. See also Lucas v. Mercantile Trust Co. (C. C. A. 8, 1930) 43 F. (2d) 39; Milliard v. Humphry (D. C. W. D. N. Y. 1934)

use of mortality tables where a life estate was given with authority to encroach upon the principal of the trust fund for any sum necessary suitably to maintain decedent's wife in as much comfort "as she now enjoys," with gifts over to charity. The provision for the charities was sufficiently certain, in that case, since the amount to be used each year for the widow could be determined from the average expended in past years.[8] The cases in which the remainder to charity was to take effect only upon the death without issue of the testator's daughter are in conflict.[9] In two later cases, *City Bank Farmers' Trust Company v. United States*,[10] in which the life tenant was a woman over 59 years of age, and *United States v. Provident Trust Co.*,[11] in which the life tenant had been rendered sterile by a surgical operation, the deductions were permitted.

In the instant case the plaintiff relied on the two decisions last cited. The clear distinction, however, is that the plaintiff in the instant case sought to establish the value of the future interest of the charity not *on* a life expectancy but *in proportion* to a life expectancy. The School Board, in fact, had no remainder of any value based upon the prospect of the nephew's death before reaching 29. His life expectancy, at the age of 17, would carry him far beyond that period. The court's conclusion that any effort to determine the value of the remainder would be wholly speculative is unassailable.[12]

In *Humes v. United States*,[13] a case much like the instant case, Mr. Justice Brandeis stated that it was not the intention of Congress that a deduction should be made for the creation of charitable contingent interests, the value of which could not be determined from any known date. It appears that this position is an advantageous one. The Supreme Court has wisely refused to sanction a type of inquiry into the value of speculative future interests in which information is wholly lacking.

W. B. B.

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8 F. Supp. 784; Sanderson v. Commissioner of Internal Revenue (1929) 18 B. T. A. 221; First Nat. Bank of Birmingham v. Snead (C. C. A. 5, 1928) 24 F. (2d) 186; Herron v. Heiner (1927) 24 F. (2d) 745.

8. Ithaca Trust Co. v. United States (1928) 279 U. S. 151, 48 S. Ct. 347, 73 L. ed. 647.

9. In Guaranty Trust Co. of New York v. Commissioner of Internal Revenue (1933) 27 B. T. A. 550, the court indulged in the presumption that a woman over 50 could bear children. In Farrington et al. v. Commissioner of Internal Revenue (C. C. A. 1, 1929) 30 F. (2d) 915 the single fact that terminated the ability to bear children was death, even where the life tenant's female organs were removed and therefore the charity's contingent interest was too remote and could not be deducted.

10. (D. C. S. D. N. Y. 1934) 5 F. Supp. 871, aff'd (C. C. A. 2, 1935) 74 F. (2d) 692. In this case the remainder was subject to a life estate of a son aged 53 at testator's death, and was contingent on the life tenant's death without issue. The charity's interest was held to be too remote. No one could predict that a man of 53 would never have issue.

11. (1933) 91 U. S. 272, 54 S. Ct. 389, 78 L. ed. 793.

12. The court stated that the tax payer or revenue officer would be using nothing but guess work in arriving at the value of the charity's contingent interest.

13. (1927) 276 U. S. 487, 48 S. Ct. 347, 72 L. ed. 667.