

Taxation of Intangibles - Rights of States Other Than the Domicile of Creditor - Double Taxation of Intangibles

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DOUBLE TAXATION OF INTANGIBLES

May a state other than the state of domicile of the creditor levy a transfer tax upon intangible property, the interest in which is transferred by the death of the creditor?

Any attempt by a state to levy such a death tax when it has no jurisdiction to do so is a violation of the Fourteenth Amendment, and as such would be prohibited. A question must then immediately arise as to when a state does have jurisdiction to impose a death tax.

Perhaps the earliest leading case on this subject was the case of *Blackstone v. Miller*,¹ where New York levied a tax upon the transfer by will of debts owed to an Illinois decedent by a New York firm and bank. Illinois had already taxed this succession. One of the objections to the New York tax was that it was contra the Fourteenth Amendment. The test laid down in this case was that if the transfer of the debt necessarily depends upon and involves the law of New York for its exercise, or, in other words, if the transfer is subject to the power of the State of New York, then New York may subject the transfer to a tax. The tax was sustained, the court stating that the transfer of the debts necessarily depended upon and involved the law of New York for its exercise, because it was the law of New York that gave validity to the debt. This rule was affirmed in *Bullen v. Wisconsin*,² where the Supreme Court of the United States permitted Wisconsin to impose a transfer tax upon certain stocks and bonds which a Wisconsin decedent had transferred to an Illinois trust company to hold in trust, retaining a power of revocation, and the right to direct and control the disposition of both principal and income.

The doctrine of the Blackstone case, *supra*, was followed until 1930, in which year it was overruled by the case of *Farmers Loan & Trust Co. v. Minnesota*,³ in which case a New York resident died owning negotiable bonds issued by the State of Minnesota and the cities of Minneapolis and St. Paul. His will was probated in New York and a tax was levied on the testamentary transfer. Minnesota also assessed an inheritance tax on this transfer on the ground that the bonds were debts of Minnesota and of corporations subject to her control; that her laws gave them validity, protected them and provided means for enforcing payment. On appeal to the Supreme Court of the United States, the judgment of the Minnesota court upholding the tax was reversed, the court saying that no state may tax anything not within her jurisdiction without violating the Fourteenth Amendment. While debts have no territorial situs a state may properly applying the rule "mobilia sequun-

¹ 188 U.S. 189, 23 Sup. Ct. 8, 47 L.Ed. 439 (1902).

² 240 U.S. 625, 36 Sup. Ct. 473, 60 L.Ed. 830 (1915).

³ 280 U.S. 204, 50 Sup. Ct. 98, 74 L.Ed. 439 (1929).

tur personam" and treat them as localized at the creditor's domicile for taxation purposes. The court further stated that there was no reason for saying that intangibles are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles. The dissent by Justice Holmes was to the effect that the debt, wherever enforced, is enforced only because it is recognized as such by the law that created it and keep it still a debt.

The court in arriving at its decision in the *Farmers Loan & Trust Co. v. Minnesota* case affirmed and elaborated upon the decision it had reached in the slightly earlier case of *Blodget v. Silbermann*.⁴ In that case a Connecticut resident died leaving the greater part of his wealth in New York, some of which was intangible in nature. It was held that the transfer of the intangible property was subject to the tax imposed by the law of the decedent's domicile, the court saying that the situs of intangibles is the domicile of the creditor. (The decision in this case was a further application of the principle, "mobilia sequuntur personam.")

This rule was again upheld in the case of *First National Bank of Boston v. Maine*,⁵ which was an action to recover the amount of a transfer tax levied by the State of Maine against shares of a Maine corporation owned by a Massachusetts decedent. The Maine tax was held to be invalid, the court saying that shares of stock, like other intangibles, constitutionally can be subjected to a death transfer tax by one state only, and that convenience and justice alike dictates the desirability of a uniform general rule confining the jurisdiction to impose death transfer taxes as to intangibles to the state of the domicile.

Although the tendency of the courts has been to avoid double taxation, exceptions to the rule have arisen.

In the *Farmers Loan and Trust Co.* case, *supra*, the court alluded to an exception to the rule that intangibles are taxable only at the domicile. It was there stated that choses in action may acquire a situs for taxation other than at the domicile of their owner if they have become integral parts of some local business. The case of *Wheeling Steel Corporation v. Fox*,⁶ is an apt illustration of this exception. There, West Virginia levied an ad valorem property tax upon accounts receivable and bank deposits in West Virginia of a corporation organized under the laws of Delaware. The corporation maintained its principal office in Delaware, but the general books and accounting records were also kept. It was held that the intangibles were taxable in West Virginia because the corporation had established a "commercial domicile" there. There had been such a localization of the corporation's business that there was

⁴ 277 U.S. 1, 48 Sup. Ct. 410, 72 L.Ed. 749 (1928).

⁵ 284 U.S. 312, 52 Sup. Ct. 174, 76 L.Ed. 313 (1931).

⁶ 298 U.S. 193, 56 Sup. Ct. 773, 80 L.Ed. 1143 (1935).

imparted to its entire intangible property a prima facie situs for taxation in that place.

In *Curry v. McCannless*,⁷ the decedent, a resident of Tennessee transferred stocks to an Alabama trustee. The deceased reserved the power to dispose of the trust estate by her last will and testament, however this power was never exercised. It was held that both Tennessee and Alabama could impose the death transfer tax, the court applying the benefit theory of taxation. When the taxpayer extends his activities with respect to his intangibles so as to avail himself of the protection and benefit of the laws of another state, such other state may tax these intangibles. Protection, benefit, and power over the subject matter are not confined to either state. The taxpayer who is domiciled in one state but carries on business in another is subject to a tax there measured by the value of the intangibles used in his business. The court expressly denied that the Fourteenth Amendment prohibited the taxation of the same intangible in more than one state.

*Graves v. Elliott*⁸ was decided by the same court in the same term, and is usually cited as a companion case to *Curry v. McCannless*, *supra*. In that case a decedent domiciled in New York created a trust in Colorado. Both New York and Colorado were permitted to impose a death transfer tax, the court applying the same reasoning as in *Curry v. McCannless*.

From the foregoing cases it appears that the rule in the *Farmers Loan & Trust Co.* case to the effect that only the state of the domicile of the creditor can tax an intangible is applicable only where the decedent has confined his activities to his domicile. However, where he extends his activities to another state, that state also can tax the intangibles. Under such circumstances both states can tax the intangibles.

The foregoing cases represent the law as it existed until April 27, 1942. On that date the Supreme Court of the United States handed down the decision in the case of *State Tax Commission of Utah v. Aldrich*,⁹ which overruled the case of *Farmers Loan & Trust Co. v. Minnesota*, and permitted both the state of the domicile of the creditor and of the debtor to tax the transfer of intangible personal property at death. In this case a New York resident died owning stock in a Utah railroad. The certificates, as well as the company's stock books, records and transfer agents were kept in New York. The administrators of the estate of the deceased sought a declaratory judgment in the Utah court to the effect that the transfer of the shares were not subject to taxation by Utah under the provisions of its inheritance tax law. The Utah court rendered judgment for the administrators under the

⁷ 307 U.S. 357, 59 Sup. Ct. 900, 83 L.Ed. 1339 (1938).

⁸ 307 U.S. 383, 59 Sup. Ct. 913, 83 L.Ed. 3156 (1938).

⁹ 62 Sup. Ct. 1008 (1942).

doctrine of *First National Bank of Boston v. State of Maine*, supra. Certiorari was granted, and the United States Supreme Court reversed the judgment of the Utah Court saying that in cases of shares of stock "jurisdiction to tax" is not restricted to the domiciliary state. Another state which has extended benefits or protection or which can demonstrate "the practical fact of its power" or sovereignty as respects the shares may likewise constitutionally make its exaction.

In arriving at the decision in the case of *State Tax Commission of Utah v. Aldrich*, the United States Supreme Court has reestablished the rule of *Blackstone v. Miller*. This result has been predicted by some, in view of the more liberal tendency of the court as indicated by such cases as *Curry v. McCannless* and *Graves v. Elliot*, and also in view of the changing personnel of the court.

Thus as the law stands today, double taxation of intangibles is constitutional, and a state other than the state of domicile of a creditor may levy a transfer tax upon intangible personal property transferred by the death of the creditor.

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