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*by George Rubin**

Introduction—The Nature of Inheritance Taxes.

IN 1789, BENJAMIN FRANKLIN wrote to a friend stating, "Our Constitution is in actual operation; everything appears to promise that it will last; but *in this world nothing is certain but death and taxes.*" (Italics supplied.) Thus this great American patriot, statesman and scholar gave to the world the much-quoted phrase regarding the uncertainties of life, excepting therefrom the inevitableness of death and taxes.

Although it appears that Benjamin Franklin treated the two certainties as things separate and distinct, yet from the earliest of times governmental authorities have united them by imposing some form of tax intended to take effect upon death. In *In Re Inman's Estate,* 199 Pac. 615, 1921, the Supreme Court of Oregon stated, "Inheritance taxes are of ancient origin. It is said that this form of imposts was adopted in Egypt in the seventh century before Christ, and that in the year 6 A. D. the Romans copied the idea from the Egyptians * * * practically all the nations of Europe have adopted some system of inheritance taxation. Since 1797 the Federal Government of the United States has at different periods enforced legislation providing for some form of inheritance taxation. In most of the states of the American union inheritance taxes are now collected."

Death taxes, generally referred to as inheritance, succession or estate taxes are not capitation taxes, nor taxes on the property of the decedent, except where so designated by constitutional provision. They are excise or privilege taxes imposed on the transfer of property of the decedent made effective by his death. Thus in *Keeney v. New York,* 56 L. Ed. 299, the United States Supreme Court held that when property is transferred by deed intended to take effect upon the death of the grantor, the tax authorized by the New York laws is one in the nature of an excise tax on the transfer, and is not void as denying the equal

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protection of the laws guaranteed by the U. S. Const. Amend. XIV, because lacking in the elements of uniformity and equality required in the assessment of property taxes.

In general, the term "inheritance tax" is used in the generic sense, in which case the tax may be divided into two classes, namely, (1) estate taxes and (2) succession or legacy taxes. Estate taxes are imposed on the transmission or the right of transmission of the estate or property by the decedent. Succession or legacy taxes are imposed on the right of the heir, devisee or legatee to receive the property transmitted.

It is well established, and therefore unnecessary to cite authorities, that the transfer or succession of real property and tangible personal property is taxable by the state where it is located irrespective of the domicile of the decedent, and that the transfer or succession of intangible personal property may be taxed by the state where the decedent was domiciled at the time of his death. Intangible personal property is in the nature of stocks, bonds, debts owed by others, bank accounts, insurance policies and the like. It becomes clear then that the state must establish the domicile of the decedent at the time of his death in order to impose an inheritance tax on the transmission or right of transmission of the intangible personal property.

The Problem—Multiple Taxation.

The problem arises in those cases where a decedent who had a place of abode in more than one state, or had performed certain acts in more than one state which independent of his actual intention respecting his domicile might be taken to indicate that he intended to become domiciled in such states had not made his "domicile" or "legal residence" unambiguous, in which instance more than one state may be successful in prevailing over the decedent's estate in a claim involving inheritance taxes in connection with his intangible personal property, thus burdening the estate with multiple taxation upon the transfer of such property. Thus in the *Dorrance* case, 309 Pa. 151, 115 N. J. Eq. 268, certiorari denied 298 U. S. 692, two states, Pennsylvania and New Jersey were each successful in collecting inheritance taxes of approximately fifteen million dollars by proving in their courts that the decedent was "domiciled" in their respective state. There the United States Supreme Court, on June 1, 1936, refused to review the question, and established the doctrine that it would

not review conflicting state court decisions as to domicile, maintaining that no federal question was involved.[1]

Domicile.

The word "domicile" is derived from the Latin "domus" meaning a home or dwelling house.[2] What has been said to be the most comprehensive and correct definition which could be given is that, in a strict legal sense, the domicile of a person is the place where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning.[3] And in *Richard v. Huff* it was brought out that one's last domicile is his fixed and permanent home at the time of his decease. The court there further stated that the word "resident" found in the statute fixing the venue for proving wills does not relate to temporary abiding place, but to a true, fixed and permanent home and to which when he is absent, he expects to return.[4]

No definite rule can be applied in connection with the proving and evidencing of a person's domicile. The "intent" of the person seems to govern. However, the courts tend to rule against the decedent's estate if it appears that he had set up a residence for tax purposes alone. Some of the elements which are evidentiary of the person's intent to elect a place of domicile, or legal residence, are church affiliations, club memberships, the location stated to be his residence in deeds, actual time spent in the place, and the principal place of his business. No one element in itself will govern, but the situation as a whole must be considered.

Florida Estate Tax.

The state of Florida provides for an estate tax in an amount equal to the credit allowable under the Basic Federal Estate

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[1] It is interesting to note that in but one case has the Supreme Court of the United States agreed to review conflicting claims as to domicile (306 U. S. 563—(Texas v. Florida—1939)). That case dealt with the matter of Col. H. R. Green who died in 1936, leaving a thirty-six million dollar estate with four states claiming death taxes thereon, to wit, Texas, Florida, New York and Massachusetts. The Supreme Court of U. S. consented to hear the case, deciding in favor of the State of Mass. Here there was a special circumstance which caused the Supreme Court to hear the case, namely, that the total claims of the four states exceeded the amount of the estate.

[2] Minick v. Minick, 111 Fla. 469.

[3] 28 C. J. S. Domicile Sec. 1.

[4] 146 Okl. 108.

Tax, pursuant to Sec. 198.02 of its Statutes, which reads as follows:

"198.02—Tax upon estates of resident decedents

A tax is imposed upon the transfer of the estate of every person who at the time of death, was a resident of this state, the amount of which shall be a sum equal to the amount by which the credit allowable under the applicable federal revenue act for estate, inheritance, legacy and succession taxes actually paid to the several states shall exceed the aggregate amount of all constitutionally valid estate, inheritance, legacy and succession taxes actually paid to the several states of the United States (other than the State of Florida) in respect to any property owned by such decedent or subject to such taxes as a part of or in connection with his estate."

However, Subsection (4) of Section 222.17 of the Florida Statutes, in connection with the possibility affording one with an abode in Florida to avail himself of the benefit of the provisions exempting property as a homestead from forced sale under process of law, presents an opportunity to that person to disclaim domicile in Florida. That Sub-section reads in part as follows:

"222.17—Manifesting and evidencing domicile in Florida

* * *

(4) Any person who shall have been or who shall be domiciled in a state other than the State of Florida, and who has or who may have a place of abode within the State of Florida, or who has or may do or perform other acts within the State of Florida, which independently of the actual intention of such person respecting his domicile might be taken to indicate that such person is or may intend to be or become domiciled in the State of Florida, and if such person desires to maintain or continue his domicile in such state other than the State of Florida, he may manifest and evidence his permanent domicile and his intention to permanently maintain and continue his domicile in such state other than the State of Florida, by filing in the office of the clerk of the circuit court in any county in the State of Florida in which he may have a place of abode or in which he may have done or performed such acts which independently may indicate that he is or may intend to be or become domiciled in the State of Florida, a sworn statement that his domicile is in such state other than the State of Florida, as the case may be, naming such state where he is domiciled and stating that he intends to permanently continue and maintain his

domicile in such other state so named in said sworn statement. Such sworn statement shall also contain a declaration that the person making the same is at the time of the making of such statement a bona fide resident of such state other than the State of Florida, and shall set forth therein his place of abode within the State of Florida, if any. Such sworn statement may contain such other and further facts with reference to any acts done or performed by such person which such person desires or intends not to be construed as evidencing any intention to establish his domicile within the State of Florida.

* * *"

It thus appears that one having an abode in Florida and domicile in another state, and fearing the possibility of multiple inheritance taxation may remove to a substantial degree the threat of multiple inheritance tax by complying with sub-section (4) of Section 222.17, *supra,* provided he has bona-fide domicile in another state.

Ohio Inheritance Taxes.

The question now arises as to whether an Ohio resident with an abode in Florida, who is in the position to adjust his affairs and change his domicile, should choose Florida as his domicile because of a possible savings in estate taxes, since the Florida estate tax provides for an amount equal to credit allowable under the Basic Federal Estate Tax, whereas the Ohio Inheritance tax is in addition to a tax equivalent to the credit allowable under the Basic Federal Tax.

Section 5731.02 of the Ohio Revised Code levies a tax upon the succession to property, and reads in part as follows:

"5731.02—Levy of tax; successions subject to tax.

A tax is hereby levied upon the succession to any property passing, in trust or otherwise, for the use of a person, institution, or corporation, in the following cases:

(A) When the succession is by will or by the intestate laws of this state from a person who was a resident of this state at the time of his death:

* * *"

Specific family exemptions and exemptions for gifts to charities are provided for in Ohio Revised Code Sec. 5731.09, which reads in part as follows:

"5731.09—Exemption of Gifts to charities: family exemptions.

The succession to any property passing to or for the use of the state, * * * or any public institution of learning

or any public hospital not for profit * * * or to or for the use of an institution for purposes only of public charity, * * * shall be subject to section 5731.02 of the Revised Code. Successions passing to other persons shall be subject to said sections only to the extent of the value of the property transferred above the following exemptions:

(A) When the property passes to or for the use of the wife or a child of the decedent who is a minor at the death of the decedent, the exemption is five thousand dollars.

(B) When the property passes to or for the use of a father, mother, husband, adult child, or other lineal descendant of the decedent, or an adopted child, or person recognized by the decedent as an adopted child and designated by such decedent as an heir under a statute of this or any other state or country, or the lineal descendants thereof, or a lineal descendant of an adopted child, the exemption shall be three thousand five hundred dollars.

(C) When the property passes to or for the use of a brother, sister, niece, nephew, the wife or widow of a son, the husband of a daughter of the decedent, or to any child to whom the decedent, for not less than ten years prior to the succession stood in the mutually acknowledged relation of a parent, the exemption shall be five hundred dollars.

* * *"

In addition, Ohio Revised Code Sec. 5731.03 provides that the first three thousand dollars of property set off and allowed to a widow and child shall be exempt from taxation.

Section 5731.12 of the Ohio Revised Code sets forth the rates of taxation and reads in part as follows:

"5731.12—Rates of tax.

The rates of the tax levied by section 5731.02 of the Revised Code shall be as follows:

(A) On successions passing to any person included in divisions (A) and (B) of section 5731.09 of the Revised Code:

(1) One per cent of the value of the property transferred up to and including the first twenty-five thousand dollars in excess of the exemptions provided by such section;

(2) Two per cent of the value of the property transferred up to and including one hundred thousand dollars in excess of twenty-five thousand dollars;

(3) Three per cent of the value of the property transferred up to and including two hundred thousand dollars in excess of one hundred thousand dollars;

(4) Four per cent of the value of the property transferred in excess of two hundred thousand dollars.

* * *"

Ohio Revised Code Sec. 5731.13 levies an additional tax in an amount equal to the exemption provided for under the Basic Federal Estate Tax. However, the tax imposed by Sec. 5713.13 is credited with the amount of the tax levied under Sections 5713.02 and 5731.12.

Section 5731.13 reads in part as follows:

"5731.13—Rates of additional tax.

In addition to the tax levied by section 5731.02 of the Revised Code, there is hereby levied an additional tax upon the transfer at death of the estates of resident decedents equal to eighty per cent of the tax imposed by the 'Revenue Act of 1926,' the rates contained in said act of congress being as follows:

* * *"

The Basic Federal Estate Tax.

The Basic Federal Estate Tax is imposed by the Revenue Act of 1926 and incorporated in subchapter A, Chapter 3 of the Internal Revenue Code. It is computed in accordance with the schedule of progressively graduated rates reproduced at the end of this article, marked Appendix A, pursuant to Section 810 of the Internal Revenue Code.[5]

Is There a Tax Advantage to a Decedent Under the Florida Statutes Over the Ohio Statutes?

The chart which follows, marked Appendix B, indicates that there is a tax advantage, based on the facts assumed, until the taxable net estate of the decedent reaches the sum of approximately $1,150,000, at which amount a point of equality is reached. An analysis reveals that this is possible because of the comparatively high exemption of $1,000,000 applicable to the Basic Federal Estate Tax and the Florida Estate Tax, which

[5] The Additional Estate Tax is a tax introduced by the Revenue Act of 1932, amended by various subsequent enactments and incorporated in Subchapter B, Chapter 3 of the Internal Revenue Code. It is by far the larger federal tax and does not affect the Inheritance Tax statutes of the various states.

causes the Ohio Inheritance Tax to be larger until such time as the higher rates of the Federal and Florida taxes become effective.

Conclusions.

(1) If the taxpayer can adjust his affairs so as to establish a bona fide domicile in Florida, without danger of submitting his estate to inheritance taxes in Ohio, and effect substantial savings thereby, he may feel inclined so to do.

(2) If the taxpayer cannot so adjust his affairs, or if his estate is of such size so that no savings is possible, it would be advisable for him to comply with Sub-section (4) of Sec. 222.17 of the Florida Statutes disclaiming domicile in Florida, thereby removing to a substantial degree the threat of multiple taxation.

APPENDIX A.

(A)	(B)	(C)	(D)
Net Estate (after deduction of $100,000 exemption)		Tax on amount in Column (A)	Tax Rate on excess over amount in (A)
exceeding	but not exceeding		Percent
$ 0	$ 50,000		1
50,000	100,000	$ 500	2
100,000	200,000	1,500	3
200,000	400,000	4,500	4
400,000	600,000	12,500	5
600,000	800,000	22,500	6
800,000	1,000,000	34,500	7
1,000,000	1,500,000	48,500	8
1,500,000	2,000,000	88,500	9
2,000,000	2,500,000	133,500	10
2,500,000	3,000,000	183,500	11
3,000,000	3,500,000	238,500	12
3,500,000	4,000,000	298,500	13
4,000,000	5,000,000	363,500	14
5,000,000	6,000,000	503,500	15
6,000,000	7,000,000	653,500	16
7,000,000	8,000,000	813,500	17
8,000,000	9,000,000	983,500	18
9,000,000	10,000,000	1,163,500	19
10,000,000	.....	1,353,500	20

APPENDIX B.

Ohio					Florida		
Taxable Net Estate	Inherit. Tax Exemptions*	Inherit. Tax**	Estate Tax***	Total Tax	Exemption	Estate Tax****	Tax Savings
$ 25,000	$22,000	$ 30	-0-	$ 30	$100,000	-0-	$ 30
100,000	"	1,310	-0-	1,310	"	-0-	1,310
150,000	"	2,590	-0-	2,590	"	400	2,190
200,000	"	4,090	-0-	4,090	"	1,200	2,890
300,000	"	7,870	-0-	7,870	"	3,600	4,270
400,000	"	11,870	-0-	11,870	"	6,800	5,070
500,000	"	15,870	-0-	15,870	"	10,000	5,870
600,000	"	19,870	-0-	19,870	"	14,000	5,870
700,000	"	23,870	-0-	23,870	"	18,000	5,870
800,000	"	27,870	-0-	27,870	"	22,800	5,070
900,000	"	31,870	-0-	31,870	"	27,600	4,270
1,000,000	"	35,870	-0-	35,870	"	33,200	2,670
1,100,000	"	39,870	-0-	39,870	"	38,800	1,070
1,125,000	"	40,870	-0-	40,870	"	40,400	470
1,150,000	"	41,870	130	42,000	"	42,000	-0-
1,175,000	"	42,870	730	43,600	"	43,600	-0-

NOTE: This chart presupposes an estate where the husband has died and left a surviving spouse and four adult children to inherit the estate. Marital deduction features and pertinent terms of the will affecting the taxable net estate have been given effect in the column headed "Taxable Net Estate."

* Ohio Revised Code Sec. 5731.09 5731.03.
** Ohio Revised Code Sec. 5731.02 5731.12.
*** Ohio Revised Code Sec. 5731.13
**** Florida Statutes Sec. 198.02.