Louisiana Law Review

Volume 8 | Number 2
The Work of the Louisiana Supreme Court for the 1946-1947 Term
January 1948

Public Law

Melvin G. Dakin

II. PUBLIC LAW

*Melvin G. Dakin**

TAXATION

State Inheritance Tax—Federal Estate Tax Not Accorded Status of Debt

Since the decision in the *Succession of Gheems* in 1921,[1] no contax, to the impact of the federal estate tax on the same transfer of sideration has been given, in the imposition of the state inheritance interests; in other words no deduction has been permitted for such taxes in arriving at the amount of the various portions of the estate to be subjected to state inheritance tax. Where, as in the *Succession of Henderson,*[2] decided at the last term of court, the testator had made no provision for the apportionment of the tax among the various legatees,[3] the result was to impose a very heavy tax burden upon the recipient of the residue of the estate. The taxpayer sought to lighten his burden by claiming the status of a debt, to be deducted in computing the taxable net estate for state purposes, for the federal estate taxes chargeable against him as residuary legatee.

The supreme court found no basis for overruling or distinguishing the *Gheems* case and upheld the tax collector; it reviewed the legislative history of the inheritance tax prior and subsequent to the *Gheems* case and also alluded to the similar position taken by other state courts in considering the issue. The court found neither of the taxpayer's major arguments for overruling the *Gheems* case persuasive. It could find no solid ground for characterizing, as the taxpayer urged, the federal tax as a tax on the estate as left by the testator and the state tax as a tax on the recipients of such estate; citing *Knowlton v. Moore,*[4] state and federal taxes were both characterized as transfer or death taxes indistinguishable in their impact upon the estate and from their nature furnishing no basis for deducting the federal tax from the net estate prior to assessment of the

*Associate Professor of Law, Louisiana State University.

1. 148 La. 1017, 88 So. 253, 16 A. L. R. 685 (1921).

2. 211 La. 707, 30 So. (2d) 809 (1947).

3. As noted in the opinion, some states have adopted legislation providing for apportionment of the federal estate tax unless the testator provides to the contrary and such legislation has been upheld as not in conflict with federal estate tax statutes. Riggs v. Del Drago, 317 U. S. 95, 63 S. Ct. 109, 87 L. Ed. 106, 142 A. L. R. 1131 (1942).

4. 178 U. S. 41, 55, 56, 20 S. Ct. 747, 753, 44 L. Ed. 969 (1900).

state tax. Secondly, rather than resulting in a tax on a tax as the taxpayer argued, the federal and state taxes were held to constitute companion claims on the net estate transmitted from the testator to his legatees, each imposed without regard to the other.[5]

The court did not have occasion to consider the relationship of the state estate tax to the problem but the existence of that statute[6] would appear to furnish an additional cogent basis for reaching the decision which it did. That statute seeks to take advantage of the provision in the federal estate tax legislation granting a credit of eighty per cent of the federal basic estate taxes for death taxes paid to the states.[7] Specifically, the Louisiana statute provides that if the aggregate of all state death taxes actually paid to the several states (including Louisiana) should prove to be less than eighty per cent of the federal basic estate tax, a transfer tax to the extent of any such difference shall become payable to the state.[8]

The adoption of this estate transfer tax by the legislature subsequent to the adoption of the inheritance tax legislation would seem to indicate an intention on their part to impose death taxes which, together with death taxes imposed by other states, would, as a minimum, equal the eighty per cent federal estate tax credit. In this statutory pattern, any reduction of state taxes through reduction of the net estate by federal estate taxes could be helpful to the taxpayer only if the total of all state death taxes was in excess of the credit and would not be reduced below the amount of the credit by taking the federal tax as a deduction. In the light of the complexities and inequalities which appear to be involved in such a procedure, it is difficult to believe that the legislature would have intended the deduction as urged by the taxpayer without making specific provision therefor.[9]

5. Citing Frick v. Pennsylvania, 268 U. S. 473, 45 S. Ct. 608, 69 L. Ed. 1058. 42 A. L. R. 316 (1925).

6. La. Act 119 of 1932 [Dart's Stats. (1939) §§ 8581-8586].

7. Internal Revenue Code, 26 U. S. C. A. § 831(b).

8. La. Act 119 of 1932, § 2 [Dart's Stats. (1939) § 8582]. In practice the full amount of such additional tax is not always collected because the inheritance tax has been fixed and the succession closed prior to a final determination being made with respect to the federal estate tax. If the federal estate tax as estimated is later increased and the amount of the eighty per cent credit likewise increased, the succession is ordinarily not reopened to assess an additional state tax. The taxpayer reaps no benefit therefrom, however, since the credit is allowed only if state taxes have actually been paid. Absent such payment, the portion of the federal tax which should have come to the state must be paid to the federal government. See comment on this subject in the Preliminary Report of the Louisiana Revenue Code Commission (1946) 116-120.

9. For a discussion of the complexities involved in those states where deduction of the federal estate tax is permitted for inheritance tax purposes and an

State Inheritance Tax—War Savings Bonds Designating Beneficiary at Death Subject Thereto

The transfer of United States War Savings Bonds to a registered co-owner upon the death of the other co-owner was held subject to state inheritance taxes by a unanimous court in *Succession of Raborn,*[10] thus terminating the authority of the rule on the matter announced by the First Circuit of Appeal in *Succession of Tanner*[11] a year earlier. The *Raborn* decision was based to a substantial extent on a treasury circular[12] specifically subjecting such bonds to state inheritance taxation which circular, it was noted, had not been considered by the circuit court in deciding the *Tanner* case. Since the *Raborn* case involved a bequest of bonds registered in the name of decedent, but payable to a sister in the event of death, and the *Tanner* case involved the disposition, as between the community and the wife's separate estate, of bonds registered in the name of the husband and wife as co-owners, all of the reasoning advanced in the latter case was not up for re-examination in the *Raborn* case. The *Tanner* decision was rested on the proposition that the bonds constituted a contract between the United States and the purchaser and that the rights of survivors arose solely from such federal contract. Hence, the argument ran, state laws with respect to the devolution of such property were rendered inoperative as being in conflict with paramount federal law on the subject.[13] An analogy was drawn in the *Tanner* case, for example, between the purchase of bonds registered in the name of the husband and wife out of community funds and the purchase of a life insurance contract in favor of the wife with such community funds, in which latter case the proceeds have been held to be the separate property of the wife.[14] Justice Ott, dissenting in the *Tanner* case, expressed disapproval of that analogy and any extension of the doctrine of the insurance cases because of the exceptions thus created to the presumption as to the community status of property which both the husband and wife reciprocally possess at the time of the dissolution of the marriage.[15] However, Justice

estate transfer tax is also levied, see Prentice-Hall, 3 Federal Tax Service 23, 210 (1945). Resort apparently must be had to the use of algebraic simultaneous equations since the federal tax must be known to determine the state tax and vice versa.

10. 210 La. 1033, 29 So. (2d) 53 (1946).

11. 24 So. (2d) 642 (La. App. 1946).

12. Treas. Cir. 654.

13. For a discussion and documentation of this rationale, see Note (1946) 20 Tulane L. Rev. 589.

14. Succession of Desforges, 135 La. 49, 64 So. 978, 52 L. R. A. (N. S) 689 (1914).

15. 24 So. (2d) 642, 648 (La. App. 1946).

Ott rejected the rationale of the majority opinion basically on the ground that treasury regulations dealing with the matter of the right to receive payment on bonds registered in the names of co-owners, or providing for disposition of the proceeds in the event of the death of the registered owner, were wholly directed to facilitating the transfer and redemption of the bonds and to relieving the government from resort to legal proceedings to determine the person entitled to receive the proceeds; to attribute to such regulations affects on the taxable status of transfers under state inheritance tax laws was in his view to go substantially beyond their intendment.

In the face of the regulation specifically permitting the levy of state taxes on the transfer of such bonds, there is probably little likelihood that an opportunity will be presented to pass squarely on all aspects of the *Tanner* case; should it be presented, however, the persuasive analysis by Justice Ott will undoubtedly receive the careful consideration of the court.

Parochial and Municipal Taxing Power—Requirement of Separation

The need for legislative or constitutional clarification of parish-municipal relations with respect to the building and maintenance of streets and highways was underscored by the decision of the supreme court on rehearing in *State ex rel. Town of Bossier City v. Padgett, Sheriff.*[16] Proceeding under Act 24 of 1870, the town sought to recover from the parish tax collector the portion of the proceeds of a special parish road tax which resulted from the imposition of the levy on property located within the town. The 1870 statute provided that "when the police jury, or other parish authority of any parish in which there is a municipal corporation or corporations, shall cause to be assessed and collected a tax for road purposes, the amount of tax so collected from property situated within the limits of said municipal corporation, less the expense of collecting the same, shall be paid over by the collector of parish taxes to the treasurer of said corporation, and the authorities of said municipal corporation shall expend the said fund for the purpose of making or repairing the roads, streets or bridges of said municipal corporation."[17]

16. 211 La. 603, 30 So. (2d) 555 (1946).
17. Dart's Stats. (1939) § 3653.

The parish police jury intervened in the proceeding alleging that the statute had been rendered inoperative by virtue of subsequent constitutional amendments and legislation designed to equalize parochial and municipal taxes by other means and otherwise to protect property owners within municipal corporations from excessive taxation by parish police juries; the police jury also made general allegations as to the unconstitutionality of the statute. Specifically, counsel for the police jury argued that Section 8 of Article XIV of the Constitution limited the parish in making a general parochial levy to the imposition of one-half such levy on property located within municipal corporations having in excess of one thousands inhabitants and which provide and maintain systems of street paving. Further, it was argued, the statute was rendered inoperative by virtue of Section 10 of Article X of the Constitution which authorizes the levy by the police jury of special taxes for public improvement provided such taxes have been approved by a majority of the taxpayers of the district. On first hearing the court found Section 8 of Article XIV inapplicable since limited to general parochial taxes, found the statute not inconsistent with Section 10 of Article X since it merely provided for the disposition of a special tax levied pursuant to such authority by the parish, and ruled that the statute should be given effect by transfer of the funds in question from the parish tax collector to the town.[18] The decision as thus rendered appeared to reach a result with respect to special road taxes which synchronized well with the equalization procedure required under the Constitution in the case of general parochial taxes;[19] in the case of special road taxes a requirement that the portion of such taxes levied within a municipal corporation be turned over to such corporation, and in the case of general parochial taxes a limitation on the parish to imposition of one-half the general parochial levy within a muncipal corporation maintaining a system of street paving.

But for the diligence of counsel for the police jury the matter might have rested there. However, further research disclosed that in 1895 the court had decided the case of the *State ex rel. Town of Mansfield v. Police Jury of De Soto Parish*[20] under the 1879 counterpart[21] of what is now Section 5 of Article X of the Constitution and that section as interpreted in the *Mansfield* case rendered unconsti-

18. 211 La. 603, 610-611, 30 So. (2d) 555, 557-558 (1946).
19. La. Const. of 1921, Art. XIV, § 8.
20. 47 La. Ann. 1244, 17 So. 792 (1895).
21. La. Const. of 1879, Art. 202.

tutional any such joint taxing procedure as contemplated in Act 24 of 1870. The section provides that "parochial and municipal corporations and public boards may exercise the power of taxation, subject to such limitations as may be elsewhere provided in the Constitution, under authority granted to them by the Legislature for parish, municipal and local purposes, strictly public in their nature. The provisions of this section shall not apply to, nor affect, similar grants to such political subdivisions under other sections of this Constitution which are self-operative." From these seemingly very general grants of taxing power to parishes and municipalities the 1895 court had extracted the proposition that the legislature could not authorize the parish to exercise its taxing power for the benefit of a municipal corporation within its limits nor could it authorize the converse. This, it said, was the plain and unambiguous meaning of the provision and such was the meaning accepted on rehearing by the court in the *Bossier City* case. Under the decision, it appears necessary for the legislature to enact a legislative counterpart of the constitutional limitation on the imposition of general parochial taxes applicable to the levy of special road taxes; otherwise the protection afforded by that limitation can be readily nullified by the imposition of a special road tax.

Administrative Law

Challenges of School Bond Elections

Louisiana has its complement of legislation protective of the buyers of municipal bonds in the way of presumptions of the truth of recitals of regularity contained therein, prescription of the bringing of contests to test validity of bond issues or the elections or tax provisions underlying them, and other devices. Nonetheless, bond counsel, sensitive to the gossamer technicalities which have often sufficed to invalidate issues in the past, persist in bringing to the supreme court for final settlement new questions as to whether real or fancied irregularities are safely within the ambit of that sphere of "regularity, formality, and legality" the validity of which cannot be questioned after the elapse of the sixty day prescriptive period provided by the Constitution.[22]

The constitutional limitation of sixty days from the date of promulgating the results of an election for bringing actions attacking the validity of such election, or the tax provisions or bond

22. La. Const. of 1921, Art. XIV, § 14(n).

authorization considered in such election, was applied in two additional cases during the 1946-1947 term.[23] The first attack was based on the ground that a school board ordinance recreating the school district and decreasing its area erroneously described the area to be included so as to render the district not susceptible of identification or, in the alternative, if the district was validly created that the election in question was not held within its boundaries. The second attack was based on the ground that notice of the election was not given in a newspaper published within the confines of the school district although such notice was published in a parish newspaper which the school board had designated as its official journal. The school boards in both instances interposed exceptions of no right or cause of action and a plea of prescription pursuant to Section 14(n) of Article XIV of the Constitution of 1921 and were upheld therein by the court since all matters raised were deemed to be attacks on the "validity" of the election as to which the conclusive constitutional presumption is operative after the lapse of the sixty day prescription period.

In a third case[24] attacking the validity of a bond election, in which suit was properly brought within the prescriptive period, the attack was grounded on the acceptance of illegal ballots, such illegality consisting of the non-qualification as an elector in the district of one participant in the election. In view of the fact that the taxpayer in question, although on the parish tax rolls, had not as yet moved his family into the district and that other evidence indicated a domicile elsewhere prior to such event, the taxpayer was held not to be a bona fide resident within the requirements for qualified electors.[25]

Authority of School Board to Lease Sixteenth Section Lands For Agricultural Purposes

Parish school board procedures with respect to the leasing of sixteenth section lands for agricultural purposes were brought within the ambit of Act 170 of 1940,[26] the general statute covering the leasing of public lands, by a construction of that statute promulgated

23. Sansing v. Rapides Parish School Board, 31 So. (2d) 169 (La. 1947); Browning v. Webster Parish School Board, 31 So. (2d) 621 (La. 1947).

24. McFatter v. Beauregard Parish School Board, 211 La. 443, 30 So. (2d) 197 (1947).

25. La. Act 46 of 1921 (E. S.), § 13, as amended by La. Act 281 of 1938 [Dart's Stats. (1939) § 8866].

26. Dart's Stats. (1939) §§ 7317-7317.10.

by the supreme court in the case of *Ellis v. Arcadia Parish School Board*[27] last term.

Prior to 1940 the matter of leasing procedures had been covered by Section 30 of Act 100 of 1922[28] which provided only that the execution of the lease be approved by a resolution of the school board. Act 170 of 1940, however, provided, with respect to leases of all public lands by the state and its departments, agencies, subdivisions, and institutions, that prior to the executions of such leases (except mineral leases for which a different procedure is provided) a description of the land to be leased and data with respect to making bids thereon shall be published in the official journal of the parish where the lands are located.[29]

In the instant case, the parish school board had leased land to the plaintiff, the board having followed only the resolution procedure provided in Act 100 of 1922 without making previous advertisement of the land. Thereafter the board was unable to put the lessee in possession as a result of the reconduction of an existing lease and plaintiff brought suit to recover estimated profits lost as damgaes. The reviewing court sustained the defendant board's exception of no right of action based on the invalidity of the lease since execution had not been preceded by advertisement as required by Act 170 of 1940.

In thus ruling that the earlier special statute had been partially repealed by implication upon the passage of a general statute covering the same subject matter, the court noted that it was not thereby going contra to the course it had pursued in *State v. Humble Oil & Refining Company*.[30] In that case the court was asked to construe an act which vested general power to lease state lands for mineral development in a state board[31] as having the effect of stripping parish school boards of their power to make leases for such purposes of sixteenth-section lands. Refusing to put such construction upon the act, the court held that such an implied transfer of authority with respect to sixteenth-section lands would run counter to the constitutional dedication of the revenues from such lands to the public schools, the later statute having made no provision for

27. 211 La. 29, 29 So. (2d) 461 (1947).

28. Dart's Stats. (1939) § 2249. The portion of this section dealing with leasing for mineral development was repealed by La. Act 162 of 1940.

29. Dart's Stats. (1939) § 7317.2.

30. 195 La. 457, 197 So. 140 (1940).

31. La. Act 93 of 1936, as amended by La. Act 80 of 1938 [Dart's Stats. (1939) §§ 4725.1-4725.21].

the segregation of such revenues to school purposes.[32] Here, on the contrary, the general procedural statute, when extended to parish school boards, would result in no transfer of power or revenues which might conflict with the Constitution or established policy but would effect only a substitution of improved procedures designed to better safeguard the public interest in the exercise of the leasing power. Such an effect was held to be properly achieved by a general statute such as Act 170 of 1940 and failure to adhere to such new procedures on the part of the school board prevented the creation of an enforceable lease.

Lands Adjudicated to the State—Right of Homestead Entry

A somewhat ingenuous attempt to take advantage of the homestead laws to acquire a suburban lot which had been adjudicated to the state for taxes was rejected by the supreme court in *State ex rel. Albeanese v. Grace*.[33] The lot in question had already been called up for sale by a prospective purchaser and advertisement thereof had been published when the relator here made application to the Register of the State Land Office to make a homestead entry upon the lot. The court upheld the register in a refusal to grant the application on the ground that such a lot was not susceptible of "settlement and cultivation" as used in the homestead act.[34]

32. Such provision was made in a subsequent statute which effected the transfer of the leasing function for mineral purposes to a state board. La. Act 162 of 1940, § 4, as amended by La. Act 338 of 1946 [Dart's Stats. (1939) § 4728.4].

33. 211 La. 685, 30 So. (2d) 756 (1947).

34. La. Act 235 of 1938, § 2 [Dart's Stats. (1939) § 7233.2].