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United States Savings Bonds - Ownership and State Inheritance Taxes

Alfred M. Posner

The foregoing discussion applies only where compensation is sought for general disability.[28] Whenever the action is for a specific injury, no credit will be given the employer for wages paid after the injury.[29]

THOMAS A. DURHAM

UNITED STATES SAVINGS BONDS—OWNERSHIP AND STATE INHERITANCE TAXES

With a substantial portion of the nation's individual wealth held in the form of United States Savings Bonds, the questions of ownership and of taxability of these bonds have arisen in numerous successions.

The treasury department has authorized savings bonds to be registered in any one of three forms. They may be registered in the name of a single owner, as "John A. Jones"; or in the name of two persons as coowners, as "John A. Jones or Mrs. Ella S. Jones"; or in the name of two persons, one of whom is beneficiary of the other, as "John A. Jones, payable on death to Mrs. Mary E. Jones."[1] The single ownership form presents no problem. When the registered owner dies, the bonds obviously are a part of his estate and are subject to inheritance taxes. Virtually all the litigation on the subject has centered around the coownership and the beneficiary forms of registration.

The matter of actual ownership of the bonds upon the death of one coowner or of the registered owner seems to have been definitely settled. In the *Succession of Land*[2] the bonds were registered in the names of the decedent and another as coowners. The court held that the surviving coowner became absolute owner under the regulations governing United States War Savings Bonds[3] subject, however, to

28. La. Act 20 of 1914, § 8(1)(A)-(c) as amended [Dart's Stats. (1939) § 4398(1)(a)-(c)] provides the schedule of payments for temporary total, permanent total, and partial disability.

29. Subsection 1(d) of Section 8 of the act [Dart's Stats. (1939) § 4398(1)(d)] provides the schedule of payments for various specific injuries. In such cases the compensation is more in the nature of damages than disability payments. See Fulmer v. McDade Gin Co., 142 So. 733 (La. App. 1932); Smith v. Turner Lumber Co., 174 So. 699 (La. App. 1937).

1. Treasury Department Circular No. 530, Sixth Revision, 10 Fed. Reg. 1956 (1945).

2. 212 La. 103, 31 So. (2d) 609 (1947).

3. Treasury Department Circular No. 530, Sixth Revision, 10 Fed. Reg. 1956 (1945).

the rights of the decedent's legal heirs to claim reduction or collation in cash or other property. The *Succession of Geagan*[4] involved bonds registered in the name of the decedent payable on his death to his son. After finding that the bonds were purchased with community funds and were therefore community property, the court held that title to the bonds themselves vested in the named beneficiary but that the surviving widow in community was entitled to a money judgment against the beneficiary for one-half the value of the bonds.

The *Land* and *Geagan* decisions appear to overrule dictum in the *Succession of Tanner*[5] which would indicate a contrary result. In that case, the bonds, purchased with community funds, were registered in the name of Tanner and his wife as coowners. After stating that the survivor, Mrs. Tanner, became the sole owner, the court indicated that she was under no obligation to reimburse the the community for the funds paid for the bonds.[6]

Apparently the courts will recognize the rights of the named coowner or the named beneficiary to ownership of the bonds.[7] However, they will not allow savings bonds to be used as a device to defeat forced heirship or the rights of the surviving spouse in community.[8]

Whether savings bonds registered in the coownership form or beneficiary form are subject to state inheritance taxes is not so clearly established. The question was first presented to a Louisiana appellate court in the *Succession of Tanner*.[9] The first circuit court of appeal held that the surviving coowner of bonds which were issued in the coownership form owed no inheritance taxes.

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4. 33 So. (2d) 118 (La. 1947).

5. 24 So. (2d) 642 (La. App. 1946).

6. 24 So. (2d) 642, 645.

7. Accord: United States v. Dauphin Deposit Trust Co., 50 F. Supp. 73 (W. D. Pa. 1943); Warren v. United States, 68 Ct. Cl. 634 (1929); Conrad v. Conrad, 152 P. (2d) 221 (Cal. App. 1944); In re Murray's Estate, 236 Iowa 807, 20 N. W. (2d) 49 (1945); Harvey v. Rackliffe, 141 Me. 169, 41 A. (2d) 455 (1945); Franklin Washington Trust Co. v. Beltram, 133 N. J. Eq. 11, 29 A. (2d) 854 (1943); In re Fliegelman's Will, 55 N. Y. S. (2d) 139 (1945); In re Deyo's Estate, 180 Misc. 32, 42 N. Y. S. (2d) 379 (1943); In re DiSanto's Estate, 142 Ohio St. 223, 51 N. E. (2d) 639 (1943).

8. The supreme court said in the Succession of Geagan, 33 So. (2d) 118, 122: "However, we will not permit William J. Geagan, Sr., to do by contract with the Federal government what he could not have done by donation mortis causa in this state, that is, dispose of his wife's share of the community property at his death in favor of a third person. . . ."

9. 24 So. (2d) 642 (La. App. 1946).

In the *Succession of Raborn*[10] the Louisiana Supreme Court considered bonds in the beneficiary form. The bonds were registered in the name of the decedent, payable upon his death to his sister. Relying on the *Succession of Tanner,* the named beneficiary sought to have the bonds declared free of state inheritance taxes. The court held that they were a gift made in contemplation of death within the meaning of Act 127 of the Extra Session of 1921,[11] and subject to inheritance taxes.[12]

The supreme court in the *Raborn* case stated that its holding was contrary to that of the *Tanner* case. It is immediately apparent, however, that the two cases presented different factual situations. One involved bonds in which the survivor had an interest from the date of purchase; the other involved bonds in which the survivor had no title until after the death of the registered owner. Whether this factual difference should be of any juridical significance is as yet somewhat conjectural. Judge Ott, dissenting in the *Tanner* case, contended that the provisions for the various forms of registration and the limitations thereon were designed solely for the convenience and protection of the United States Government as payor of the bonds and that the form should not, therefore, materially affect the equities arising out of the transaction except insofar as might be necessary to safeguard the interests and purposes of the United States Government. It follows from this proposition that although the named coowner or named beneficiary has the exclusive right to demand and receive the proceeds of the bonds from the government, he holds such proceeds subject to the state laws governing ownership and descent of property. In other words, the federal government, under Treasury Circular 530,[13] will deliver the pro-

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

11. Dart's Stats. (1939) § 8556. Section 1 of the act imposes a tax "upon all inheritances, legacies, and donations and gifts made in contemplation of death" with certain listed exceptions not here pertinent. In Section 2 of the act it is declared that "Said tax shall be imposed with respect to all property of every nature and kind included or embraced in any inheritance, legacy or donation or gift made in contemplation of death, including all personal property physically in the state of Louisiana, whether owned or inherited by, or bequeathed, given or donated to, a resident or nonresident, and whether inherited, bequeathed, given or donated to, under the law of this state or of any other state or country; and all personal property owned by residents of the state of Louisiana, wherever situated, unless such property shall be included in the exemptions above set forth."

12. Relying on the *Succession of Raborn,* the Supreme Court of Maine reached a similar conclusion in the very recent case of Hallett v. Bailey, Inheritance Tax Commissioner, 54 A. (2d) 533 (Me. 1947), which involved similar facts.

13. Treasury Department Circular No. 530, Sixth Revision, 10 Fed. Reg. 1956 (1945).

ceeds of the bonds only to the named payee, but the payee must in turn deliver the proceeds to the estate of the decedent to be disposed of in accordance with state law.

The Supreme Court of the State of Washington, in the case of *Decker v. Fowler*,[14] took the same position as Judge Ott. After holding that the treasury directives making the named beneficiary the sole owner of the bonds was for the convenience of the government in making payment, that court said, "It was no concern of the Federal government to whom the money might belong after it was paid."[15] The court ordered the named beneficiary to collect the proceeds from the government and pay them into the estate of the deceased.

A contrary conclusion was reached in the New York case *In re Deyo's Estate*.[16] In that case the court declared that the treasury directives on the subject did not relate only to form of payment and protection of the government from double litigation and held that they did relate to the actual enjoyment of the proceeds of the bonds after collection.

Under the rule of the *Decker* case, the proceeds of the bonds, regardless of the form of registration, became part of the decedent's estate and are subject to the state succession laws and inheritance taxes just as any other asset of the estate; whereas, under the rule of the *Deyo* case, it would appear that the bonds would be subject to state inheritance taxes only if the transaction whereby the beneficiary or surviving coowner acquired his rights fell within the purview of the inheritance tax laws.

The majority of the court of appeal in the *Tanner* case adopted the same rule as did the New York court in the *Deyo* case. The Louisiana Supreme Court in the *Raborn* case did not comment specifically on the point. It seems, however, to have impliedly followed the same rule, but it determined that the purchase and registration of the bonds in the beneficiary form constituted a gift made in contemplation of death within the terms of the state inheritance tax statute. The more recent decision, the *Succession of Geagan*,[17] is an indication that the supreme court might follow the

14. 199 Wash. 549, 92 P. (2d) 254 (1939).
15. 199 Wash. 549, 552, 92 P. (2d) 254, 256.
16. 180 Misc. 32, 42 N. Y. S. (2d) 379 (1943).
17. 33 So. (2d) 118 (La. 1947).

Decker case. In the *Geagan* case the rights of the named beneficiary were held to be subordinate to the state's community property laws.

It appears that despite the statement of the supreme court in the *Raborn* case that its holding was contrary to the *Tanner* decision, the difference in the factual situations of the two cases may be significant. The *Raborn* case is clearly correct as regards bonds registered in beneficiary form. But bonds registered in the coownership, as in the *Tanner* case, might not fall into the same category. While both coowners are still alive, either has the right to present the bonds for payment without the knowledge or consent of the other.[18] Clearly the rights of the survivor do not come into being only upon the death of the other. The legislature has seen fit to impose an inheritance tax upon "all inheritances, legacies and donations and gifts made in contemplation of death."[19] Savings bonds registered in the coownership form are perhaps neither inheritance, legacy, nor donation or gift made in contemplation of death. It may be, therefore, that they are not within the purview of the inheritance tax law at all. If this be true, the *Succession of Tanner* may still state the correct rule to be applied to cases of bonds issued in the coownership form.[20]

ALFRED M. POSNER

18. Treasury Department Circular No. 530, Sixth Revision, 10 Fed. Reg. 1956 (1945).

19. Supra note 11.

20. Whether or not the purchase and registration of savings bonds in the coownership form constitutes a donation inter vivos is not within the scope of this comment.