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Richard F. Knight

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into business it should be subject to all obligations to which individuals in that business are subjected.

Billy H. Hines

TAXATION—PRESCRIPTION—WHEN LOUISIANA INHERITANCE TAX
BECOMES DUE

Twenty-four years after the death of the *de cuius*, her heirs instituted proceedings to be placed in possession of the succession, and sought a rule against the Louisiana Inheritance Tax Collector to determine and fix the amount of state inheritance taxes,¹ if any, which might have been due. The heirs contended that the inheritance taxes were due immediately upon the death of the *de cuius*, or alternatively, that they were due six months after her death; but, that in either case more than three years having elapsed, they had prescribed.² The state, on the other hand, contended that they were not due until the opening of the succession and consequently had not prescribed, or alternatively that, if any prescription had accrued in favor of the heirs, such prescription had been waived or renounced by virtue of their pleadings.³ In the district court, judgment was rendered for the state on the ground that the constitutional amendment establishing uniform prescriptive periods had no application to inheritance taxes.⁴ The court of appeal reversed, and found that the claim had prescribed.⁵ On certiorari, the Supreme Court, *held*, reversed and remanded. State inheritance taxes are not due until a final judgment of the court fixing the amount payable. *Succession of Brower*, 228 La. 785, 84 So. 2d 191 (1955).

In 1921 an act was passed establishing the present state inheritance tax, but no provision was made for prescription.⁶ The act was then amended in 1924 to provide prescriptive periods of three and five years, running from the opening of the succession.⁷ In 1938 a constitutional amendment established a

1. LA. R.S. 47:2401-2423 (1950).

2. Brief for Appellees, p. 21, *Succession of Brower*, 228 La. 785, 84 So.2d 191 (1955).

3. Brief for Appellants, p. 10, *Succession of Brower*, *ibid*.

4. LA. CONST. art. XIX, § 19.

5. *Ibid.* provides: ". . . that all taxes and licenses, other than real property taxes shall prescribe in three years from the 31st day of December in the year in which such taxes or licenses are due."

6. La. Acts 1921 (E.S.), No. 127, p. 323, now LA. R.S. 47:2401-2423 (1950).

7. La. Acts 1924, No. 82, p. 119.

uniform prescriptive period of three years for all taxes, except those on real property.⁸ This prescription runs from the 31st day of December in the year in which such taxes are *due*, but there is no provision stating when the taxes are *due*.⁹ In the subsequent compilation of the Revised Statutes of 1950, the redactors did not resolve the question as to the meaning of the word "due" in the context of the inheritance tax statute, apparently leaving for judicial determination the fixing of this date. The only prior interpretation of the meaning of the statute¹⁰ was an opinion of the Attorney General, in which the act was interpreted as meaning that the inheritance taxes became due not later than six months after decedent's death.¹¹ However, the Court of Appeal for the Second Circuit, in interpreting the effect of the constitutional amendment on the state income tax statute, held that the amendment changed the length of the prescriptive period for that tax, but that as to all other aspects the income tax statute was unaffected by the amendment.¹² Following the reasoning of the court of appeal, it would seem only the duration of the prescriptive period for the inheritance tax was affected by the amendment and the date of commencement of the period should still run from the opening of the succession, as it did under the 1924 act.¹³ Since the Revised Statutes of 1950 merely restates the substance of the constitutional provisions without giving the date due, the same reasoning should apply.

In the instant case, the court followed neither the contentions of the state nor the heirs, but held that the tax was not due until a final judgment of court fixing the amount payable.¹⁴ It felt that, even though the act does imply that the succession must be opened within six months of the death of the *de cujus*,

8. LA. CONST. art. XIX, § 19.

9. See *ibid.*; La. Acts 1921 (E.S.), No. 127, p. 323.

10. La. Acts 1921 (E.S.), No. 127, p. 323.

11. OPS. ATT'Y GEN. OF LA. 1098 (1938-40): "The time when judicial demand can be made for inheritance taxes varies. It depends on the manner in which each particular succession is handled. If no judicial proceedings are begun within the six months following decedent's death with regard to his succession, the tax collector can commence proceedings for collection of inheritance taxes. Act 127 of 1921, E.S., Sec. 11. Under these circumstances then, inheritance taxes owing by the decedent's heirs or legatees become due six months after his death."

12. *Henwood v. Collector of Revenue*, 51 So.2d 105 (La. App. 1951).

13. Since La. Acts 1924, No. 82, p. 119, was still on the statute books and was not repealed by the constitutional amendment of 1938, under the rule of the *Henwood* case, prescription should run from the opening of the succession. The only effect of the amendment was to establish a uniform prescriptive period.

14. *Succession of Brower*, 228 La. 785, 84 So.2d 191 (1955).

such provision is merely directory and has no effect on fixing the due date of the tax.¹⁵ The fact that interest begins to run at that time is simply a penalty for failure to institute proceedings promptly.¹⁶ The court reasoned that until the value of the estate has been determined, and the amount that each heir is to receive has been ascertained, the tax cannot be due, since the parties would not know before that time the amount of the tax, if in fact there were any tax due.

As a result of the holding of the court, another problem area is added to the already complicated subject of title examination, since the state holds a lien against all property of a succession until a final judgment has been rendered by the court and the inheritance tax paid.¹⁷ However, this result could have been avoided. An analysis of the statutes would seem to indicate — and the court of appeal so held in its decision on the state income tax¹⁸ — that the constitutional amendment changed only the prescriptive period of the existing statutes. Therefore, the most logical interpretation of the legislation would appear to be that the tax becomes due at the date of the opening of the succession. On the other hand, the most desirable result, from the title examiner's standpoint, would be obtained by a legislative enactment making inheritance taxes due at the death of the *de cuius*. This would be in conformity with the general rule in most other jurisdictions.¹⁹

Richard F. Knight

15. Under La. Acts 1921 (E.S.), No. 127, § 11, p. 323, if the succession is not opened within six months, the act provides that the court shall grant an order on application of the tax collector to make a search for the will and have the succession opened.

16. La. Acts 1921 (E.S.), No. 127, § 24: "Taxes hereby levied shall bear interest at the rate of one per cent per month, beginning six months after the death of the decedent."

17. LA. R.S. 47:1577 (1950): ". . . any tax, penalty, interest or attorney fee due under the provisions under this Sub-title, shall operate as a lien, privilege and mortgage on all the property of the tax debtor, both movable and immovable, which said lien, privilege and mortgage shall be enforceable in any court of competent jurisdiction in an action, at law, or may be enforced as otherwise provided by this Sub-title."

18. *Henwood v. Collector of Revenue*, 51 So.2d 105 (La. App. 1951).

19. Annot., 131 A.L.R. 826 (1941). "The general rule appears to be that the statute of limitations begins to run against actions to collect inheritances taxes or transfer taxes from the date of death of the decedent."