INHERITANCE TAXATION IN STATE OF NORTH CAROLINA

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Contrary to the general idea inheritance taxation is not a new device or form of taxation, either in North Carolina, or in the world at large. Rather it is a very old principle that has been in use in a great many countries of the world and in a great many states of the American union. It has been a very dependable source of revenue from times of antiquity, and it is said that it is one of the forms of taxation in practice by the Ptolomies of Egypt. Furthermore, Gibbon in his history of Rome says that it was introduced into Roman law by Augustus, and was employed as a means of supporting the Roman army.

The tax is a source of revenue in most of the civilized countries, known by different names in the various countries. England adopted it in 1780, and it has been highly developed there, and particularly in the Australian states. It was first introduced in the United States by its employment in Pennsylvania in 1826. Thereafter it was adopted in Louisiana, Virginia and Maryland, and then in 1846, two years after Maryland, North Carolina passed its first inheritance tax law. There are several decisions of our supreme court involving this early law, and its amendments, which I shall mention hereafter. This statute with its various changes and amendments remained the law in this state until its repeal in 1874, from which time until 1897 North Carolina had no such law. This is probably very surprising to a great many persons who have thought that inheritance taxation was a new fangled device in this state. The law has been amended very materially since 1901, and there have been numerous decisions of our courts which I will treat later.

The fundamental principle of the tax is that a man cannot carry with him into the next world the possessions he has acquired in this world. Therefore, he must leave such possessions to be protected by the law of the state. To understand thoroughly the foundation principle it must be remembered that there was a time when the state succeeded to all the property and possessions of a decendent. The privilege of taking property by will or by descent is not one of the inalienable rights of man. Both the law of wills and the law of descents are creatures of the statute law. Without these statutes property would pass, upon the death of the owner, to the next immediate occupant, or escheat to the state.

But in order that there might be an orderly condition established in civilized society the right was given to a dying person to dispose of his possessions by descent or by will. Then, inasmuch as the dying person had to rely upon the power of the state to protect and give effect to such disposition, it was but natural that the state should feel that it was entitled to some part of that which it had allowed to pass, and which it must recognize and protect.

In some states and countries very heavy progressive rates of tax are imposed, and this is done not merely for the amount of tax that may be derived, but also to aid in the breaking up of large estates. It is now recognized by most all economic authorities that inheritance taxation is a form of tax that is less burdensome to those who have to pay it, than any other form of tax. The exemptions to dependents are usually very liberal and in this way hardship is avoided. It is a means of reducing the patrimony of the idle rich, and those who have to pay the large amounts never really miss the tax paid. Of course it could be a dangerous instrument in the hands of radicals who have no respect for the rights of private property. The graduated and progressive rates established in many jurisdictions including our own, recognize the principle that the son of the poor man who is left barely enough with which to start off in life, this inheritance being the result of labor and saving on the part of his hard working parents, ought not to pay proportionately, the same as those children of fortune whose every whim and caprice can be satisfied by the riches left them, without any effort on their part.

When inheritance taxation is considered as a property tax, if, of course, violates the fundamental and universal requirement that all taxation shall be applied equally as to its burdens, and its application shall be uniform and not discrimnatory. But inheritance taxation is not a property tax, but a tax on the right to pass and receive property either by descent or by will. This must be kept clearly in mind and when considering inherily in mind when considering inheritance taxation laws.

Of course the inheritance tax law has not passed without many a challenge, the first of which was, as might be expected, as to its constitutionality. It has been such a long time since an individual did not have the right to inherit, or to devise or bequeath his property that the average man forgets that it is by the exercise of power by the state that these rights are guaranteed him, and that he had no such right inherently. In the case of Pullen vs. Commissioners 66 N. C. 361, it was held by our court that such a law was constitutional. In the opinion in that case, Justice Rodman says:

"But we do not regard the tax in question as a tax on property, but rather a tax imposed on the succession; on the right of the legatee to take under will or of a collateral distribution in the case of intestacy—Is there any reason why the state shall be denied the power to tax a succession, whether it be by gift inter vivos or by will or intestacy? Property itself as well as the succession to it, is the creature of positive law. The right to give or take property is not one of those natural and inallenable rights which are supposed to precede all government, and which no government can rightfully impair. There was a time, at least as to gift by will, it did not exist; and there may be a time again when it will seem wise and expedient to deny it."

Justice Brown, in re Mann's estate, 138 N. C., said:

"The right to take property by devise or descent is not one of the natural rights of man, but is the creature of the law. Should the supreme law abolish such rights, the property would escheat to the government or fall to the first occupant. The authority which confers such rights may impose conditions upon them, or take them away entirely."

The constitutionality of the law was again upheld in the cases of State vs. Bridgers, 161 N. C., 246, and Norris vs. Durfey, 168 N. C., 321. The first of these cases also determines certain questions as to the methods of appraisements and collection of the tax and also as to the meaning of the law with respect to exemptions, and construes the in loco parentis part of the statute. This case also settled the question that where there is a difference between the law in force at the decedent's death, and that in force at the time of collection, the first law will control as to the rate and amount of tax, and the statute in force at the time of collection, as to the methods of appraisment and collection.

The act of 1846 chapter 72, laws of 1846, taxed collateral kindred and strangers, except widows of deceased at 1 per cent.

There were several decisions of the supreme court construing this statute, the first of which was in the case of Huner et al vs. Husted, 45 N. C. 141. This decision settled the question so often asked by persons not thoroughly familiar with the inheritance tax law, that the tax is paid by the legatees or distributees, respectively, and not by the estate of the deceased. This is still the law in this state, as the tax is on the takers of the property, and not on the estate tax, as is the federal estate tax.

The next court decision in this state, in re: Alvany vs. Powell N. C. 50, in which it was determined that a transfer of property within this state by a non-resident decedent was taxable under the law of 1846, and such is our law today.

Then the case of Barringer vs. Cowan, 55 N. C. 436, where it was held that a bequest to a church and to a college may be taxed. This is the status of our law today as to such institutions without the state of North Carolina.

The next question presented to the court was in the case of State vs. Brim, 57 N. C. 300, in which it was held that a resident next of kin was not subject to the law where the decedent died a non-resident, and his estate was also outside of North Carolina. The mere fact that the next of kin was a resident of North Carolina did not subject him to the tax.

In the case of Attorney-General vs. Allen, 59 N. C. 144 chapter 99 of the revised code was construed as to the payment of the tax by the executor or administrator into the clerk's office, at the time of settlement with legatee.

The tax on a legacy or bequest in remainder after a life estate was held to be taxable and due immediately and not when the legacy vests, in Attorney-General vs. Pierce, 59 N. C. 240.

The case of State vs. Brevard, 62 N. C. 141 involved the question as to whether or not an executor was to be chargeable with the tax on valueless currency that was left on his hands as a result of the war of 1861-65 and the court held that it depended on whether or not the executor was required to make good the valueless currency in his setlement with the legatees. Of course if the legatees received full value instead of the valueles currency, then the tax would have to be paid.

The above cited cases together with the case of Pullen vs. Commissioners hereafter mentioned constitute all of the decisions of our court prior to those cases involving the law of 1901, and the several amendments thereto.

The next question determined by our supreme court was in the case of Norris vs. Durfey, 168 N. C. 321, and it was really the decision in this case that gave new life and effect to our law. The law with respect to personal property had been in the statute books since 1897, chapter 168, and this law imposed a small tax on both direct and collateral heirs.

It seems, though, that not much if any, attention was paid to its enforcement, and it was amended by the act of 1901, chapter 9. Then at the session of 1905 the legislature amended the law so as to make it operate on both personal and realty. There was some slight defect in the wording of the act, which was continued through the acts of 1907 and 1909. It seems that both the attorney-general and the state treasurer had construed these acts to exempt real estate, and just afterwards the enforcement of the law was turned over to the state tax commission, and this case was made a test case, and went to the supreme court from Wake county.

The court held that the law applied to realty as well as personalty, and that the construction placed on the law by administrative officers of the state were not binding on the courts. The estate in this case then paid to the state taxes to the amount of more than $9,000 which was the largest amount paid by any single estate up to that time, except the estate of George W. Vanderbilt which paid the tax on realty as well as on personalty not contesting the law as to the realty.

This decision was really the beginning of the law's strict enforcement, the case having been decided on February 24, 1915. Immediately thereafter, the legislature, then in session authorized the state tax commission to emply special assistants or counsel to enforce the law, the compensation to be on a commission basis, not to exceed 5 per cent of the amounts collected. The tax commission then employed assistants and attorneys in various parts of the state, but only a few of those employed ever did any real work on the proposition. Everywhere the law met with opposition, and in some cases defiance, and a great many local attorneys of course did not feel justified in stirring up the animosity of some of their county's most prominent citizens. One of the chief reasons for so much opposition was that those employed were instructed to investigate all settlements of old estates made since the passage of the law, and this meant that in some cases the tax was collected many years after an estate had been settled. This did not mean, however, that innocent parties were made to suffer, as the collection of the tax was made from the parties who owed the tax, and so far as I know, there was never a case where an executor's or administrator's bond was called upon.

Just why the law was allowed to become and remain a dead letter for so long, I do not know, but when the state tax commission took charge of the matter, and the legislature of 1915 provided the commission with means of enforcing the law, a source of revenue of tremendous importance was opened up, and today this is one of the main sources of the state's revenue. In the year 1914 the state collected from inheritance tax to the extent of $19,899.19. In 1915 it collected $31,495.06, and this was the year that the enforcement was really begun. The following year there was collected $153,759.18, and during the fiscal year 1920 the state received from this tax $603,229.92.

The tremendous development of this means of revenue can be realized, when it is seen that in 1901 there was received by the state the sum of $237.07. And I might pause just here to say, that the first item of $6.45 was collected by W. S. Stevens, clerk of the superior court of Johnston county. During the years 1903, 1904, 1909 and 1913 the state collected from $12,000 to $16,000 in round numbers, each year, these collections being swelled by several large estates paying the tax on personalty at the time of settling the estates.

The following schedule shows the inheritances taxes received by the state, every year, from 1901 to 1920; as shown by the reports in the state auditor's office.

1901	$ 237.07
1902	4,240.69
1903	12,578.82
1904	16,000.26
1905	5,325.14
1906	4,673.41
1907	7,792.06
1908	5,533.60
1909	14,795.87
1910	6,159.80
1911	9,822.32
1912	5,264.65
1913	16,672.33
1914	19,899.19
1915	31,495.06
1916	153,759.18
1917	296,951.90
1918	376,437.72
1919	595,681.94
1920	603,229.92

One of the troublesome questions that has presented itself has been as to that part of the statute placing those who stood in relation of child to the decedent in the first class and allowing such the lowest rate of tax, along with lineal issue, direct ancestors, husband, wife and adopted child. This part of the statute was construed by the court In Re: Estate of John H.

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