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Estate Tax--Effect of Subsequent Events on Claims Against the Estate

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At decedent's demise in July, 1952, his estate was obligated to continue 40 dollar weekly payments to his former wife until her death or remarriage as provided for under divorce decree. The wife received payments from the estate totaling $2,079.96 until her remarriage in June, 1953. The estate return was filed in July, 1953; the administrator claiming a deduction of $27,058.30 which would have been due the wife based on her life expectancy at the date of the husband's death. The Tax Court allowed the deduction. *Held,* reversed. INT. REV. CODE of 1939, § 812(b) (3), provides for deductions of "claims against the estate" as are allowed by the laws of the particular jurisdiction. If events occurring subsequent to decedent's death better enable the purpose of the statute to be satisfied, such events will be taken into account in determining the claim and its allowance under local law. *Commissioner v. Shively's Estate,* 276 F.2d 372 (2d Cir. 1960).

There was a strong dissent in the principal case based primarily on *Ithaca Trust Co. v. United States,* 279 U.S. 151 (1929). This estate tax case concerned the valuation of charitable contributions subject to a life estate of decedent's wife. Though the wife died six months after her husband's death and before the estate tax return was filed, the value of her interest was held to be that of the time of testator's death rather than based on events as they later proved to be. The crucial date in determining the value of the claim to be deducted was held to be that of testator's death, the value being no less real at that time whether or not the facts later proved to be different from their estimation.

The applicable section of the INT. REV. CODE of 1954, § 2053(a) (3), provides that ". . . the value of the taxable estate shall be determined by deducting from the gross estate such amounts . . . for claims against the estate . . . as are allowed by the jurisdiction, . . . under which the estate is being administered." This section is basically comparable to § 812(b) (3) of the 1939 code and to previous statutes including that which controlled in the *Ithaca* holding.

Many cases have professed the rationale of the *Ithaca* case as controlling; however, several holdings have purported to place limitations upon the decision. See Rev. Rul. 60-247, 1960 INT. REV. BULL. No. 29, at 17. The Revenue Ruling states that deductions for claims against the estate will not be allowed where the claims have not been paid or will not be paid because the creditor waives payment, fails to file according to the applicable local law, or in any other way fails to

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enforce payment. An exception on the foregoing is recognized when the claim, though not formally presented and paid, is deemed to have been met by other payments to the claimant in an amount at least equal to that of the claim.

Such a ruling by the commissioner does not, like a regulation, have the effect of law. *Helvering v. N. Y. Trust Co.,* 292 U.S. 455, 468 (1934). However, the ruling does summarize the divergence from the *Ithaca* holding by subsequent cases.

The limitation was early seen in *Jacobs v. Commissioner,* 34 F.2d 233 (8th Cir. 1929), *cert. denied,* 280 U.S. 603 (1929). Here a claim based on an antenuptial contract, which was enforceable against the estate of claimant's husband at the time of his death, was denied because the widow accepted provisions in the husband's will in lieu of such claims. The court based its decision on the reasoning that ". . . tax laws deal with actualities; . . . the claims . . . which Congress intended to be deducted were actual claims, not theoretical ones." The court further provided that claims to be deductible are those determined as valid and ". . . actually paid or to be paid."

In *Du Val's Estate v. Commissioner,* 152 F.2d 103 (9th Cir. 1945), a bank owned a claim against decedent as guarantor of notes, the claim enforceable under the laws of the local jurisdiction. The bank consented to the distribution of the estate without payment of its claim. As the estate was in such a position that it would never have to pay the claim, the amount was not deductible. The court reasoned that a claim is a mere assertion of a right which if abandoned is no claim.

The court in *Estate of Annie Feder,* 22 T.C. 30 (1954), stated that it is not necessary for a claim to be formally presented and paid in order to qualify as deductible. However, the fact situation placed the case within the exception to the limitations of Rev. Rul. 60-247 *supra,* since the claimants received an amount as beneficiaries in excess of the deduction allowed. Thus, the claim may be deemed to have been paid. Under similar facts in *Commissioner v. Straus,* 77 F.2d 401 (7th Cir. 1935), the same decision was reached.

Also in *Buck v. Helvering,* 73 F.2d 760 (9th Cir. 1934), the wife was allowed to deduct a claim against her husband's estate even though she did not file a claim against the estate. The failure to file was immaterial because she was a beneficiary taking an amount exceeding her claim just as in the *Feder* case. On a further matter the court denied deductibility of a claim based on the deceased stockholder's being liable for the debts of the corporation. Though the obligation was considered legally enforcable under the particular state law, the court considered the claim potential rather than actual until such time as it be paid or reasonably certain that it must be paid.

In *Commissioner v. State Street Trust Co.,* 128 F.2d 618 (1st Cir. 1942), there was an enforceable claim at the date of death for monthly alimony payments of $1,000 during the lifetime of the former wife. The divorce decree was compromised by a decree of the probate court subsequent to the testator's death calling for a lump sum payment plus monthly amounts of $650. The actuarial value of the latter decree was the one allowed to be deducted by the estate.

Further, the *Ithaca* case was allegedly limited by *Helvering v. Safe Deposit and Trust Co.,* 316 U.S. 56 (1942), and *Helvering v. Grinnell,* 294 U.S. 153 (1935), where the subsequent events were controlled by the beneficiaries.

However, when it is reasonably certain that the claim is to be paid, the *Ithaca* case is controlling. *Smyth v. Erickson,* 221 F.2d 1 (9th Cir. 1955); *Maresi v. United States,* 152 F.2d 929 (2d Cir. 1946).

The case of *Winer v. United States,* 153 F. Supp. 941 (S.D. N.Y. 1950), does not seem to be within the purview of the Revenue Ruling. Here the estate was indebted to the executrix. She, through inadvertence, did not file a claim. The deduction was allowed since there was an enforceable claim at the date of decedent's death. The government's contention in the case was the statute should be construed to mean that the claim must be ultimately allowed by the probate court. The case does not fall within the exception to the limitations as did the *Feder* case, *supra.* In the *Winer* case the executrix does not take anything under the will. However, the Florida statute on which the deductibility in the *Winer* case was dependent is unique, no other state having such a law. The statute rules such obligations void if not filed properly within eight months even though the personal representative previously recognized the claim.

In the principal case the court disagreed with the reasoning of the *Ithaca* and *Winer* cases in holding that subsequent events are to be ignored even when they result in the claim's never being paid. The rationale of the two cases was considered incompatible with the purpose of the code section defining "Net Estate" as " . . .to tax the passing of property by way of gift taking effect at death." *Kahn v. United States,* 20 F. Supp. 312 (S.D. N.Y. 1937).

The *Ithaca* case, a United States Supreme Court decision, has not been expressly overruled even partially by the Supreme Court so as to conform to the limitations set forth in the Revenue Ruling or the cited cases. Further, the decisions which have employed the limitations have been in inferior courts. The final decision regarding the intendment of the statute rests with the Supreme Court. It should be construed in such a way as to make for certainty and uniformity in its application.

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Evidence—Past Recollection Recorded—Present Recollection Revived

Upon prosecution for murder in the first degree *D* objects to the use by two witnesses of documents upon which his alleged confession to the crime was recorded. Both witnesses read their notes verbatim after testifying that they could achieve greater accuracy from the notes than from their recollection alone or their recollection refreshed by the notes. *Held,* it is not error to allow a witness to read a faithful memorandum where he is devoid of a present recollection but possesses an accurate account of the events made by him at the time of their occurrence. *Hall v. State,* 162 A.2d 751 (Md. 1960).

The instant case states clearly and concisely the best and most widely accepted view concerning a field of evidence which has in the past been the subject of much misunderstanding. 3 WIGMORE, EVIDENCE § 735 (3d ed. 1940). It is impossible to discuss past recollection recorded without also considering the concept known as present recollection revived. It is this interrelation which has caused the courts some trouble in distinguishing between the two. *Hall v. State, supra,* clearly involves a case of past recollection recorded. Here both witnesses testified that they could not remember clearly the contents of the confession, but both testified that they could remember having made accurate recordings of the defendant's statements at the time of their occurrence. The value of such testimony is readily discernible, the frailty of the human memory gives impetus to the acceptance of this rule by the courts, and the ends of justice are best served by its use.