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Federal Estate Tax—Marital Deduction—Apportionment

Death taxes are levied either on the privilege of transmitting or receiving property.¹ The federal estate tax is of the former type² and is imposed on the net estate of decedents³ "to the extent of the interest of the decedent at the time of his death."⁴ The ultimate burden of the tax may vary depending upon (1) the jurisdiction administering the estate, (2) the type of property involved, and (3) the presence or absence of direction of the burden by the testator or settlor.⁵ The burden of the tax is a matter of state law⁶ and in the majority of common law states the tax is payable from the residue of the estate⁷ unless a contrary intention is shown by the decedent.⁸ An analysis of the cases requiring payment of the tax from the residue of the estate shows the following theories relied upon for the result: (1) the tax is levied on the whole estate and not the individual shares, thus there is a presumption against requiring individuals to contribute to the tax;⁹ (2) the Internal Rev-

¹ MONTGOMERY, FEDERAL TAXES 462 (1952).

² INT. REV. CODE § 810, *New York Trust Co. v. Eisner*, 256 U. S. 345 (1921).

³ INT. REV. CODE § 810, Reg. 105 § 81.4.

⁴ INT. REV. CODE § 811 (a), Reg. 105 § 81.13

⁵ All three factors are usually present in every case. The factors may further be classified as follows: (1) "jurisdiction," (a) common law states, (b) equitable apportionment states, (c) statutory apportionment states; (2) the "property," (a) testamentary property, (b) intestate property and transfers of property included in decedent's estate under certain provisions of the Internal Revenue Code, *e.g.*, § 811 (c) and (d); (3) this material does not contemplate covering the cases on the specific language of testator necessary to direct the burden of taxes, but only the result obtained in certain cases after the court has ruled on the meaning of the words.

⁶ "We are of opinion that Congress intended the federal estate tax should be paid out of the estate as a whole and that the applicable state law as to the devolution of property at death should govern the distribution of the remainder and the ultimate impact of the federal tax. . . ." *Riggs v. Del Drago*, 317 U. S. 95, 97 (1942).

"Considering the problem as an open question, we begin with the principle . . . that the federal estate tax statute leaves it to the states to determine how the tax burden shall be distributed among those who share in the taxed estate." *In re Heringer's Estate*, 38 Wash. 2d 399, 403, 230 P. 2d 297, 300 (1951).

⁷ *Y.M.C.A. v. Davis*, 106 Ohio St. 366, 140 N. E. 114 (1922), *aff'd*, 264 U. S. 47 (1924); *Central Trust Co. v. Burrow*, 144 Kan. 79, 58 P. 2d 469 (1924); *Bemis v. Converse*, 246 Mass. 131, 140 N. E. 686 (1923); *Gelin v. Gelin*, 296 Minn. 516, 40 N. W. 2d 342 (1949); *Farmers Loan & Trust Co. v. Wintrop*, 238 N. Y. 477, 144 N. W. 686 (1924); *Craig v. Craig*, 232 N. C. 729, 62 S. E. 2d 336 (1951); *Seattle-First National Bank v. Macomber*, 32 Wash. 2d 696, 203 P. 2d 1078 (1949).

"The unfortunate nature of this situation was pointed out in 1930, by the New York State Commission to Report Defects in the Law of Estates in the finding that 'experience has demonstrated that in most estates, the residuary legatees are the widow, children or nearer and more dependent relatives.'" Mitnick, *State Legislative Apportionment of the Federal Estate Tax*, 10 MD. L. REV. 289 (1949).

⁸ "A careful reading of decedent's will fails to find any expression of decedent's intention insofar as payment of federal estate tax is concerned." *Gelin v. Gelin*, 229 Minn. 516, 520, 40 N. W. 2d 342, 345 (1949). "In other jurisdictions, the majority of courts have held that the federal estate tax burden is a charge against and payable from the residue of an estate. . . ." *Id.* at 522, 40 N. W. 2d at 346.

⁹ This argument is based on the nature of the tax and not on testator's silence

enue Code requires the personal representative to pay the tax, therefore it must be taken from the residuary estate in the same manner as debts and expenses of administration;¹⁰ and (3) "the courts can not speculate concerning the intention of settlors and testators as to where they intend the burden of taxes to rest."¹¹ Some states have enacted apportionment statutes distributing the tax burden¹² and in two situations the Internal Revenue Code allows the personal representative limited rights of recovery where there has been no direction as to payment of the tax.¹³

In 1948 Congress enacted a complicated marital deduction provision in order to put non-community states on a substantial footing with those states having community property rights.¹⁴ In substance, it allows a deduction up to 50% of the adjusted gross estate for property passing to the surviving spouse if certain requirements are fulfilled.¹⁵

In *Wachovia Bank & Trust Co. v. Green*,¹⁶ a case of first impression in North Carolina, the widow dissented from decedent's will and elected to take her statutory share.¹⁷ In an action by the executor for direction

as to the burden of the tax. *Plunkett v. Old Colony Trust Co.*, 233 Mass. 471, 124 N. E. 265 (1919).

Perhaps the leading decision on this point is *Y.M.C.A. v. Davis*, 264 U. S. 47, 50 (1924) where the court held: "What was being imposed here was an excise upon the transfer of an estate upon death of the owner. It was not a tax upon death of the owner. . . . What this law taxes is not the interest to which the legatees and devisees succeeded on death, but the interest which ceased by reason of the death."

¹⁰ In *Amoskeag Trust Co. v. Trustees of Dartmouth College*, 89 N. H. 471, 200 Atl. 786 (1938), the court held as the executor was required to pay the tax before distribution, the tax was a charge against the estate, and like other debts of administration, must be paid from the residue. *Hughes v. Sun Life Assur. Co.* 159 F. 2d 110 (9th Cir. 1946); *First Nat. Bank v. Hart*, 383 Ill. 489, 50 N. E. 2d 461 (1943); *Gelin v. Gelin*, 229 Minn. 516, 40 N. W. 2d 342 (1949). Cf. *Bigoness v. Anderson*, 106 F. Supp. 986 (D. D. C. 1952), holding that there was no reason to distinguish between the federal estate tax and debts of the decedent and that if personalty in the residuary estate was not sufficient to pay the tax then resort to the realty in the residuary estate could be made.

¹¹ *Bemis v. Converse*, 246 Mass. 131, 149 N. E. 686 (1923) (Testator was silent on the subject of taxes.) For collection of cases involving testamentary direction see *Notes*, 115 A. L. R. 916; 117 A. L. R. 1186; 15 A. L. R. 2d 1216.

¹² ARK. STAT. ANN. § 63-150 (1947); CAL. PROB. CODE §§ 970-977 (Ann. 1944); CONN. GEN. STAT. §§ 2075-2081 (1949), CONN. GEN. STAT. § 227a (Supp. 1949), CONN. GEN. STAT. § 449b (Supp. 1951); DEL. REV. CODE 1949 c. 405 (1935); FLA. STAT. ANN. § 734.041 (Supp. 1952); MASS. ANN. LAWS c. 65A, § 5 (Supp. 1952); MD. ANN. CODE GEN. LAWS art. 81, § 160 (1951); NEB. REV. STAT. §§ 77-2108 through 77-2112 (1943, reissue 1950); N. H. REV. LAWS c. 88-A, § 1 (as added by L. 1943 c. 75 and L. 1947 c. 102); N. J. STAT. ANN. §§ 3:26-45-3:26-53 (Supp. 1951); N. Y. DEC. EST. LAW § 124; PA. STAT. ANN. tit. 20 §§ 881-887 (Supp. 1952); TENN. CODE ANN. § 8350.7 (Williams, Supp. 1952); TEX. REV. CIV. STAT. ANN. art. 3883a. (1952); VA. CODE §§ 64-150-64-155 (1950).

¹³ INT. REV. CODE § 826 (c) (insurance proceeds); INT. REV. CODE § 826 (d) (property over which decedent had a power of appointment).

¹⁴ INT. REV. CODE § 812 (e), Reg. 105 § 81.47, 81.48.

¹⁵ *Id.* ¹⁶ 236 N. C. 654, 73 S. E. 2d 879 (1953).

¹⁷ N. C. GEN. STAT. § 30-1 (1943 Recomp. 1950) (time and manner of dissent); N. C. GEN. STAT. § 30-2 (1943, Recomp. 1950) "Upon such dissent the widow shall have the same rights and estates in the real and personal property of her husband as if he had died intestate."

as to the allocation of the federal estate tax liability the court held that the widow's one-half interest in the personalty of the estate¹⁸ would be computed after the payment of the federal estate tax. The decision reduced the share passing to the widow which lowered the marital deduction¹⁹ and resulted in a higher federal tax on the estate. However, the decision in this particular case was not inequitable because had the decision been otherwise the bequests to the principal beneficiaries would have been wiped out. The court rejected the argument advanced concerning the purpose of the marital deduction,²⁰ and held that pertinent statutes²¹ requiring distribution be made after the payment of debts. The federal estate tax was held to come within the meaning of G. S. § 28-105:²²

"The debts of the decedent must be paid in the following order:

" . . .

"Fourth Class. Dues to the United States and to the State of North Carolina."²³

The court relied on *Craig v. Craig*²⁴ where it was held that the estate tax was chargeable to the residuary estate thus indicating the tax "should be regarded as a charge against the whole estate, to be paid

¹⁸ N. C. GEN. STAT. § 28-149 (3) (1943, Recomp. 1950). The statute has recently been amended, See note 27, *infra*. (Realty was not involved in the litigation).

¹⁹ INT. REV. CODE § 812 (e) (1) (E) (i). This section requires the marital deduction to be reduced by the amount of the tax payable on the interest of the spouse. Thus, in the instant case had the tax been computed after the share was allotted to the widow the reduction clause of the Code would not apply.

²⁰ "To place the property of married persons in common-law states on a more nearly equal estate tax basis with the now reinstated "splitting" principle of community property, the 1948 Act also amended the law to permit a married person holding separate property to achieve substantially the same "splitting" advantage, provided that he also accepted some of the community property disadvantages. This had been accomplished by the addition . . . of a "marital deduction" in computing the net estate subject to tax." MONTGOMERY, FEDERAL TAXES 784 (1952).

²¹ "The statute now in force in this state prescribes that the dissenting widow shall receive one-half the personal state . . . and directs the personal representative, in case of intestacy, after payment of debts in the order prescribed by G. S. 28-105; to distribute the surplus in the manner set out in G. S. § 28-149. The word surplus means the personal property left after payment of the debts of the deceased and costs of administration." *Wachovia Bank & Trust Co. v. Green*, 236 N. C. 654, 659, 73 S. E. 2d 879, 883 (1953).

²² N. C. GEN. STAT. § 28-105 (1943, Recomp. 1950).

²³ "It will be noted that there are no citations in the General Statutes under this subsection. Governmental claims against the individual have much increased both in number and complexity since this law was written, and it is difficult to know just what the rule means. It would certainly seem to include unpaid income taxes, both state and federal, if such taxes are not included in class three. It would also seem to include any other form of tax, assessment or penalty imposed by state or federal law which the United States or the State of North Carolina could collect by legal process of any nature." DOUGLAS, ADMINISTRATION OF ESTATES IN NORTH CAROLINA § 218 at p. 166 (1948).

²⁴ 232 N. C. 729, 62 S. E. 2d 336 (1950).

from the residuary estate in the same manner as debts and expenses of administration."²⁵ Thus, North Carolina followed the majority rule by refusing to apportion taxes without legislative guidance. Subsequent tax legislation which would have nullified the effect of the instant case failed.²⁶

However, an amendment to the North Carolina distribution statute²⁷ has been enacted which will allow the dissenting widow her statutory share in personal property free of the federal estate tax in a situation comparable to the facts of the *Green* case.

The distribution provision before the recent amendment provided²⁸ that if a man died intestate leaving a wife but no children the widow would get all of the personal property up to \$10,000 with the remainder distributed one-half to the widow and one-half to the decedent's next of kin who are in equal degree of kinship, or their legal representative. In case the decedent died testate, and the widow dissented from the will, she would take one-half the personal estate and the remainder would be distributed according to the terms of the will.

Chapter 1325 (amendment to G. S. § 28-149 (3)) does not change the basic distributions of personalty in form, but far different monetary results may be obtained because of the addition of provisions relating to the federal estate tax.

Chapter 1325 provides that in the situation where the widow is to receive one-half the estate of the intestate which exceeds \$10,000, the one-half will be computed before any deduction for the federal tax. The remaining one-half which goes to the husband's next of kin is subject to the federal tax. Apparently the \$10,000 to be allotted the widow in this situation (where the estate exceeds \$10,000) is subject to the federal tax for it is not expressly exempted. However, it would seem that because the share allotted to the next of kin is expressly made subject to the federal tax that the \$10,000 to the widow is exempt from the tax in the same manner as her one-half share in the estate which exceeds \$10,000. If the husband dies testate and the widow dissents from the will her one-half share in the personalty is exempt from the tax. The remaining one-half which is distributed according to the decedent's will bears the burden of the federal estate tax. Chapter 1325 further provides that nothing in the act will be construed to deprive a widow of her right to a year's support.

²⁵ *Wachovia Bank & Trust Co. v. Green*, 236 N. C. 654, 662, 72 S. E. 2d 879, 885 (1953). In *Northern Trust Co. v. Wilson*, 344 Ill. App. 556, 101 N. E. 2d 604 (1951) the distribution statute provided that the dissenting spouse would be entitled to a certain share "after the payment of all just claims." The federal estate tax was held to be a "just claim" and the widow received her share after deduction for the estate tax as in the principal case.

²⁶ S. B. 357, N. C. General Assembly 1953. Reported unfavorably April, 1953.

²⁷ H. B. 851, c. 1325 N. C. General Assembly 1953.

²⁸ N. C. Gen. Stat. § 28-149 (3) (1943, Recomp. 1950).

Ohio, in *Miller v. Hammond*,²⁹ reached a decision contra to the principal case on similar facts. The dissenting widow was allowed her statutory share free of the federal tax. The Ohio statutes involved are comparable to those of North Carolina³⁰ (but before c. 1325 was enacted in North Carolina). The Ohio court had to distinguish the often-quoted decision of *Y.M.C.A. v. Davis*,³¹ where residuary charitable institutions were burdened with the federal estate tax notwithstanding the federal charitable deduction provisions. The court held that *Y.M.C.A. v. Davis* was decided before the federal marital deduction provision and it involved testamentary property whereas the *Miller* case involved the dissenting share of a widow, *i.e.*, intestate property. This decision was followed by *McDougall v. Central National Bank*³² where the court apportioned the tax between an intestate estate and an inter vivos trust. However, in *Vandervort v. Hodge*,³³ where the estate consisted entirely of *testate property*, any trend toward a full apportionment rule in Ohio was reversed and the residuary estate was charged with the full burden of the federal estate tax. The court reiterated the doctrine of *Y.M.C.A. v. Davis* and held it had been approved and distinguished in the *Miller* and *McDougall* cases.

Kentucky has long recognized the equitable rule of apportionment where non-probate property was involved³⁴ and recently allowed the dissenting spouse to take her share tax free³⁵ on the premise that equitable apportionment is within the inherent power of the courts. The court reasoned that the marital deduction was enacted to equalize tax rights between community and non-community property states, and as the spouse's share would not add to the tax by virtue of the marital deduction she would not be liable for payment of any of the tax. Rhode Island has apportioned the tax between testamentary and non-testamentary property. In *Industrial Trust Co. v. Budlog*³⁶ this court required contribution from six inter-vivos trusts where testator had directed that taxes be paid from the residuary estate but neglected to mention "any taxes which might be imposed by reason of the inter-vivos

²⁹ 156 Ohio St. 475, 104 N. E. 2d 9 (1952).

³⁰ OHIO GEN. CODE ANN. § 10509-121 (Supp. 1951).

³¹ See note 7 *supra*.

³² 157 Ohio St. 45, 104 N. E. 2d 441 (1952). The theory of this case seemed to be that there was a "common obligation" resting on the intestate estate and the trust property to pay the estate tax, thus, it was apportioned between the two types of property. Query as to whether there is any more of a common obligation in this situation than there is in a case involving only probate assets, or the dissenting share of a spouse.

³³ CCH INH. EST. & GIFT TAX REP. ¶ 17,706 (1950), Ohio Ct. App. (1st App. D. 1953).

³⁴ *Hampton's Admr. v. Hampton*, 188 Ky. 199, 221 S. W. 496 (1920); *Martin v. Martin's Admr.*, 283 Ky. 513, 142 S. W. 2d 164 (1940); *Trimble v. Hatcher's Ex'rs.*, 295 Ky. 178, 173 S. W. 2d 985 (1943).

³⁵ *Lincoln Bank and Trust Co. v. Huber*, 240 S. W. 2d 89 (Ky. 1951).

³⁶ 77 R. I. 428, 76 A. 2d 600 (1951).

gifts in question."³⁷ Georgia³⁸ and Louisiana³⁹ have applied the equitable rule and recently Indiana joined the ranks of the minority with a strong denunciation of the common law rule. The latter court in *Pearcy v. The Citizens Bank and Trust Co.*⁴⁰ said:

We believe the cases from the states holding against the right of apportionment except where there is specific statutory authority therefore, or a specific provision therefor, in the will of the decedent, are based upon an erroneous concept of the Federal Estate Tax Act and a misinterpretation of provisions thereof.

The court applied the apportionment rule to survivorship property.

The apportionment rule has merit especially where intestate shares or non-testamentary property, such as inter-vivos trusts, gifts, and survivorship rights are involved because of the weakness of the residue argument in situations such as these. It is well settled that the ultimate burden of the tax is a matter of state law, thus, why is it necessary to hold that because the federal estate tax is a charge on the whole estate, the tax is in the position of debts of the estate and accordingly its payment falls on the residuary estate? It would seem that the non-testamentary estate could be distinguished from the testamentary estate of the decedent and be made to bear its own burden of the tax, if any.

³⁷ The testator's meaning was held to be a matter of conjecture. Two previous Rhode Island cases apportioning the federal estate tax were relied on by the court. *Trust Co. v. Watson*, 76 R. I. 223, 68 A. 2d 916 (1949) (insurance proceeds); *Hooker v. Drayton*, 69 R. I. 290, 33 A. 2d 206 (1942) (property passing under power of appointment). Contribution in both cases were allowed pursuant to the provisions of the Int. Rev. Code, note 13 *supra*. However, in the *Industrial Trust Co.* case the court reasoned there was no distinction between property passing under a power of appointment and property which a decedent had placed in trust. Both types were out of a decedent's control, and neither type of property constitutes part of a decedent's true estate. The Rhode Island court was not deterred by the fact that the state did not have an apportionment statute.

The Rhode Island court did not invoke the doctrine of "implied direction," *i.e.*, allowing contribution from the trust property because the testator did not mention it in his direction, but held the distinguishing factor was between testamentary and non-testamentary property. See Note, 31 B. U. L. Rev. 233, 235 (1951).

³⁸ *Regents of University System of Georgia v. Trust Co. of Georgia*, 194 Ga. 255, 21 S. E. 2d 691 (1942). The federal estate tax was apportioned between the individual estate of testatrix and property passing under power of appointment notwithstanding a statute which provided the tax would be a charge against the estate and not against the individual shares. The court held the property passing under the appointment was separate and distinct from the donee's own estate thus both classes of property should bear the burden of the tax. Section 826 (d) of the Code was not in effect at the decedent's death, thus, the court had to rely solely on its equitable powers to apportion the tax.

³⁹ *Succession of Ratchiff*, 212 La. 563, 33 So. 2d 114 (1947) (survivorship property). ". . . equitable principles demand that the burden be divided between all persons sharing in the estate in accordance with their respective interests." *Id.*, 33 So. 2d at 117.

⁴⁰ 121 Ind. App. 136, 96 N. E. 2d 918 (1951). In this case the court relied on equitable apportionment for survivorship property but required contribution from beneficiaries of insurance proceeds pursuant to the INT. REV. CODE provision, note 13 *supra*.

This reasoning is even stronger in a situation where decedent has directed the burden of the tax on the residuary without mentioning *inter vivos* transfers or survivorship property.

Those jurisdictions having apportionment statutes⁴¹ reach all of the assets by typically providing that the tax will be apportioned among those interested in the estate⁴² but those interests will be allowed any deductions granted under the act imposing the tax.⁴³ The latter phrase allows the parties who qualify to take the deductions offered in the Internal Revenue Code.⁴⁴ However, apportionment states are faced with a conflict between their proration laws and their distribution statutes as to the method of computation of the share. The widow's share has been computed tax free⁴⁵ notwithstanding a distribution statute declaring her interest to share ratably in the tax, because the apportionment act indicated a legislative policy not to tax any interest that did not add to the tax burden. The same result has been reached on the theory that the distribution statute did not provide a method of computation of the widow's share but only set an upper limit to which the taker was entitled.⁴⁶

Connecticut allowed the widow's share to pass tax free despite a direction by testator to the executor "to pay . . . all my just and lawful debts, funeral and testamentary expenses."⁴⁷ The words did not cover the payment of federal estate taxes, said the court, and if the marital deduction was not allowed it would substantially increase the tax. In *Estate of Donald Bayne*,⁴⁸ testator gave one-half of the residuary estate in trust to his wife for life, and created two trusts of one-fourth each from the other half. Testator directed "all . . . taxes which may accrue hereunder . . . be paid out of my general estate." It was held that the

⁴¹ See note 12 *supra*.

⁴² CAL. PROB. CODE § 970 (Ann. 1944) ("shall be equitably prorated among persons interested in the estate to whom such property is or may be transferred or to whom any benefit accrues.")

⁴³ CAL. PROB. CODE (Ann. 1944) ("In making a proration allowances shall be made for any exemptions granted by the act imposing the tax and for any deductions allowed by such act for the purpose of arriving at the value of the net estate.")

⁴⁴ INT. REV. CODE § 812.

⁴⁵ *In re Fuch's Estate*, 60 So. 2d 536 (Fla. 1952).

⁴⁶ *In re Peter's Will*, 88 N. Y. S. 2d 651 (1949), *aff'd*, 89 N. Y. S. 2d 651 (1949); *Estate of Frank Wolf*, CCH INH. EST. & GIFT TAX REP. ¶ 17,705 (1950), N. Y. Surr. Ct., N. Y. Co. (1953). The "upper limit" doctrine originated in *In re Goldsmith's Estate*, 177 Misc. 298, 30 N. Y. S. 2d 474 (1941) where the court distinguished between the words "intestate share" and "share in intestacy." The New York distribution statute limited the "intestate share" to no more than one-half the net estate of decedent. The court held that this was a "term of art" setting an upper limit to the "share in intestacy" but not providing a method of computation of the "share in intestacy."

⁴⁷ *Jerome v. Jerome*, CCH INH. EST. & GIFT TAX REP. ¶ 17,666 (1950), Conn. Sup. Ct. Err. (1952).

⁴⁸ CCH INH. EST. & GIFT TAX REP. ¶ 17,321 (1950), N. Y. Surr. Ct., Westch. Co. (1950).

words "general estate" were equivalent to "residuary estate" and amounted to an implied direction against apportionment but there was no direction for or against apportionment of such taxes imposed on the residuary gifts within the respective shares comprising the residuary estate.

The foregoing material has pointed up some of the highly technical difficulties encountered in arriving at an individual's estate tax burden. The trend is towards equitable apportionment and some states have bills in the current legislative sessions to provide for statutory apportionment.⁴⁹ In the principal case, North Carolina seems to have decided to stay inexorably with the common law view of pressing the entire estate tax burden on the residuary estate. The court distinguished a Kentucky case as applying an equitable apportionment rule⁵⁰ which indicates it will not adopt any. The recent amendment to the North Carolina distribution statute, c. 1325, will allow the widow a full marital deduction where there are no children, but it is submitted that a complete apportionment statute would be more equitable and it would give monetary relief to those unlucky enough to "reside in the residue."

JACK D. YARBROUGH.

Landlord and Tenant—Leases—Rights of Lessees under Oral Leases

In decisions growing out of a recent litigation, involving three appeals,¹ the Supreme Court has clarified considerably the North Carolina position on some of the rights of oral lessees, but at the same time has cast some doubt as to other rights under such oral leases.²

The litigation involved a situation wherein the plaintiff had, by oral agreement, leased two tobacco warehouses for three tobacco marketing

⁴⁹ Arizona—H. 45. Amends estate tax code to conform to federal provisions governing marital deduction. (Approved, March 13, 1953).

Connecticut—S. 203. Provides a more equitable apportionment of the federal estate tax within a fund consisting of the proceeds of life insurance. (Conn. has an apportionment statute, see note 12, *supra*).

Iowa—S. 345. Provides for equitable apportionment of estate tax among those interested in the estate.

Nebraska—LB. 578. Provides that the interest of any surviving spouse shall be determined prior to the payment of any federal estate tax or state inheritance tax. (Neb. has an apportionment statute. See note 12, *supra*).

Tennessee—S. 597. Permits marital deduction on inheritance tax. (Tenn. has an apportionment statute. See note 12, *supra*).

Vermont—H. 509. Relates to apportionment of federal estate tax in certain cases.

West Virginia—H. 24. Relates to the apportionment of death taxes among persons interested in the estate of decedent. CCH INH. EST. & GIFT TAX REP. (1950), 1953 Pending Legislation, ¶ 86,501, 509.

⁵⁰ Note 35 *supra*.

¹ Perkins v. Langdon, 231 N. C. 386, 57 S. E. 2d 407 (1950); Perkins v. Langdon, 233 N. C. 240, 63 S. E. 2d 565 (1951); Perkins v. Langdon, 237 N. C. 159, 74 S. E. 2d 634 (1953).

² It will be the object of this note to point up both results.