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The Constitutionality of the North Carolina Estate Tax

In the year 1926, Congress passed an estate tax that allows a credit for all estate, inheritance, succession, and legacy taxes paid to the various states, provided the total credit shall not be more than 80 per cent of the tax due the United States.[1] Following this act, the North Carolina Legislature in 1927, passed an estate tax law,[2] in addition to the inheritance tax that had previously been imposed. By the provisions of this act, a tax equal to the full percentage of the Federal tax, levied upon the same estate, allowed as a credit by the United States for payment of said tax to the state of North Carolina, is imposed.

In the recent case of *Haygood v. Doughton*,[3] the interpretation of the Commissioner of Revenue, and the constitutionality of this law is challenged. The Supreme Court held that the Commissioner was correct in his interpretation and that the law was constitutional. The case can be better understood by a brief history of the estate tax laws of the Federal government and of North Carolina. In the Federal Revenue Acts of 1918 and 1921 no credit was allowed on the estate tax due the United States for amounts paid to the states in the form of inheritance, estate, succession, or legacy taxes. The Federal law of 1924 allowed a credit up to 25 per cent for amounts paid to the various states, and the 1926 law, that is now under consideration, allows a credit of 80 per cent. In the North Carolina Revenue Acts that were passed in 1921, 1923, and 1925, inheritance taxes were imposed, but no estate tax was imposed in addition thereto. It was only after the Federal government allowed a credit of 80 per cent that the State of North Carolina imposed its estate tax.

The estate tax imposed by North Carolina did not materially increase the tax burden on the transfer of estates over what was imposed before 1926. Had the tax not been imposed, the burden would have been considerably decreased because the Federal government increased the credit allowed for amounts paid to the various

[1] 26 U. S. C. A., §1093; U. S. Comp. Stat., §6336 5/8 a.
[2] N. C. Pub. Laws, 1927, ch. 80, §6.
[3] Haygood v. Doughton, 195 N. C. 811, 143 S. E. 841 (1928).

states from 25 to 80 per cent.[4] In determining the wisdom of a tax that is imposed, the taxes imposed by Federal government, counties, towns, and all special taxing districts must be considered. If there was a just proportion of the burden of taxation before 1926, there is no undue burden under the present law in North Carolina.

There has been much propaganda published to influence Congress to relinquish estate and inheritance taxes to the various states. The views of the members of Congress differ very considerably. Some members wished to have a high Federal estate tax and to lower other taxes. Others were in favor of repealing the Federal estate tax outright. Still others were afraid certain states would abuse the repeal of the Federal law, impose no inheritance tax and thus become rest havens for retired business men to the detriment of other states desiring to impose such a tax.[5] The 1926 estate tax, allowing the 80 per cent credit for amounts paid to the various states, was imposed, because the majority of Congress thought that the inheritance tax was sound in principle. It was recognized that, if the states would pass inheritance tax laws, the burden on other taxing sources

[4] For illustration assume an estate for $500,000 with only one heir and that being a widow.

	Year 1925	Year 1927	Year 1927 (if N. C. estate tax had not been passed)
North Carolina			
Total amount of estate	$500,000	$500,000	$500,000
Exemption for widow	10,000	10,000	10,000
	$490,000	$490,000	$490,000
Inheritance Tax	$ 15,850	$ 15,850	$ 15,850
N. C. estate tax based on Federal credit		8,000	
Total N. C. tax	$ 15,850	$ 23,850	$ 15,850
United States			
Total amount of estate	$500,000	$500,000	$500,000
Exemption	100,000	100,000	100,000
	$400,000	$400,000	$400,000
Estate Tax	$ 10,000	$ 10,000	$ 10,000
Credit allowed for amounts paid to North Carolina	2,500	8,000	8,000
Net tax to U. S.	$ 7,500	$ 2,000	$ 2,000
Total tax to N. C. and to U. S.	$ 23,350	$ 25,850	$ 17,850

[5] See debate in Congress. Congressional Record, Vol. 67, Part 4, beginning pages 3580, 3595, 3666, 3841, 3842, 3861, 4476.

could be lessened. The Federal government did not need the revenue, and Congress, thinking that such a tax was equitable and should be imposed, encouraged the states to acquire revenue from this source, by allowing the estate a credit up to 80 per cent on amounts due the United States, for the tax paid to the various states. It is fairly clear that Congress did not entirely abolish the estates tax, because it recognized that certain states would impose no inheritance tax in order to induce men of wealth to establish their residences in those states.[6] One or two states could in this way acquire a large economic advantage over the others. Such a policy would tend to cause other states to repeal their inheritance tax laws in order to prevent their wealth from being depleted by the emigration of their richest citizens. It is possible that all the states would abandon such taxes were it not for the Federal Act.

The 80 per cent credit clause of the Federal Act was recently held to be constitutional by the Supreme Court of the United States.[7] Assuming, as was claimed, that the Act does indirectly coerce Florida into imposing an inheritance tax, that fact is not any more unjust than to allow Florida to coerce all the other states into abandoning their inheritance taxes.

The most important arguments advanced against the North Carolina Act in the instant case were:

1. Since the inheritance tax paid to the State of North Carolina was more than the credit allowed by the Federal Act, there is no credit left for the North Carolina estate tax, and, therefore, no estate tax is due. Although the wording of the statute is not absolutely free from ambiguity, the argument advanced is untenable, for it is clear that the intention was to impose the estate tax in addition. The courts interpret such statute in the light of the intention of the legislature,[8] if possible. The North Carolina Supreme Court held that the full credit allowed by the Federal government to the estate should be construed as being on account of the North Carolina estate tax and that the inheritance tax was in addition to this amount.

[6] See Note 4, *supra.*

[7] Florida v. Mellon, 273 U. S. 12, 47 S. Ct. 265 (1927). The Court said: "All that the constitution requires is that the laws shall be uniform in the sense that by its provisions the rule of liability shall be alike in all parts of the United States."

[8] Fortune v. Commissioners, 140 N. C. 322, 52 S. E. 950 (1905); State v. Johnson, 170 N. C. 685, 86 S. E. 788 (1915); State v. Bell, 184 N. C. 701, 115 S. E. 190 (1922); People v. Mensching, 187 N. Y. 8, 79 N. E. 884 (1907); Hill v. Micham, 116 Ohio St. 549, 157 N. E. 13 (1927); Hunter v. Harrison, 154 Tenn. 590, 288 S. W. 355 (1926).

2. The tax imposed is an interference with and a burden upon the exercise of the taxing power and the policies of the United States, contrary to Article 1, Section 5, of the Constitution of North Carolina. How could this tax impose a burden on the exercise of the taxing power and policies of the United States, when it is in line with that which Congress desired?[9]

3. By making the tax equal to the full amount of the credit allowed in the Federal law the legislature has delegated to the Federal Congress the determination of the rate of the tax. It is argued that this is arbitrary and in violation of the 14th amendment of the Constitution of the United States and Article 1, Section 17, of the Constitution of North Carolina in that it amounts to taking property without due process of law. There is some merit in the criticism of the law on the ground that it is a delegation of legislative power. The contention is that the validity of the tax depends upon the legislation of Congress and that it is, therefore, not in itself a complete expression of the North Carolina legislative will. This question is somewhat analogous to mutual or retaliatory measures passed by various states; e.g., a state often passes a law exempting foreign corporations from certain requirements, provided the parent state of the corporation grants similar privileges to corporations of the first state. Such laws have been held constitutional in all states where the question has arisen, except one.[10]

It may be argued that an estate tax in addition to an inheritance tax is double taxation of the same property by the same taxing power. Double taxation may be undesirable, but there is no constitutional provision against it unless such taxation should be confiscatory, thereby being a violation of the fourteenth amendment. The North Carolina inheritance and estate taxes are in no sense confiscatory, nor are they taxes on property. An inheritance tax and an estate tax are both excise taxes.[11] The former is a tax on the

[9] See Note 4, *supra*.

[10] See list of cases, 14A-C. J. 1268, note 61. In the case of Home Ins. Co. v. Swigert, 104 Ill. 653 (1882), the court said: "Where the contingency upon which the ultimate operation of the law is made to depend, consists of the action of some foreign legislative body, it is erroneous to suppose the legislature in such cases abandons its own legislative function or delegates its powers to such foreign legislative body."

[11] Knowlton v. Moore, 178 U. S. 41, 20 S. Ct. 747 (1900); U. S. v. Perkins, 163 U. S. 625, 16 S. Ct. 1073 (1895); *In re* Estate of E. J. Davis and *in re* Estate of Burnwell, 190 N. C. 358, 130 S. E. 22 (1926), uniformity rule inapplicable to inheritance taxes; First National Bank of Boston v. Com. of Corp. & Taxation, 258 Mass. 253, 154 N. E. 844 (1927); *In re* Opinion of Justices, 137 A. 50 (Me., 1927).

right to receive property by descent or bequest, and the latter is a tax on the right to transmit property by descent or bequest. In a recent Oregon case,[12] a statute providing for an estate tax and an inheritance tax on the same devolution of property was held to be constitutional.

Some kind of inheritance or succession tax was imposed in all the states, except three, as of October 7, 1927.[13] Twelve states had amended their inheritance tax measures to take advantage of the credit provision of the Federal tax measure at that time. The constitutionality of the estate tax based on the Federal credit was recently approved by the Supreme Court of Maine.[14] In Maine and most of the states, the amendment to the inheritance tax measure was made in order that any difference between the credit allowed under the Federal measure and the existing state inheritance tax measures could be taken advantage of by the state. North Carolina seems to be out of line in imposing the estate tax for the full measure of the Federal credit, in addition to the inheritance tax imposed. The wisdom of this act may be questioned, whether one favors large succession taxes or not, for the North Carolina measure, being in addition to the inheritance tax, makes the tax paid by its decedents larger than that paid by decedents in other states. Instead of encouraging rich people to come to its resorts to retire, North Carolina encourages them to move to other states.

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REGISTRATION OF FEDERAL JUDGMENTS

The duty of the abstracter in reference to Federal judgments is involved in confusion. For many years it has been the practice of abstracting attorneys to make no examination of the judgment dockets of the Federal Court and to rely upon Consolidated Statutes 616 which provides for the docketing of Federal judgments in the State court. This practice is still almost universal but its propriety is a matter of great doubt. The question has been brought to the attention of the profession by the case of *Rhea v. Smith*[1] in which the

[12] *In re* Heck's Estate, 120 Ore. 80, 250 Pac. 733 (1926).
[13] American Taxpayers' League, Bulletin No. 71.
[14] *In re* Opinion of Justices, *supra* note 11.
[1] Rhea v. Smith, 274 U. S. 434, 47 S. Ct. 698 (1927).

United States Supreme Court, in an opinion by Chief Justice Taft, held that the Missouri Conformity Act was not in accordance with the Act of Congress and that judgments of a Federal court in Missouri were liens upon land without being docketed in the state court. This case should receive the careful attention of abstracters.

The North Carolina Conformity Act has not been passed upon by the United States Supreme Court. The particular defect pointed out in the *Rhea* case is not applicable to the North Carolina statute but it is possible that a similar difficulty exists. The reasoning of the *Rhea* case is that if a state judgment has any advantage over a Federal judgment then the terms of the Act of Congress have not been met by the state statute and therefore Federal judgments do not have to be recorded in the state court. The question that arises is whether C. S. 613 gives a state judgment an advantage over a Federal judgment which would prevent the operation of the Federal Conformity Act. Under C. S. 613 a judgment of the Superior Court docketed during the term at which rendered or within ten days thereafter relates back to the first day of the term. Our State Supreme Court has said that the purpose of this relation back is to avoid an indecent haste in getting the ear of the court and has held that there is no relation back as against an intervening mortgage.[2] Under the theory behind these cases it is a natural conclusion that our court would hold that the relation back statute does not apply so as to give a state judgment priority over a Federal judgment docketed after the first day of a state court term and prior to the actual docketing of the state judgment. That conclusion has been reached by the New York Title & Mortgage Co. and they have instructed counsel upon their approved list that the examination of Federal court dockets is unnecessary. Other companies, however, take the view that until there is an explicit decision on the question the Federal judgment dockets must be examined. A decision of our Supreme Court carrying the doctrine of the above cases to its logical conclusion and holding that the relation back statute is limited to judgments *inter se* of the same parentage is much to be desired and in the absence of such holding it would appear advisable for the Legislature to amend the relation back statute so as to eliminate all doubt. Until the matter has been removed from the realm of uncertainty by one or the other

[2] See Riley v. Carter, 165 N. C. 334, 81 S. E. 414 (1914); McKinne v. Street, 165 N. C. 515, 81 S. E. 757 (1914); Fowle v. McLean, 168 N. C. 537, 84 S. E. 852 (1915).