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many life insurance and joint bank account cases to the contrary,[9] and in fact, ignored the whole doctrine of donee beneficiaries.[10]

Judges Steinert and Robinson recognized the case as involving a donee beneficiary and joined in a well-written dissent which concludes: "The result of the majority opinion will be that what heretofore has been thought to be an attractive form of government security will prove but a snare to those who rely upon it." The rule of the case will do more than defeat the purpose of those who purchase this type of bond. It strikes at every life insurance policy which contains the now usual clauses reserving to the insured the power to effect a change of beneficiary or realize the cash value of the policy, without consent of the named beneficiary.

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EXEMPTIONS OF REMAINDER INTERESTS IN THE INHERITANCE TAX STATUTE OF THE STATE OF WASHINGTON

Three recent cases involving the application of the inheritance tax statute of the State of Washington have raised some problems which should receive immediate attention.[1] The statute provides three different schedules of rates, the schedule applicable to any gift being determined by the relationship of the beneficiary to the deceased.[2] Class A includes any devise, bequest, legacy, gift or beneficial interest to any property or income therefrom which shall pass to or for the use or benefit of any grandfather, grandmother, father, mother, husband, wife, child or stepchild, or any lineal descendant of the deceased. The schedule of rates for class A provides for a tax of 1 per cent on amounts from $10,000 to $25,000; of 2 per cent on amounts from $25,000 to $50,000, and of higher rates for larger amounts. Class B includes gifts to a brother or sister. The schedule of rates for class B begins with a tax of 3 per cent on amounts from $1,000 to $5,000, 4 per cent on amounts from $5,000 to $10,000, and continues at an increasing rate for larger amounts. Class C includes gifts to all others. The schedule of rates for class C begins with a tax of 10 per cent on all amounts up to $10,000, 15 per cent on amounts from $10,000 to $25,000, and continues at an increasing rate for larger amounts. The classification set up by the statute is inclusive in that it covers all possible gifts to all persons. The statute provides for appraisement of property subject

[9]VANCE, *op. cit. supra* note 3; 1 BOGERT and 5 MICHIE, *op. cit. supra* note 8.

[10]The Washington court made no mention of the possibility that the transaction before it might be controlled by the Statute of Wills and In re Murphy's Estate, 193 Wash. 400, 75 P. (2d) 916 (1938), *rehearing denied*, 195 Wash. 695, 81 P. (2d) 779 (1938). Several unsuccessful attempts have been made to induce application of that statute to life insurance contracts in which the beneficiary's interest was not absolute. Martin v. Modern Woodmen, 253 Ill. 400, 97 N. E. 693 (1912); Johnston v. Scott, 76 Misc. Rep. 641, 137 N. Y. S. 243 (Sup. Ct. 1912). It would appear equally inapplicable to the contract in issue in Decker v. Fowler, 99 Wash. Dec. 485, 92 P. (2d) 254 (1939).

[1]In re Gochnour's Estate, 192 Wash. 92, 72 P. (2d) 1027 (1937); In re Hallstrom's Estate, 98 Wash. Dec. 193, 88 P. (2d) 405 (1939); In re Bolstad's Estate, 100 Wash. Dec. 25, 93 P. (2d) 726 (1939).

[2]REM. REV. STAT. (Supp. 1939) § 11202.

to the tax[3] and particularly for the manner of determining the value of gifts of life estates, estates for a term of years, and remainders.[4]

The first of this series of cases under discussion was *In re Gochnour's Estate.*[5] The facts are, shortly, that an estate valued at $9,369 was devised to a class A beneficiary for life, remainder to class B and C beneficiaries. The life tenant was given the power to consume the corpus of the estate. It was held that no inheritance tax could be collected although the remainder was valued at $6,315. The next case was *In re Hallstrom's Estate.*[6] An estate, valued at $3,350.51, was devised to a class A beneficiary for life, remainder to class C beneficiaries. The life tenant was not given the power to consume the corpus of the estate. The court held that no tax could be levied on the remainder. The result of these decisions was that the state was precluded from taxing a remainder interest preceded by a life estate to a class A beneficiary. It seemed that a loophole for evasion of the inheritance tax statute was opened.

Immediately after the *Hallstrom* case, the legislature amended the statute to withdraw the exemption extended to the remainder interests. The court had stated that the life tenant would, to the extent of the amount of the tax claimed on the remainder, be deprived of the "use and benefit" of the property devised if a tax were allowed. So the legislature deleted the words "for the use or benefit of"[7] from the statute. It now reads in effect that class A shall include "any gift or beneficial interest to any property" rather than "any gift or beneficial interest to *or for the use and benefit of* any property". The deletion was a futile gesture on the part of the legislature. The court in the latest decision, *In re Bolstad's Estate,*[8] said that the amendment does not change the effect of the *Gochnour* and *Hallstrom* cases because the deletion of those words left unchanged the proposition that a life tenant had a right to any income or beneficial interest devised to him and that this interest should not be decreased by an inheritance tax.

From the first two cases it was difficult to determine what would happen if the total value of the assets in the decedent's estate were in excess of $10,000. The *Bolstad* case answered the question in an altogether surprising manner. An estate, valued at $13,311.38 after all allowable deductions were made, was devised in trust for testatrix's son, remainder to class C beneficiaries upon the death of the son. Under the plan for determining the value of life estates and remainders, the life estate was valued at $8,271.27 and the remainder at $5,040.11. In a proceeding to determine the amount of inheritance tax due, it was held that the estate is exempt from taxation up to $10,000 and that the balance, $3,311.38, is taxable at the rate of 10 per cent. In allowing an exemption of the first $10,000 the court reiterated the proposition that the income to a class A beneficiary is to be protected against

[3]REM. REV. STAT. (Supp. 1939) § 11202-1.
[4]REM. REV. STAT. (Supp. 1939) § 11205.
[5]192 Wash. 92, 72 P. (2d) 1027 (1937).
[6]98 Wash. Dec. 193, 88 P. (2d) 405 (1939).
[7]Wash. Laws 1939, c. 202 § 1. For an expression of what effect it was thought this amendment would have see *Laws Relating to Inheritance Taxes and Escheats* (Wash. Tax Commission 1939) p. 7, n. to § 11202, and p. 15, n. to § 11205.
[8]100 Wash. Dec. 25, 93 P. (2d) 726 (1939).

encroachment by a tax on a remainder, but in permitting the 10 per cent tax on the sum in excess of $10,000 to be paid out of the corpus of the estate, it permitted just such an encroachment.

The proposition which the court completely brushed aside in all of these cases was that the statute sets up a plan for determining the value of life estates and remainders, the statute indicating thereby that the value of these interests is to be used in determining the amount which each beneficiary receives and that it is this value which in turn determines the rate to be applied. In the *Bolstad* case the corpus of the estate was divided for tax purpose into two units of $10,000 and $3,311, arbitrarily, instead of units of value that each class of beneficiaries receives, namely: $8,271 of value to the class A beneficiary, and $5,040 of value to the class C beneficiary. The only rationale that can explain this result and bring all of these cases into a semblance of harmony is that the court views the inheritance tax as a tax upon the transfer of specific things or objects, and as a result of this view applied to the statute, there cannot be a tax on the first $10,000 of specific things whenever a class A beneficiary is to enjoy them, however short may be the period of that enjoyment. It is submitted that this involves a wholly unjustifiable interpretation of the statute and has resulted in exemption, wholly or in part, of gifts in remainder contrary to the purpose of the statute.

What the court seems to have overlooked in applying the tax is that the actual property or "things" which belonged to a decedent may be divided between different persons upon the basis of time of enjoyment as well as of allocation between them of actual physical units. When one creates a life estate and a remainder in specified property worth $13,311 there are as truly two separate and distinct gifts as in the case of the physical division of $13,311 worth of property. The proper construction, therefore, is that the statute imposes a tax upon the transfer of *interests* in "things" or property, including of course any gift of a valuable right to use or enjoy the property of the decedent for a specified time. If the class A beneficiary had actually received $8,271, absolutely, and the class C beneficiary had received $5,040, absolutely, the rate applied would without doubt be 10 per cent to the $5,040 given to the class C beneficiary. There should be no greater difficulty applying the same rate to a non-possessory remainder which is an actual property interest worth $5,040.

The confusion, if any, is to be found in the matter of collection because of the section which makes the tax a lien on the estate until paid.[9] It is out of this provision that the objection of the court arises that the income to the life tenant is reduced if a tax is levied. However, this properly raises an issue as to when and how the tax is to be collected, not whether the tax is leviable. Another court has said that payment out of the estate is not an impairment of the life estate as such.[10] But even if unwilling to accept this viewpoint, the Washington court had another alternative. Taking into consideration the provisions relating to payment and collection of the tax[11] and the provision making the tax a lien on the estate until paid, the court could have

[9]REM. REV. STAT. (Supp. 1939) § 11205.
[10]Minot v. Winthrop, 162 Mass. 113, 38 N. E. 512 (1894).
[11]REM. REV. STAT. (Supp. 1939) §§ 11205, 11208, 11209, 11210.

said that the tax levied with respect to the gift in remainder should be collected from the remaindermen personally, and if not paid by them the tax would constitute a lien on the remainder interest *only*.[12] If the tax were levied on a gift of money, the tax would be taken from that amount only. Certainly neither of these constructions does the violence to the statute that the court does in creating by judicial fiat an exemption wholly foreign to the language of the statute applicable to class C gifts.

In both the *Gochnour* and *Bolstad* cases the life tenant was given the power to invade the corpus of the estate. This feature is chiefly important in determining the value of the life estate and the remainder. However, it is pertinent to the point here discussed because the existence of such a power seems to bring these cases within the section, which, ambiguously it is true, provides for holding in abeyance the collection of the tax on a remainder subject to a contingency until it becomes possessory.[13] If this section were so applied, the court's objection vanishes because no tax is payable until after the life tenant dies. Thus, there was a third alternative available to the court in two of the three cases.

As unsatisfactory as the results in these cases seem to be, not all of the criticism should be directed at the court. As those who have examined the inheritance tax statutes of this state know, they are a hodge-podge through which one finds his way with greatest difficulty. Starting in 1901 with a statute which was poorly phrased and more poorly constructed, it has been amended session after session by random insertions and deletions. There are no definitions; there seems to be no order or continuity. Closely related subjects are treated in widely separated sections; there is a bewildering intermixture of topics in every section. Ambiguity stalks throughout. Until the statutes are clarified by complete revision in light of current theories, practices and problems, we probably should not expect treatment of such a complex subject matter in a manner which is wholly free of the possibility of criticism.

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[12]For the idea that a devise of a remainder is subject to execution see Lockwood v. Nye, 2 Swan 515 (Tenn. 1852), 58 Am. Dec. 77 (1886).

[13]REM. REV. STAT § 11206. The court held that the remainder was vested in each case. In the absence of statutory authorization, it is doubtful that a tax should be levied on a remainder before it comes into possession where it is preceded by a life estate with a power in the life tenant to invade the corpus of the estate because the value of the remainder is uncertain. In re Mead's Estate, 145 Misc. Rep. 893, 261 N. Y. S. 328 (1932).