Washington Law Review

Volume 28
Number 3 *Washington Legislation—1953*

8-1-1953

Taxation

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beaver, deer, and elk was apparently found too harsh. The claimant now has ninety days within which to file his claim with the Game Department.[10]

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[10] L. 1953, c. 127.

TAXATION

Of the fourteen acts which relate directly to taxation four[1] are primarily administrative in nature, one[2] repeals an obsolete statute relating to property tax rebates, one[3] provides additional exemptions from county real estate sales tax, and one[4] provides more favorable treatment with respect to the taxation of extractors of copra. Of somewhat broader significance from a fiscal standpoint is the act[5] providing for reallocation of property tax millages under the forty-mill limitation law, and the act[6] relating to the number of electors required in special school elections held prior to November, 1954. The latter act has been the subject of recent press comment and litigation has been threatened because of uncertainty as to which "general election" is meant under the language of the act.

Of greatest significance from the standpoint of revenue is chapter 91 which extends until April 30, 1955, the "temporary" increase in the rates of business and occupation, public utilities and liquor taxes and applies the retail sales tax to the furnishing of lodging and similar services.

Among the enactments which received little, if any, attention in the press are several relating to inheritance and gift taxes. While the changes here made will have impact in only a limited number of cases the effect may be substantial in a situation to which the amendment applies.

Chapter 136 relates to inheritance tax. It establishes a new method for the evaluation of annuities, life estates, terms of years and the remainders expectant upon such present interests. The actuaries combined experience tables on the basis of four per cent annual interest

[1] L. 1953, c. 150, c. 151, c. 157 (each of which relates to motor vehicle tax enforcement), c. 240 (relating to cigarette tax). Chapter 94, § 2, also pertains to administrative procedure (allocation of funds collected) under the real estate sales tax.
[2] L. 1953, c. 103.
[3] L. 1953, c. 94, §1.
[4] L. 1953, c. 195.
[5] L. 1953, c. 175.
[6] L. 1953, c. 189.

is abandoned in favor of the mortality tables required by law for use by life insurance companies in determining values under ordinary life insurance policies, with interest computed at three and one-half per cent per annum. Under this act the tax commission is also permitted to accept security other than a surety company bond when the payment of inheritance tax upon a remainder is postponed until the time that such interest becomes possessory

Chapters 138 and 139, which relate respectively to inheritance tax exemptions and the gift tax exemptions, are similar in effect. The major change effected in each is a redefinition of the persons constituting class A beneficiaries and donees within the meaning of the two tax statutes. As amended the categories of persons included in the class are the same in each statute.

The effect of the two acts is to enlarge the categories of related persons included within class A. The words "lineal ancestors" are substituted for the present reference to parents and grandparents, thus enlarging the class to include ancestors in the third and more remote degrees. The "lineal descendants of a stepchild" and the "adopted child of a lineal descendant" are also added to the class. The words "lineal descendant" are changed in position and the unnecessary reference to "child" is deleted. Otherwise the members of the class remain as in the former law

Another change is made in the placement of one clause in the inheritance tax provision relating to exemptions.[7] The words "which allowance shall include all allowances in lieu of homestead and all family allowances in excess of one thousand dollars" are shifted from their former position in clause (A-1), which provides an exemption of $5,000 for the class, and are appended to the final sentence of the paragraph, which states that "All of the amounts specified in A-1, A-2 and A-3 shall be allowed as exemptions to class A as a whole and not to the persons mentioned therein." The reason for this change in position is not readily apparent, as the clause itself seems to have no particular relevance in either place. It would seem that in its original position it was merely window-dressing, an apparent attempt to justify the existence of the blanket exemption of $5,000 accorded to the class under (A-1) In its new position it lacks even that significance. Excision of the clause would seem to have been the better procedure, as this would have avoided the possibility of claim that the clause has some signifi-

[7] RCW 83.08.020 [Rem. Supp. 1943 §11202].

cance in fixing the amount of the exemptions which are allowable under this section.

Chapter 137 relates to inheritance tax. It is a revision of RCW 83.16.070 [RRS § 11202a] which provides exemption from inheritance tax on account of property previously taxed.

The former provision allowed an "exemption" of the value of any property which was included, and subjected to inheritance tax, in the estate of a prior decedent (who died within five years of the present decedent) whenever such property is included in the estate of the present decedent. The amount of the exemption was the value of the property in the estate of the prior decedent, excluding any increment in value between the dates of the two deaths.

The new provision allows an exemption of a portion only of the value of the property previously taxed. In so doing this state follows the federal estate tax statute which requires a proportionate reduction of the deduction allowed under the federal law with respect to property previously taxed.[8]

Under the former state provision the property previously taxed was, in effect, treated as though it were completely separate and apart from the other assets comprising the estate of the present decedent. Even though claims and other charges are deductible in determining the property taxable in the estate of the present decedent and even though class exemptions are allowed in the estate of the present decedent, as they were in the estate of the prior decedent, the exemption for property previously taxed was allowed to the full extent of the value of the property at the time it was included in the estate of the prior decedent. The theory of the federal estate tax statutes as well as of the new state provision is that such full allowance improperly affords a double deduction; and that the deduction or exemption of property previously taxed should be allowed in proportion only to the property which is taxable, taking into consideration deductions allowable and the specific or class exemptions granted.

Having accepted the general philosophy of the federal estate tax statute the new state law fails, however, to follow the pattern of the federal law in determining the amount by which the exemption shall be reduced. The federal statute and regulations pertaining to the deduction for property previously taxed are undoubtedly as complex as any in the estate tax law. Few are the lawyers, even of the Philadelphia

[8] INT. REV. CODE § 812 (c).

variety, who can read and readily understand the provisions of INT. REV CODE § 812 (c) The federal statutory provisions, however, have been worked out after careful study by both the Bureau of Internal Revenue and the expert staff of the Congressional committees. The fact that a fairly acceptable, even though complex, scheme has been evolved at that level would seem to justify as close adherence as possible to the federal pattern when the general theory of the federal statute is adopted at the state level. But instead of following the federal pattern the new state law injects a new factor into its formula. "the proportion of deductions chargable and any exemptions allowed against the property previously taxed *in the estate of the prior decedent*" [italics supplied] must be taken into consideration. Under the federal law, as complex as it is, only the claims and exemptions in the estate of the *present decedent* are taken into consideration in arriving at the proportionate reductions. But the new Washington rule requires that claims and exemptions in the estate of the *prior decedent* as well as deductions chargeable against the property previously taxed in the estate of the *present* decedent be taken into consideration. The new statute states that the proportionate reduction, in accord with statutory standards, "shall be determined under the rules prescribed by the tax commission." If the tax commission, under a statute which requires consideration of such factors, can provide a formula which can be readily understood and applied, most persons who have had occasion to struggle with the federal statute and regulations relative to property previously taxed will be duly amazed. However, as the new state provision was undoubtedly enacted with the approval of the commission, it must be assumed that the commission will provide a formula which will resolve doubts on this score.

The established policy in this state has been to limit the exemption for property previously taxed to those cases in which the relationship between both (a) the prior decedent and the present and (b) the present decedent and the persons taking from the present decedent are in close relationship by blood or marriage. Unless the statutory relationship exists between both (a) prior-present decedents and (b) present decedent-takers, the state law denies exemption for property previously taxed. This is true under both the former and the new provision, al-

though no such limitation exists under the federal estate tax statute.[9] The new statute clears up some ambiguities which existed under the former provision and clearly specifies that the relationship in both instances must be those specified in the case of class A exemptions.

Like the former statute the new provision does not afford an exemption for property upon which a gift tax has been paid by decedent's donor within the five-year period prior to the present decedent's death. The federal law applies the deduction to both types of cases. The avoidance of double taxation within a period of five years is the reason for allowing the exemption for property previously taxed. Whether the previous tax is imposed under the state inheritance tax statute or under the state gift tax statute would seem to be immaterial. Here, again, there seems to be no substantial reason for failing to follow the pattern of the federal estate tax law.

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[9]The difference in this respect between state and federal laws stems from the fact that the state imposes a classified inheritance tax whereas the federal tax is an estate tax levied without reference to the relationship between the decedent and those who take from him.

TORTS

Survival of Actions—Death of Tort-Feasor. This Act represents a long overdue attempt to reform a particularly barbarous segment of the law by providing for the survival of causes of action for bodily injuries, property damage, or wrongful death against the deceased tort feasor. It is not entirely clear that it will succeed; in 1869 a statute was passed saying that "all causes of action . . . by one person against another, whether arising on contract or otherwise, survive to the personal representative of the former and against the personal representative of the latter." One would suppose that nothing could be clearer—that the legislature could have done nothing more than to add the phrase "and we mean it"—but by that strange alchemy which courts occasionally practice the statute was transmuted to read "all causes of action which survive at common law . . . survive,"[2] thereby furnishing as neat an example of judicial legislation as can readily be brought to mind. Nor was it in a good cause, or for justifiable ends; the origin and limits of the common law scheme of survival are not only wrapped in

[1] RCW 4.20.040 [RRS §967].
[2] Slauson v. Schwabacher Bros., 4 Wash. 783, 31 Pac. 329 (1892).