

CHAPTER 291

INHERITANCES, DEVISES, BEQUESTS

291.01 TAX IMPOSED

HISTORY. Amended, 1949 c 735 s 1; 1953 c 629 s 1.

Laws 1943, Chapter 504, relating to inheritance and transfer taxes. 31 MLR 74.

Inclusion in the gross estate of trust property in which beneficial interest or possibility of reversion is reserved to the settler. 31 MLR 278.

Transfers in trust intended to take effect in possession or enjoyment at or after the death of the transferror; distribution of corpus to income beneficiary at settler's death. 33 MLR 95.

Federal estate taxes; transfers intended to take effect in possession or enjoyment at or after the death of the transferror. 33 MLR 549.

Federal estate tax, ultimate burden upon the state. 34 MLR 704.

Jurisdiction of state to impose estate taxes. 34 MLR 707.

Marital deduction; estate tax. 36 MLR 50.

Unlike federal estate taxes, the state inheritance tax, imposed upon privilege of receiving property rather than upon privilege of transferring it. *State v Wagner*, 233 M 241, 46 NW(2d) 676.

While the words used in a federal estate tax law are identical to those contained in state statutes where there is a transfer intended to take effect in possession or enjoyment at or after death, the federal statute imposes not an inheritance but an estate tax in which the crucial test of liability is the transfer of an interest rather than the coming into beneficial enjoyment of an interest on the death of the grantor whose act created such interest. There is a distinction between a gift inter vivos of an entire estate and one which is divided into a life use and remainder. The Minnesota inheritance tax law was intended to tax gifts which were made in lieu of testamentary disposition. The inheritance tax was never intended to be a gift tax. Its aim was the more limited one of taxing successions occurring as the result of the death of the owner of the transferred property in situations in which such owner had enjoyed the economic benefits of the property until the moment of his death. In the instant case where the settler has completely divested herself of all interest and control in the property by a present inter vivos transfer to a designated beneficiary for the life of the settler and remainder over on her death lacks the essential characteristics of a testamentary disposition of the property and is not a substitute therefor so as to be subject to the tax under the Minnesota Inheritance Tax Law; and the four irrevocable trusts created by Lena Bohn were complete inter vivos transfers of property passing a present beneficial interest in possession and enjoyment to the beneficiaries and are not taxable as transfers intended to take effect in possession and enjoyment at or after death. *Chase v Commissioner, MBTA*, Oct. 16, 1947, 289.

Prior to July 15, 1937, the decedent took out four insurance policies on his own life and later irrevocably transferred these policies to his wife. She thereafter paid certain premiums and consented to certain changes in the policy contract. Upon death of the decedent in 1944 the commissioner included the proceeds of the four policies in the decedent's estate and assessed an inheritance tax thereon. The commissioner contends that under the facts the entire proceeds must be included in the decedent's estate. An additional inheritance tax was due in the amount of \$1,309.90, based upon the total insurance policies of \$49,528.45. The appeal board affirmed the commissioner's order except that \$22,865.32, the amount of premiums paid by decedent's wife after the policies were assigned to her, should be deducted from the \$49,528.45 and the tax re-computed so as to tax the remaining difference. The legis-

lature intends to tax only transfers of a donative nature. *Pearson v Commissioner, MBTA, Dec. 27, 1948, 319.*

The taxpayer and her husband were the owners of a residence in joint tenancy which they sold on Dec. 27, 1948. At the same time plans were laid, although there was no contract, for the purchase of a new homestead. The taxpayer and her husband did not cash the drafts amounting to \$9,000 which they received for their homestead. In the sale of their homestead they were authorized to occupy the premises until March 1, 1949. The husband died on Jan. 3, 1949. The taxpayer withdrew the \$9,000 in checks from the safety deposit vault and purchased a new homestead on Jan. 17, 1949. The taxpayer contended that the \$9,000 represented proceeds from the sale of a homestead and as such should be exempt from the taxation and asks that the \$9,000 be not included in the inheritance tax computation. The board finds that the taxpayer and her husband lost their homestead exemption when they sold their property on Dec. 27, 1948, and received full payment from the same. The \$9,000 on hand at the time of the death of the husband does not constitute a homestead and is therefore not exempt and the commissioner properly included the amount of \$9,000 in determining the inheritance tax. *Goodrich v Commissioner, MBTA, March 16, 1950, 340.*

Certiorari upon the relation of the commissioner of taxation to review a decision of the board of tax appeals determining that certain properties transferred in trust by Lena Bohn prior to her death should not be included in her estate so as to be subject to an inheritance tax under section 291.01. *Chase v Commissioner of Taxation, 226 M 521, 33 NW(2d) 706.*

The transfer here, wherein the donor completely divested herself of all title to and control over both income and principal and whereunder distribution of principal to donor's children was withheld until donor's death, became subject upon such death to the inheritance tax imposed by section 291.01 as a transfer intended to take effect in possession or enjoyment at or after the death of the donor. *Chase v Commissioner of Taxation, 226 M 521, 33 NW(2d) 706.*

Except when power of taxation is granted to municipalities, taxing power is exercised solely by the legislature, and the burden of establishing the validity of its taxing power rests on the municipality. *Carter v City of St. Louis, 203 SW(2d) 438.*

City of St. Louis "earnings tax" of one-fourth of one percent on gross salaries, wages, and commissions, and on profits, covering not only residents but nonresidents, with respect to activities in St. Louis, imposed for general revenue purposes, is not a "license tax" under police power, but a species of "income tax" or "excise tax." Notwithstanding the liberal charter provision, such tax was not within the city's power. All who go to a city must obey its police regulations and some excise taxes, especially if they are pseudo-regulatory and therefore partake of the police power, but generally, such taxes are imposed only on citizens or residents of the jurisdiction. *Carter v City of St. Louis, 203 SW(2d) 438.*

"Inheritance" includes all methods by which a child or relative takes property from another at his death, except by devise, and includes succession as well as descent; but a bankrupt's share of proceeds from settlement of a claim under the Federal Employers' Liability Act for wrongful death of his son, which was acquired within six months of filing of a petition in bankruptcy, did not constitute an "inheritance" so as to vest in the bankrupt's trustee. *In re McHugh, 75 F. Supp. 766.*

A with his own funds purchased a Series E war savings bond, made payable to "A or B," and placed the bond in his safety deposit box where it is found upon A's death. A died intestate and B survived him. Such bond evidences a contract between the federal government and the purchaser and is governed by federal law and regulations. Under the 1945 supplement of the code of federal regulations, title 31, section 315.45 (C) if either co-owner dies without the bond having been presented and surrendered the surviving co-owner is recognized as the sole and absolute owner of the bond. Under this rule, upon A's death the ownership of the bond passes directly to B by operation of contract and does not become a part of A's estate. An inheritance tax accrues on A's death under the provisions of section 291.01 and the surviving co-owner is personally liable for the inheritance tax to the extent of the value of the bonds. *OAG March 31, 1948 (424-C-29) (242-A-18).*

MINNESOTA STATUTES 1953 ANNOTATIONS

813

INHERITANCES, DEVISES, BEQUESTS 291.05

If a death certificate is filed with the register of deeds, the lien of the State of Minnesota on joint tenancy property expires ten years thereafter. OAG Aug. 26, 1952 (242-A-18).

An inheritance tax lien upon the interest of deceased in jointly held mortgage requires tax clearance with the registrar of titles before obtaining a memorial upon the certificate evidencing transfer of title to the surviving joint tenant. OAG Nov. 12, 1947 (242-C-5).

291.02 RATE OF TAX

HISTORY. 1905 c 288 s 2; 1911 c 372 s 2; 1913 c 455; GS 1913 s 2272; 1919 c 410; Ex1919 c 4; GS 1923 s 2293; 1927 c 205 s 1, 2; MS 1927 s 2293; 1939 c 338 s 2; 1943 c 504 s 3.

The state inheritance tax unlike the federal estate tax is imposed upon the privilege of receiving the property rather than the privilege of transferring. Where no standardized market for the particular kind and quantity of property being valued is shown to exist, its "full and true value" for inheritance tax purposes is not to be determined on the basis of market value, but is the fair value determined by reference to all relevant facts in evidence. The price at which 100 shares of corporate stock were sold on the New York Curb on the date of decedent's death, though not controlling, should be given some weight in determining the full and true value of a large block of corporate stock for inheritance tax purposes. The appellate court will not overthrow the finding of the trial court as to the value of property for inheritance tax purposes unless such finding is manifestly against the weight of evidence. *State v Wagner*, 233 M 246, 46 NW(2d) 676.

291.03 PRIMARY RATES

HISTORY. 1905 c 288 s 2; 1911 c 372 s 2; 1913 c 455; GS 1913 s 2272; 1919 c 410; Ex1919 c 4; GS 1923 s 2293; 1927 c 205 s 1, 2; MS 1927 s 2293; 1939 c 338 s 2a; 1943 c 504 s 3.

291.04 EXCESS RATES

HISTORY. 1905 c 288 s 2; 1911 c 372 s 2; 1913 c 455; GS 1913 s 2272; 1919 c 410; Ex1919 c 4; GS 1923 s 2293; MS 1927 s 2293; Ex1937 c 50 s 1; 1939 c 338 s 2b; 1943 c 504 s 3.

291.05 EXEMPTIONS

HISTORY. 1905 c 288 s 2; 1911 c 372 s 2; 1913 c 455; GS 1913 s 2272; 1919 c 410; Ex1919 c 4; GS 1923 s 2293; 1927 c 290 s 1; MS 1927 s 2293; 1931 c 208; Ex1937 s 50 s 2; 1939 c 338 s 2c; 1943 c 504 s 3; 1949 c 735 s 2; 1951 c 180 s 1.

Taxation of Series E bonds. 32 MLR 158.

State inheritance tax; homestead exemption; applicability of equitable conversion by contract. 33 MLR 209.

Marital deduction; estate tax. 36 MLR 50.

All instruments pertaining to charitable trusts are to be construed liberally in behalf of such trusts; and under a will devising real estate to a corporate foundation to be devoted to furtherance of its general objects and purposes with unrestricted power in the board of trustees to dispose of the property devised for the promotion of religious, educational, scientific, medical, surgical, social or charitable activities within the purpose of the corporation, the gift was in trust for charitable purposes. In *Re Quinlan's Estate*, 233 M 35, 45 NW(2d) 807.

Where a homestead occupied by husband and wife as joint tenants was, on April 22, 1947, sold for \$10,500, possession to be reserved until July 1, 1947, and where at the time of the death of the husband on June 22, 1947, \$5,000 was paid and the cash reserved to purchase a new homestead, and the remaining \$5,500 due on the contract, the order of the commissioner of taxation is amended to show joint tenancy in prop-

MINNESOTA STATUTES 1953 ANNOTATIONS

291.06 INHERITANCES, DEVISES, BEQUESTS

814

erty in the gross amount of \$10,338.73. Minnesota adheres to the doctrine of equitable conversion whereby a vendee under a contract for deed is deemed in equity to be the owner of the land, and the vendor is deemed in equity to be the owner of the money. Ownership of the legal title which at all times remains in the vendor provides ample justification for the claim of homestead when advanced by a vendor. Since the \$5,500 balance due on the contract for deed covers the homestead of decedent, it partakes of the inheritance tax immunity of the homestead and should be excluded from the property upon which an inheritance tax is levied. *Boldt v Commissioner, MBTA*, July 8, 1948, 316.

The taxpayer and her husband were the owners of a residence in joint tenancy which they sold on Dec. 27, 1948. At the same time plans were laid, although there was no contract, for the purchase of a new homestead. The taxpayer and her husband did not cash the drafts amounting to \$9,000 which they received for their homestead. In the sale of their homestead they were authorized to occupy the premises until March 1, 1949. The husband died on Jan. 3, 1949. The taxpayer withdrew the \$9,000 in checks from the safety deposit vault and purchased a new homestead on Jan. 17, 1949. The taxpayer contended that the \$9,000 represented proceeds from the sale of a homestead and as such should be exempt from the taxation and asks that the \$9,000 be included in the inheritance tax computation. The board finds that the taxpayer and her husband lost their homestead exemption when they sold their property on Dec. 27, 1948, and received full payment from the same. The \$9,000 on hand at the time of the death of the husband does not constitute a homestead and is therefore not exempt and the commissioner properly included the amount of \$9,000 in determining the inheritance tax. *Goodrich v Commissioner, MBTA*, March 16, 1950, 340.

291.06 LIMITED EXEMPTIONS

HISTORY. 1905 c 288 s 2; 1911 c 372 s 2; 1913 c 455; GS 1913 s 2272; 1919 c 410; 1919 c 4; GS 1923 s 2293; 1927 c 290 s 1; MS 1927 s 2293; 1939 c 338 s 2d; 1943 c 504 s 3.

The value of the widow's life estate in homestead is exempt within the limit set forth and since the widow takes only a life estate, the exemption granted her does not apply to the rental interest in that property. OAG March 12, 1951 (242-A-5).

291.07 EXPENSES OF ADMINISTRATION

HISTORY. 1905 c 288 s 2; 1911 c 372 s 2; 1913 c 455; GS 1913 s 2272; 1919 c 410; Ex1919 c 4; GS 1923 s 2293; 1927 c 290 s 1; MS 1927 s 2293; 1939 c 338 s 2e; 1943 c 504 s 3.

291.08 APPORTIONMENT OF EXPENSE

HISTORY. 1905 c 288 s 2; 1911 c 372 s 2; 1913 c 455; GS 1913 s 2272; 1919 c 410; Ex1919 c 4; GS 1923 s 2293; 1927 c 290 s 1; MS 1927 s 2293; 1939 c 338 s 2f; 1943 c 504 s 3.

291.09 DETERMINATION OF TAX

HISTORY. 1905 c 288 s 2; 1911 c 372 s 2; 1913 c 455; GS 1913 s 2272; 1919 c 410; Ex1919 c 4; GS 1923 s 2293; 1927 c 290 s 1; MS 1927 s 2293; 1939 c 338 s 2g; 1943 c 504 s 3.

291.11 TIME EFFECTIVE

HISTORY. 1905 c 288 s 3; 1911 c 209 s 1; Mason's 1927 s 2294; 1939 c 338 s 3; 1943 c 504 s 4, 5; 1953 c 657 s 1.

Where properties were transferred in trust by donor before her death by trust instrument which divested owner of all title and control over income or principal, and distributed the principal to the donor's children effective upon the donor's death, the transfer was subject to an inheritance tax as a transfer intended to take effect in possession or enjoyment at or after the death of the donor. *Chase v Commissioner*, 226 M 521, 33 NW(2d) 706.

MINNESOTA STATUTES 1953 ANNOTATIONS

815

INHERITANCES, DEVISES, BEQUESTS 291.34

291.12 COLLECTION OF TAX

HISTORY. 1905 c 288 s 4; Mason's 1927 s 2295; 1939 c 338 s 4; 1943 c 504 s 6; 1953 c 638 s 1.

291.15 INTEREST

HISTORY. 1905 c 288 s 7; Mason's 1927 s 2298; 1943 c 504 s 7; 1953 c 659 s 2.

291.18 TAX ERRONEOUSLY PAID; REFUNDMENT

HISTORY. 1905 c 288 s 10; Mason's 1927 s 2301; 1943 c 593 s 2; 1947 c 556 s 1; 1951 c 180 s 2.

291.19 PERSONAL PROPERTY OF NONRESIDENT DECEDENT; TRANSFER

HISTORY. Subdivisions 5, 6, 7; Repealed, 1947 c 556 s 3.

291.20 SAFETY DEPOSIT COMPANIES NOT TO TRANSFER FUNDS

When necessary for the county treasurer to use his own car when inspecting safety deposit boxes, he may charge five cents per mile mileage. OAG Jan. 26, 1948 (450-F-3).

291.21 COMMISSIONER OF TAXATION TO RECEIVE LIST OF PROPERTY

HISTORY. 1905 c 288 s 13; 1911 c 209 s 3; MS 1927 s 2304; 1939 c 338 s 7; 1939 c 431 art 6 s 6; 1943 c 504 s 9; 1943 c 593 s 4.

291.23 INHERITANCES, HOW APPRAISED

An authoritative writer and consultant of business groups and government agencies, having an extensive background of practical experience in the investment field, and extensive academic training and experience in economics and investments, is competent to express an opinion on the values of corporate stock for inheritance tax purposes. *State v Wagner*, 233 M 241, 46 NW(2d) 676.

291.28 Unnecessary.

291.29 RECORDS; REPORTS

HISTORY. 1905 c 288 s 21; 1913 c 565 s 2; Mason's 1927 s 2312; 1943 c 504 s 10; 1953 c 626 s 1.

291.30 WHEN ESTATE OF NONRESIDENT NOT PROBATED

Under the tax laws of the United States interest in the partnership is a capital asset gain on the transfer of which is to be taxed as a capital gain even though the partnership assets included non-capital assets. *U.S. v Shapiro*, 178 F(2d) 459.

291.33 PAYMENTS TO COUNTIES

HISTORY. 1905 c 288 s 21-D; 1911 c 209 s 9; Mason's 1927 s 2316; 1943 c 598 s 8; 1945 c 498 s 1; 1953 c 649 s 1.

291.34 ESTATE TAX

Jurisdiction of state to impose estate taxes. 34 MLR 707.

Exclusion from decedent's gross estate, for federal estate tax purposes, of property held in joint tenancy to extent that survivor's contribution to purchase price consisted of income from decedent's inter vivos gives to survivor. 35 MLR 678.

MINNESOTA STATUTES 1953 ANNOTATIONS

291.35 INHERITANCES, DEVISES, BEQUESTS

816

Funds constituting a trust, under terms of which the settler merely gave up physical control over the corpus of the trust for his lifetime reserving the power to designate the manner of distribution of income or principal of the corpus from and after his death either gratuitously or for a consideration, should be included in his gross estate subject to the federal estate tax. *First Trust Co. of St. Paul v Kelm*, 105 F. Supp. 667.

291.35 TIME OF PAYMENT

HISTORY. 1931 c 332 s 2; Mason's Supp s 2321-2; 1953 c 627 s 1.

291.40 APPORTIONMENT OF ESTATE TAX

HISTORY. 1931 s 332 s 7; M Supp s 2321-7; 1951 c 249 s 1.

Federal estate tax, ultimate burden on the estate. 34 MLR 704.

DOMICILE OF DECEDENTS FOR DEATH TAX PURPOSES

291.41 DEFINITIONS

HISTORY. 1951 c 247 s 1.

291.42 ELECTION TO INVOKE

HISTORY. 1951 c 247 s 2.

291.43 AGREEMENT AS TO DEATH TAX

HISTORY. 1951 c 247 s 3.

291.44 DETERMINATION OF DOMICILE WHEN NO AGREEMENT

HISTORY. 1951 c 247 s 4.

291.45 ACCEPTANCE OF AGREED SUM IN FULL PAYMENT

HISTORY. 1951 c 247 s 5.

291.46 PENALTIES, INTEREST; LIMITATION

HISTORY. 1951 c 247 s 6.

291.47 APPLICATION

HISTORY. 1951 c 247 s 7.

CHAPTER 292

GIFT TAXES

292.01 GIFT TAX

Taxation upon completed gifts. 32 MLR 646.

Gifts in trust to minors. 36 MLR 295.

Estate and gift taxes. 36 MLR 918.