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means has little if any opportunity to withdraw or revoke? Moreover, is a principle of contract law to be made subject to variations in postal regulations? It is believed that the rule of *Adams* v. *Lindsell* is the better view. It can make little practical difference to the offeror if the offeree withdraws his acceptance, because the offeror will not act in reliance on the contract until an acceptance is received. There are cases decided after adoption of the Postal Regulations of 1913 in which the doctrine of *Adams* v. *Lindsell* was followed. However, these postal regulations were not called to the attention of the court.[16] Even so, it is believed that these cases reach the better result, and that an acceptance should become effective when posted.[17]

ROBERT A. PALMER

FEDERAL ESTATE TAXATION—SOME PROBLEMS IN APPORTIONMENT (IN THE ABSENCE OF WILL PROVISION OR IN INTESTATE ESTATES)

The federal estate tax is calculated in much the same manner as the federal income tax. There is a determination of the gross taxable estate,[1] from which are subtracted the allowable deductions and exemptions.[2] The resulting sum is defined as the net taxable estate and upon this sum the tax is based.[3] The responsibility of paying the tax is on the personal representative of the estate.[4] The "Gross Estate," as defined by the Internal Revenue Code, includes not only real and personal property of the decedent which passes by will or by intestacy but also interests which are not subject to administration (sometimes termed non-testamentary interests) such as life insurance proceeds, joint and community property, property over which the decedent held a power of appointment, gifts in contemplation of death, transfers intended to take effect in possession or enjoyment at or after death, and trusts subject to amendment or revocation.[5] As noted above, payment of the tax on these non-testamentary interests is made the responsibility of the personal representative, regardless of the fact that such property may never come within his control.[6]

[16] Barnebey v. Barron G. Collier, 65 F. 2d 864 (C.C.A. 8th 1933); Shubert Theatrical Co. v. Rath, 271 Fed. 827, 20 A.L.R. 846 (C.C.A. 2d 1921); J. R. Watkins Co. v. Hill, 214 Ala. 507, 108 S. 244 (1926); International Transp. Ass'n v. Des Moines Morris Plan Co., 215 Iowa 268, 245 N.W. 244 (1932); McAlister v. Klein, 81 Okla. 291, 198 P. 506 (1921).

[17] The risk thereby placed on the offeror can be avoided by conditioning the offer so as to require receipt of the letter of acceptance.

[1] 26 U.S.C. sec. 811.

[2] 26 U.S.C. sec. 812.

[3] 26 U.S.C. sec. 810.

[4] 26 U.S.C. sec. 822 (b).

[5] 26 U.S.C. sec. 811.

[6] U.S. Treas. Reg. 105, sec. 81.76.

A real problem necessarily evolving from the fact that the federal estate tax is imposed on property not part of the estate for administration purposes, relates to the burden of the tax. Is the beneficiary of the property increasing the taxable estate though not subject to administration liable to the personal representative for that portion of the tax attributable to such property or must the entire tax be paid from the residuary estate or personal property without reimbursement from the beneficiary of such property?

The History and General Principles. Prior to 1942 there was uncertainty in the United States both as to whether the estate tax was to be apportioned among the beneficiaries of the property comprising the taxable estate in proportion to the benefit received by each and whether the states could determine the ultimate burden of the tax.[7] Although the estate tax had been in effect for twenty-five years, the federal law did not fix the burden of the tax except insofar as Internal Revenue Code sections 826 (c) and (d) provide that unless the decedent directs otherwise the executor shall be entitled to recover a ratable share of the tax from insurance beneficiaries and property subject to a power of appointment.[8] Other than these provisions the Code is silent on who should bear the burden of the tax. Consequent courts repeatedly held that federal law had preempted the field and state courts could not create any rule concerning the burden of the tax.[9]

In 1930 the New York Legislature passed an apportionment statute.[10] *In Matter of Del Drago,*[11] the New York Court of Appeals held the statute in conflict with federal law saying, "The Congress has spoken, and it is our function to interpret, not to legislate."[12] This ruling ultimately led to the United States Supreme Court decision in *Riggs* v. *Del Drago,*[13] where the court said that federal law does not direct how the estate tax is to be distributed, nor does it determine who shall bear the ultimate burden of the tax. Internal Revenue Code section 826 (b) provides only that the final impact of the tax shall be the same as though it had first been taken out of the estate before distribution, leaving to state law the determination of who should bear

[7] Note, 40 COL. L. REV. 690 (1940).

[8] Beneficiaries of life insurance proceeds or property subject to a power of appointment must bear a pro rata share of the estate tax unless the will provides otherwise. 26 U.S.C. 826 (c) & (d).

[9] Bemis v. Converse, 246 Mass. 131, 140 N.E. 686, 687 (1923); Matter of Hamlin, 226 N.Y. 407, 124 N.E. 4 (1919), cert. den. Hamlin v. Wellington, 250 U.S. 672, 40 S.Ct. 14, 64 L. Ed. 1200 (1919).

[10] Laws of New York 1930, c. 709, now section 124 of Decedent's Estate Law.

[11] 287 N.Y. 61, 38 N.E. 2d 131 (1941).

[12] *Id.*, 38 N.E. 2d 131, 140.

[13] 317 U.S. 95, 87 L. Ed. 106, 63 S. Ct. 109, 142 A.L.R. 1131 (1942).

the burden.[14] This stand was reaffirmed at the same term of court in *Harrison* v. *Northern Trust Company*.[15] Thus, the ultimate burden of the federal estate tax depends upon state law, since Congress has not undertaken to deal with the question except to the extent that Internal Revenue Code sections 826 (c) and (d) deal with life insurance proceeds and appointive property.

In some jurisdictions the rule is that the estate taxes ultimately must be borne by the residuary or personal estate.[16] The rationalization of this rule is that since the tax is a debt against the estate and since under the general rule debts are payable from the residuary or personal estate, the tax should be payable wholly from these estates.[17] This rule generally is criticized and is made subject to many exceptions because of its impracticability in many situations.[18]

In other jurisdictions it is the rule by statute or case authority that the ultimate burden of the estate tax must be shared ratably by every part of the taxable estate.[19] The rationale of this rule is that since the tax is imposed upon the entire taxable estate, the entire taxable estate should share in the payment thereof.[20] Thus, each beneficiary is required to pay that portion of the total tax obligation which can be attributed to the assets which he has received or is to receive.

The Kentucky Rule. Kentucky has been one of the leading states which has reached an apportionment result as a matter of case law in both testate and intestate estates. In the early case of *Hampton's Adm'rs* v. *Hampton*,[21] and subsequently in *Martin* v. *Martin's Adm'rs*,[22] both involving intestate estates, the question before the court was whether personalty and realty should share the federal tax equally when state law provides for the payment of obligations of the estate out of the personal property. The court held that all classes of property

[14] Of course the will may direct who is to bear the tax, but this note is limited in scope to intestate estates and testate estates where the will is silent as to the burden of the tax.

[15] 317 U.S. 476, 87 L. Ed. 407, 63 S. Ct. 361 (1943).

[16] Annotation, 37 A.L.R. 2d 150, 176 lists fourteen states of which several have made a change in their case rule by adopting apportionment statutes, at p. 177. Alabama has a statute specifically forbidding apportionment. Ala. Code (1940, 1951 Cum. Supp.) tit. 51, sec. 449 (1).

[17] Plunkett v. Old Colony Trust Co., 233 Mass. 471, 124 N.E. 265, 7 A.L.R. 696 (1919); Turner v. Cole, 118 N.J. Eq. 497, 179 A. 113 (1935).

[18] General exceptions to the rule; (1) When the testator leaves no residuary estate, (2) When the residuary estate is less than the tax due, (3) When the residue is real property and taxes are to be paid out of the personalty, (4) When the probate estate is insolvent, but the tax is due because of non-testamentary assets, and (5) When there is no residue estate because the decedent was intestate. 37 A.L.R. 2d 150, 179 (1954).

[19] *Ibid.*

[20] Wilmington Trust Co. v. Copeland, 94 A. 2d 703 (Del. 1953).

[21] 188 Ky. 199, 221 S.W. 496, 10 A.L.R. 515 (1920).

[22] 283 Ky. 513, 142 S.W. 2d 164 (1940).

should make a pro rata contribution to the tax without regard to whether the property received was personalty or realty. The court said in the later decision:

> . . . . Appellants contend that the tax—whatever may be its true name or character—should be treated under our statute of Descent and Distribution as a debt or as an ad valorem tax against all the property comprising the estate and payable primarily out of the personalty of the decedent's estate before resorting to his real estate. . . .[23]
>
> . . . . However, since no such requirement is made in the federal statute levying the tax, and since it would, as held in the Hampton opinion, be unjust and inequitable, we conclude that in the absence of specific direction to the contrary justice requires that all classes of beneficiaries participating in the net value of the estate left after the federal tax is satisfied and deducted should, as between themselves, bear their just proportion of it. . . .[24]

In the more recent case of *Trimble* v. *Hatcher's Ex'rs*,[25] the testator had made gifts which the taxing authorities held to be in contemplation of death. The court, having opportunity to pass upon the question of apportionment of taxes in testate estates as to non-testamentary property, held that the executor had a right to obtain contribution from the donee. Thus the Kentucky court holds that the estate tax must be ratably apportioned among realty, personalty, testamentary property, and property not subject to administration.

The Huber Case. Simple though the basic rule of apportionment may be, many problems arise in its application. One particularly difficult problem faced by the Kentucky Court was that caused by the passage in 1948 of the "marital deduction" provisions of the Internal Revenue Code.[26] In *Lincoln Bank & Trust Co. v. Huber*,[27] the plaintiff's husband died testate and plaintiff elected to renounce the provisions of the will and recover from the executor her statutory one-half interest in the surplus personalty as provided for in Kentucky Revised Statutes section 392.020. The plaintiff contended that, since the estate was entitled to deduct this one-half interest from the gross estate under the marital deduction provisions of the Internal Revenue Code, her one-half interest was not included in the net taxable estate for tax purposes and should not have to bear any portion of the tax imposed upon the net taxable estate. The court held that under the rule of equitable apportionment the plaintiff's contention was sound, saying:

[23] *Id.*, at 516, 142 S.W. 2d at 165.
[24] *Id.*, at 518, 142 S.W. 2d at 167.
[25] 295 Ky. 178, 173 S.W. 2d 985 (1943).
[26] 26 U.S.C. 812 (e) (1).
[27] 240 S.W. 2d 89 (Ky. 1951).

> . . . . We conclude that if the marital allotment is a deductible item before arriving at the net taxable estate, and since that item does not add to the tax, it cannot be burdened with any portion of the federal estate tax. The surviving spouse, therefore, should receive her share undiminished by any federal estate tax.[28]

This case on first impression would seem to be an exception to the rule of pro rata distribution of the tax burden. However, it is submitted that the equitable apportionment rationale of the pro rata distribution rule does support the decision. The basis of the rule of equitable apportionment is that since the tax is imposed upon the entire taxable estate, it is *equitable* for the entire taxable estate to bear a proportionate share of the burden of the tax. Thus, since a particular item does not ultimately contribute to the burden of the tax because it is a deduction, it is equally equitable that such an item should not share in payment of the tax. The same result is reached by many state apportionment statutes.[29]

If the Kentucky Court in the *Huber* case had reached the final result by only that rationalization set forth above, the case would be

[28] *Id.* at 91.

[29] Eleven state statutes provide that in apportioning federal estate taxes among the beneficiaries, the surviving spouse should have the benefit of the marital deduction. One example of a statute of this type is that of Pennsylvania which seems to be a fairly uniform statute among the states.

"Apportionment of the estate tax, except as provided in section 3, shall be made among persons interested in property includible in gross estate in proportion that the value of the interest of each person bears to the value of the net estate before exemption." . . .

. . . "Any interest for which deduction is allowable under Federal revenue laws in determining the value of decedent's net estate such as property passing to or in trust for a surviving spouse and charitable, public or similar gifts or bequests to the extent of the allowed deduction, shall not be included in the computation provided in subsection (a) . . ., and to that extent no apportionment shall be made against such interest. . . ." Purdon Pennsylvania tit. 20 section 884 (1954) Cum. Supp.

Another example of a uniform statute is that of Tennessee. "Such proration shall be made by the personal representative in the proportion, as near as may be, that the value of the property, interest or benefit of each person bears to the total value of the property, interests and benefits received by all such interested in the estate, except that in making such proration allowances shall be made for any deductions allowed by such act for the purpose of arriving at the value of the net estate. . . ." Tenn. Code Ann. (Williams, 1952 Supp.) section 8350.7.

Other states with statutes similar to these are California, Cal. Probate Code (Derring, 1953) sections 970-972; Connecticut, Conn. Gen. Stat. (1949 Rev.) section 2076, as amended, Conn. Gen. Stat. (1951 Supp.) section 449 (b), and Conn. Gen. Stat. (1953 Supp.) section 938c; Florida, Fla. Stat. (1951) section 734.041; Nebraska, Neb. Rev. Stat. (1943 Reissue) sections 77-2108, as amended by Neb. Laws (1953) c. 95; New Hampshire, N. H. Laws (1950) c. 822; Pennsylvania, cited *supra* this note; Tennessee, cited *supra* this note and; Virginia, Va. Code (1950) section 64-151, as amended by Va. Acts (1952) c. 294.

The statutes of two other states could be interpreted to reach the same result as the above statutes direct; Massachusetts, Mass. Laws Ann. (1953) c. 65 A. section 5, and; Oregon, Oregon Laws (1949) c. 475, as amended Ore. Laws (1951) c. 386.

entirely satisfactory. However, in an attempt to support the result by providing more than one leg for the decision the court said, in effect, that it was the intention of Congress that the spouse would bear no share of the federal tax, citing as authority *In Re Peter's Will*.[30] This alternative basis of the Huber decision is undoubtedly wrong. Since the decision in the *Del Drago* case states have always been allowed to place the burden of the tax. The marital deduction provisions were not intended to change the rule in the case of the widow's distributive share. Nevertheless, the holding in the *Huber* case flows logically from the rule of equitable apportionment and its value should not be weakened by the one wrong basis of the decision. The rule is fair and in most cases will reach the proper result.

The applicability of the *Huber* case in other jurisdictions depends upon the particular state's method of computing the surviving spouse's share. In Ohio there are four reported decisions, the earliest being *Miller* v. *Hammond*,[31] which involve facts essentially similar to the *Huber* case. The *Huber* decision was followed in the *Miller* case but a strong dissent was written in the following language:

> It should be noted further that the statutory situation in Kentucky differs substantially from that in Ohio. In Kentucky, the statute gives the widow a share in the 'husband's surplus personalty' and the amount of 'surplus personalty' is determined before deduction of the federal estate tax. *Hampton's Adm'rs* v. *Hampton*, 188 Ky. 199, 221 S.W. 496, 10 A.L.R. 515, 518. However, as hereinbefore pointed out, the widow's share under our statutes, *cannot be determined until after payment of the federal estate tax*.[32]

The *Miller* case was followed in *Campbell* v. *Lloyd* et al.[33] In *Foerster* v. *Foerster*,[34] a decision written by the Probate Court judge whose decision had been overruled by the Ohio Supreme Court in the *Miller* case, the opinion was written opposing the principle of the *Miller* case but its authority was undisputed and it was followed. However, on appeal in *Campbell* v. *Lloyd*,[35] the Supreme Court of Ohio admitted its error and overruled the *Miller* case on the statutory grounds indicated in the dissent in that case. In addition to Ohio, other states have reached a result contra to the *Huber* case. The rationalization of these cases is that notwithstanding the allowance by Congress of the marital deduction, the burden of the federal tax has always been a matter of policy for the state. Thus, the local inheritance

[30] 88 N.Y.S. 2e 142 (1949).
[31] 156 Ohio St. 475, 104 N.E. 2d 9 (1952).
[32] *Id.*, 104 N.E. 2d at 21 (Dissent, italics added).
[33] 117 N.E. 2d 45, Court of Appeals, Cuyahoga County (Ohio 1954).
[34] 122 N.E. 2d 314, Probate Court (Ohio 1954).
[35] 122 N.E. 2d 695 (Ohio Supreme Court 1954).

statute must determine whether the widow's distributive share is computed before or after deduction of the tax.[36]

Whether the principle of the *Huber* case will apply within a particular state depends upon the state method of computing the surviving spouse's share under applicable state laws of descent and distribution. Where, as in Kentucky, the surviving spouse's share is computed before the estate tax is paid, the application of the *Huber* principle is sound and equitable because that share does not add to the total tax burden. On the other hand, the application of the *Campbell* case is equally sound in jurisdictions where the surviving spouse's share is computed after payment of the federal tax because the effect of the state statute rule is to make that share contribute to the total tax burden.[37] An analogous situation is presented when a religious or charitable organization is to take the residue of an estate after the specific devises have been satisfied. Its share is included in calculating the taxable estate even though ordinarily a devise of a specific amount would be deductible and would not bear a proportion of the estate tax.[38] The rationale is that the Internal Revenue Code does not undertake to exempt the recipients of such charitable gifts from the burden of the tax if placed upon them by will.[39] Likewise, in states such as Ohio the statutory rule places upon the spouse the burden of the tax when the amount claimed as the deduction is the statutory share.[40]

However, even in a jurisdiction such as Ohio, if specific devises to the spouse under terms of the will qualify as a marital deduction then the amount receivable by the spouse should not bear any portion of the tax, since in fact such amount does not contribute to the tax because the statutory method of computing the surviving spouse's share does not then become relevant. But when the spouse waives the provisions of the will or when there is intestacy and the statutory share provisions become applicable the spouse should bear a portion of the tax since under the statute that spouse's portion adds to the total tax burden.

In Kentucky, of course, it makes no difference whether the marital

[36] Northern Trust Co. v. Wilson, 344 Ill. App. 508, 101 N.E. 2d 604 (1951), the widow's share is determined after payment of "all just claims," and the federal estate tax is a "just claim;" Wachovia Bank & Trust Co. v. Green, 236 N.C. 654, 73 S.E. 2d 879 (1953), the widow's share is distributed out of the "surplus" of the estate, and the "surplus" is not determined until after payment of the federal estate taxes; In Re Uihlein's Will, 264 Wis. 362, 59 N.W. 2d 641 (1953), the widow's share is one-third of the "net personal estate," and the "net personal estate" is what remains after payment of all charges against the estate.

[37] *Ibid.* [38] Y.M.C.A. v. Davis, 264 U.S. 47 (1924). [39] *Ibid.*

[40] "The reasoning in the Huber case cannot be applied in the face of a state statute which seems to direct otherwise." . . . Weinberg v. Safe Deposit & Trust Co. of Baltimore, 85 A. 2d 50 (Md. 1951).

deduction is a specific devise or the statutory share since in both situations the amount qualifying as the deduction does not contribute to the tax burden.

Implications From The Huber Case. As interesting as the narrow holding in the *Huber* case is the possibility of the extension of the rule through the use of its rationale. "It appears to us that the apparent purpose behind the enactment of the U.S. Code above was to . . . prepare the way for elimination from the tax burden *all those whose legacies or allotments do not create or add to the tax.*"[41] Thus, if a testator made a specific devise to a religious or charitable organization which was deductible in computing the net taxable estate it would logically follow that, . . . since that item does not add to the tax is cannot be burdened with any portion of the tax."[42] Research has revealed few cases supporting this conclusion.[43] Perhaps the proposition is so obvious that it has not been seriously litigated. However, it is submitted that in view of the rationale of the *Huber* case, the conclusion does seem reasonable as a consequence of the rule of equitable apportionment. In *In Re Starr's Estate,*[44] it was said:

> Unless recognition is given to the fact that deduction of the value of the remainder vested in the charities has resulted in a lessened total tax on the residuary and unless the source of the deduction resulting in such lessened total tax is taken into account in the apportionment of the taxes, the result will be that each half of the residue of the estate will bear an equal burden of the tax, though as to one-half only a portion of the property . . . was actually considered as subject to the tax.[45]

The court then held that the value of the remainder interest received by the charity taking absolutely was required to be deducted from the gross estate before computing the taxes and such interest would not bear any portion of the tax.

The Problem of Insurance. By specific provision of the Internal Revenue Code insurance beneficiaries must bear a pro rata share of the burden of the estate tax unless the will directs otherwise.[46] The problem arises when the insurance proceeds are made payable in installments.[47] Must the personal representative await payment to the beneficiary and collect the tax from him, or may the personal repre-

[41] Lincoln Bank & Trust Co. v. Huber *supra,* note 27 at 91.
[42] *Ibid.*
[43] In De Dettmer's Will, 40 N.Y.S. 2d 99 (1943); In Re Starr's Estate, 282 N.Y.S. 957 (1935); and all of the statutes cited in note 29 *supra* would support this view.
[44] *Ibid.* [45] *Id.,* at 959. [46] 26 U.S.C. sec. 826 (d).
[47] Polisher, PRORATION OF FEDERAL ESTATE TAX AMONG LIFE INSURANCE BENEFICIARIES, 50 DICK L. REV. I. (1945); Polisher, ESTATE TAX APPORTIONMENT, 84 TRUSTS AND ESTATES 99 (1947).

sentative proceed against the insurance company for payment of the tax? Regardless of the view adopted there are difficulties involved and policy considerations to ponder. If the tax is made the responsibility of the insurance company there may be a delay in the payment of the proceeds to the beneficiary. If the executor must await payment to the beneficiary and then proceed against him for the tax the administration of the estate will be seriously hampered and delayed. Kentucky has never passed on this problem in a reported decision, and the courts that have are divided, being faced with a difficult task of choosing between two conflicting policy considerations.

New York has held that after the estate tax for which the insurance proceeds are responsible has been paid by the executor, the executor shall then be paid the tax by the insurance company and the amount of the tax deducted from the total of the future payments to the beneficiaries and the amount of each installment readjusted.[48] Pennsylvania, however, has held that apportionment may not be enforced against the insurance company but that the executor must collect the tax at such time as the beneficiary receives the installment.[49] In the opinion of the Pennsylvania court, to hold otherwise would constitute an impairment of the obligation of the contract between the insurance company and the decedent.

It is submitted that Kentucky would follow the New York rule. In *Traveler's Insurance Co.* v. *Fidelity & Columbia Trust Co.*,[50] which was unreported in the official reporter because the opinion was withdrawn, the court said that a judgment against the insurance company does not impair the obligation of the contracts between the insured and the insurance company because no one by contract may circumvent the authority of the government to impose a tax.[51]

The Attorney's Problem. To this point the estate tax has been discussed only in connection with intestate estates or testate estates where there is no specific tax clause in the will. However, as indicated, the law is fairly clear when this type estate is confronted. The greatest bulk of questions today in relation to estate taxes concerns the intention of the testator as to the burden of the estate tax when there *is* a specific tax clause. The following discussion will not attempt to be exhaustive but will only indicate the problems confronting the attorney who is drafting a tax clause.[52]

[48] In Re central Hanover Bank & Trust Co., 274 N.Y. 536, 10 N.E. 2d 538 (1937); Traveler's Ins. Co. v. Fidelity Trust Co., 43-2 U.S.T.C. par. 10, 071 (Ky. 1943) opinion withdrawn and appeal dismissed 44-2 U.S.T.C. par. 10, 126.

[49] In Re Moreland's Estate, 351 Pa. 623, 42 A. 2d 63 (1945).

[50] Cases cited note 48 *supra*.

[51] 44-2 U.S.T.C.C., p. 10, 413.

[52] For extensive treatment see, Annotation, 37 A.L.R. 2d 7 (1954).

In *Trimble* v. *Hatcher's Ex'rs,*[53] the Kentucky court had before it a will which directed ". . . payment of all taxes on all property which I may own at my death." Two years prior to his death the testator had made gifts which were held to be in contemplation of death under the Internal Revenue Code provisions. The case is primarily significant for the rule of ratable recovery by the executor. But in the course of the decision the court construed the tax clause as referring only to testamentary property and held that since the testator did not "own" the non-testamentary property at his death, the beneficiary of the gifts should bear a ratable proportion of the estate tax. It is of course speculative as to whether the testator knew that these gifts might be taxed as part of the gross estate. Perhaps he knew that they might be. However, it is possible that the testator did not know it and if he had known, he would have specifically directed exoneration from payment of the tax. Regardless of the conclusion, the tax clause did cause litigation.

Thus, the attorney's problem in drafting a tax clause for a will is first to ascertain the probable assets of the estate as defined by the Internal Revenue Code and then to determine which of them are testamentary, which of them are non-testamentary, and whether the testator has previously made an *inter vivos* gifts, trusts, or other transfers which might possibly be subject to the estate tax. The attorney must then determine the testator's wishes as to who is to bear the burden of the tax and who is to be exonerated. Finally, the attorney must draft a tax clause which clearly and specifically states the testator's intentions. Thus, the attorney cannot do his professional best unless he has a thorough understanding of the Internal Revenue Code, a complete summary of the testator's property which is includible in the gross taxable estate, and the patience to draft a tax clause adequately reflecting the testator's intentions.

In conclusion, the law is clear on who shall bear the burden of the estate tax in intestate estates and testate estates when there is no specific tax clause. In Kentucky the rule of apportionment prevails. Property qualifying for the marital deduction is exonerated. The tax created by insurance payable in installments probably must be paid by the insurance company. There is no question concerning the right of the testator to shift the tax burden and exonerate some parties as long as there is sufficient property to pay the tax.[54] The question most frequently arising, however, is whether the language actually used in a tax clause is effective to shift the tax burden from those on whom the law otherwise places it.

J. MONTJOY TRIMBLE

[53] 295 Ky. 178, 173 S.W. 2d 985 (1943).
[54] Y.M.C.A. v. Paris, *supra* note 32.