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A Comparison of Estate Taxes in the Southeast

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A COMPARISON OF ESTATE TAXES IN THE SOUTHEAST

In this day and age of atoms and taxes, the question has arisen in the minds of a number of people of means whether it would be economically preferable to die as a resident of one state rather than another. It is of course deplorable that our civilization has come down to that level, but facts are facts, and therefore this author has undertaken to compare the death tax statutes of six Southeastern states in order to determine how great the difference actually is.

In order to understand the calculation of state death taxes, it is first necessary to go to the United States Code for an understanding of the federal basic estate tax. The Code directs that a sum equal to a certain percentage of the value of the net estate of every decedent citizen or resident of the United States passing under a will, the intestate laws of any state, or by gifts *causa mortis* shall be imposed upon the transfer of the net estate as a basic estate tax.[1] There follows a provision that should any state levy any inheritance, estate, or other death tax on the estate of a deceased person, the amount of such a tax shall be deducted from the federal estate tax, the maximum allowable deduction being eighty percent of the above-mentioned basic tax.[2] Under other sections of the Revenue Code, the federal government imposes an additional and far greater tax on the transfer of decedents' estates, but this additional tax does not permit a credit for payment of state death taxes.[3] Therefore, it need not concern us here.

It has been said that one of the many factors that induce retired businessmen to settle in Florida is the liberal estate tax law of that state. We can only partially agree with that statement. True, Florida certainly has the most liberal law of the six states under consideration, but the difference in most cases is not so great as to appear to be a deciding influence in the choice of a permanent domicil. The Florida Code provides, in short, that the measure of estate taxes in Florida shall be the amount that is left of the federal exemption after all death taxes due to other states for the particular property have been paid.[4] By this provision, Florida assures its residents that they will

[1]44 STAT. 69 (1926), 26 U.S.C. §810 (1946).
[2]44 STAT. 70 (1926), as amended, 26 U.S.C. §813 (b) (1946).
[3]47 STAT. 243 (1932), as amended, 26 U.S.C. §935 (1946).
[4]FLA. STAT. §198.02 (1951).

not have to pay more than the rate of the federal estate tax. At the same time, the state assures itself the maximum revenue the federal government will allow it to take without detriment to the taxpayer, considering the possibility of double taxation.

At first sight, there appears to be a paradox in the Florida provision. A decedent's intangible property is always taxable at his domicil and usually only there. Therefore, how could there be any taxes due to other states on intangible property subject to the jurisdiction of Florida? The answer lies in the decision of *Curry v. McCanless*,[5] in which the United States Supreme Court, by a 5-4 majority, held that a trust fund over which the grantor had reserved certain supervisory powers was properly taxed in both the state of domicil of the grantor and the state of domicil of the trustee upon the grantor's death. In the light of this case, the Florida provision takes on great importance with regard to estates that are invested in such a manner as to possibly create a double situs. Florida is the only Southeastern state whose laws take into account the possibility of double taxation, and if there is any advantage to the taxpayer in the Florida system of estate taxation over the systems of Georgia and Alabama, it must rest on this basis, as the effect of the other provisions of the Florida death tax law is identical to that of the laws of the latter two states.

Georgia[6] and Alabama[7] take credit for having the most straightforward provisions as to the amount of death taxes to be collected. Both states have a death tax equal to the full federal exemption of eighty percent of the basic federal tax. In both states the tax is computed directly from a duplicate of the federal tax return, and as in the basic federal estate tax, transfers are tax-free if the estate amounts to less than $100,000. Exactly as in the computation of federal tax, the estate in Georgia and Alabama is taken to be the amount left after deducting from the total estate all funeral expenses, costs of administration, widow's and children's support, losses incurred during settlement, gifts to the United States, state or local governmental bodies, or to charities, and all property on which estate taxes were assessed within five years prior to decedent's death.[8]

As we come into Mississippi, we find a slight increase in inheritance taxes. The tax rate in Mississippi, upon calculation, turns out

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[5]307 U.S. 357 (1939).

[6]GA. CODE ANN. tit. 92, §3401 (1933).

[7]ALA. CODE ANN. tit. 51, §432 (1940).

[8]GA. CODE ANN. tit. 92, §3401 (1933); ALA. CODE ANN. tit. 51, §434 (1940).

to be eighty percent of the federal basic tax.[9] However, instead of the estate being tax-free up to $100,000 it is so only up to $50,000. As far as the computation of the taxable estate goes, it is done in the same manner as for the federal tax, but the Mississippi Code has no provision exempting gifts to the United States, nor does it exempt from taxation any property on which inheritance taxes have been levied longer than two years prior to decedent's death.[10] An interesting provision in the Mississippi law is the one allowing life insurance up to $20,000 to be deducted from the taxable estate if it is payable to a beneficiary other than the estate itself.[11]

The death tax provisions discussed so far have one thing in common: their very existence is in each case predicated upon the existence of a basic federal estate tax.[12] The respective codes expressly state that the above taxes shall be levied only so long as the appropriate federal provisions remain in force. When we come to South Carolina and Tennessee, however, we find an inheritance tax law that seems entirely independent of the federal tax law both in detail and in general structure. The law of South Carolina makes the distinction between inheritance tax and estate tax: the inheritance tax in this case is the actual state tax, whereas the estate tax assures the state of the amount by which the 80% federal exemption exceeds the inheritance tax.[13] The South Carolina inheritance tax law divides the beneficiaries into three classes: the decedent's immediate family is of the first degree, his near relatives of the second degree, and distant relatives as well as strangers of the third degree. Unlike any other Southeastern state, South Carolina subtracts her exemptions from the amounts of the legacies rather than from the total value of the estate.[14] For the purpose of taxation, in other words, the net taxable estate is computed by subtracting from the total estate all federal taxes, an exemption of $7,500 for each legacy to a minor child of the decedent, $5,000 for each legacy to another first-degree beneficiary, $500 for each legacy to a second-degree beneficiary, and $200

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[9]Miss. Code Ann. §9264 (1942).

[10]Miss. Code Ann. §9267 (1942).

[11]*Ibid.* This type of deduction is rather unusual: it is found only in Mississippi and Tennessee in the Southeast, and seldom in other states.

[12]Fla. Stat. §198.41 (1951); Ala. Code Ann. tit. 51, §432 (1940); Ga. Code Ann. tit. 92, §3401 (1933); Miss. Code Ann. §9270 (1942).

[13]S.C. Code §2504-1 (1942).

[14]Simmons v. South Carolina Tax Comm'n, 134 S.C. 261, 132 S.E. 37 (1926).

for each legacy to a third-degree beneficiary provided he is a resident of South Carolina or of a state according reciprocity in a similar case, and by further subtracting any gifts to charities, the State of South Carolina, or any cities or towns thereof, as well as any South Carolina bonds or farm loan bonds that are part of the estate.[15] Of course, such bonds must be a bona fide part of the estate and not *causa mortis* acquisitions designed to avoid inheritance taxes.[16]

The actual rate of taxation of the net taxable estate in South Carolina is slightly higher than the 80% federal exemption up to a net estate of about $1,000,000 and lower thereafter. The portion of the estate going to third-degree beneficiaries is subject to a South Carolina inheritance tax considerably higher than the federal basic tax.[17] The South Carolina rate is definitely the highest in the Southeast, and only its liberal deductions, especially in the case of a large family, bring it down to the level of surrounding states.

The death tax law of Tennessee bears many similarities to that of South Carolina. Again we have the split between the fixed inheritance tax independent of federal taxes, and the estate tax which absorbs the difference between the inheritance tax and the allowable federal discount.[18] Again we find legatees divided into classes, except that this time there are only two: Class A beneficiaries, which include the immediate family and near relatives of the decedent, and Class B beneficiaries, which include distant relatives and strangers.[19] In order to find the net taxable estate in Tennessee, the gross estate is cut by the amount of gifts to the United States, the State of Tennessee, and charities. Further deductions include the expenses and debts of the estate, support money, other Tennessee taxes due on the particular property, inheritance taxes due other states, war risk insurance, and life insurance payable to a trustee or to a Class A beneficiary up to $40,000.[20] The remaining estate is divided into legacies to Class A beneficiaries and legacies to Class B beneficiaries. A $10,-000 exemption is subtracted from the former part, a $5,000 exemption from the latter part. These last two exemptions are allowed only

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[15]S.C. CODE §2480 (Supp. 1946).

[16]Pearson v. McGraw, 308 U.S. 313 (1939).

[17]S.C. CODE §2480 (Supp. 1946).

[18]TENN. CODE ANN. §1297 (1934).

[19]TENN. CODE ANN. §1266 (1934).

[20]TENN. CODE ANN. §1265 (1934). Compare this with the Mississippi provision, *supra* note 10.

where all of the decedent's property is taxable in Tennessee; otherwise, they are apportioned according to what part of the decedent's estate is under the jurisdiction of Tennessee.[21] The remaining estate is now taxed according to the rates provided for in the code, which, like those of South Carolina, are higher than the federal 80% exemption up to $1,000,000 of net estate for Class A transfers, and considerably higher than the federal exemption for Class B transfers.[22] Finally, in order to obtain the actual Tennessee inheritance tax, the tax computed as above is diminished by the amount of inheritance taxes paid to Tennessee on the property within five years prior to decedent's death.[23] If the amount thus determined is less than 80% of the federal basic tax, the estate tax, as in South Carolina, levies an additional tax to insure the full federal credit.

The above summary allows us to divide the Southeastern states into three groups from the point of view of death taxation. (1) Florida: The taxpayer pays only the federal rate, the state getting whatever part thereof it can; (2) Georgia, Alabama, Mississippi: The taxpayer pays more than the federal rate only in cases of multiple taxation; (3) South Carolina, Tennessee: The taxpayer of comfortable means pays more than the federal rate in any event, and the millionaire pays about the same as he would in the other Southeastern states.

The comparative effects of the various state death tax laws in dollars and cents can be effectively illustrated by the following example. Let us assume that Mr. Jones at his demise leaves an estate of $550,000 made up as follows:

Inheritance from distant relative 3 years ago	$ 30,000
Life insurance policy made out to Mrs. Jones	50,000
Real estate in Mr. Jones' state of residence	250,000
Securities and bank accounts in Mr. Jones' name	70,000
Investments over which Mr. Jones had control but on which New York imposed $9,000 inheritance tax	150,000
Total	$550,000

[21] TENN. CODE ANN. §1266 (1934).

[22] TENN. CODE ANN. §1267 (1934).

[23] TENN. CODE ANN. §1269 (1934). Note that this is a direct deduction from the tax rather than from the gross estate.

Let us further assume that Mr. Jones leaves a widow and three children, two of whom are minors. Mr. Jones in his will distributes his estate as follows:

To the adult child	$ 50,000
To each minor child $50,000; total	100,000
To charity	30,000
To Mr. Jones' parents	25,000
To Mr. Jones' best friend	10,000
To the wife	the remainder

Finally, let us assume that expenses and costs of administration consumed $20,000 of the estate, and that, for the purpose of computing the Tennessee tax, a $1,450 state inheritance tax has previously been levied and paid on the $30,000 legacy to Mr. Jones.

Under these circumstances, if we compute the total taxes, including the federal tax, that would be levied in the various jurisdictions, we arrive at the following results:

Florida	$116,900
Georgia	125,900
Alabama	125,900
Mississippi	128,060
South Carolina	131,313
Tennessee	132,935

It should be kept in mind in considering the above tabulation that the difference between the Florida tax on one hand and the Georgia and Alabama taxes on the other hand is due solely to the double taxation of some of Mr. Jones' property. In the absence of such double taxation, all figures except Florida's would be reduced by $9,000, making the tax of Georgia and Alabama equal to that of Florida.

The above figures show that this particular family could have saved $16,035 by settling in Florida rather than in Tennessee. That amount of money may or may not be sufficient to motivate a family of the Jones' means in deciding on their permanent place of residence.

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