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TAXATION -FEDERAL ESTATE TAX-INTERPRETATION OF LOSS FROM "OTHER CASUALTY"

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TAXATION — FEDERAL ESTATE TAX — INTERPRETATION OF LOSS FROM "OTHER CASUALTY" —The Federal Revenue Act[1] provides that losses incurred during settlement of an estate should be deducted when they arise from "fires, storms, shipwreck, or other casualty." Losses to the estate of the testator of the petitioner were caused by Great Britain's going off the gold standard. The petitioners contend this was a casualty within the meaning of the Revenue Act. *Held*, the language is to be construed according to the rule of ejusdem generis. This casualty is not of the same general kind or class as those specifically mentioned and therefore not within the act. *Lyman v. Commissioner of Internal Revenue*, (C. C. A. 1st, 1936) 83 F. (2d) 811.

When general words in a statute or contract follow specific words, they are commonly construed in light of the rule of ejusdem generis.[2] This rule amounts to a presumption that the general words refer to persons or things similar to those specifically enumerated.[3] The rule is particularly applicable in the interpretation of statutes.[4] However, it must not be permitted to override the real purpose of the statute.[5] Where specific words exhaust the class, general

[1] Revenue Act of 1926, § 303 (a) (1), 44 Stat. L. 72.

[2] 2 SUTHERLAND, STATUTORY CONSTRUCTION, 2d ed., 814-843 (1904). For a discussion of the rule of ejusdem generis, see: "The Ejusdem Generis Rule," 149 L. T. 20 (1920); "The Ejusdem Generis Rule," 36 SCOT. L. REV. 267 (1920).

[3] Allen v. Berkshire Mut. Fire Ins. Co., 105 Vt. 471, 168 A. 698 (1933); O'Connor v. Great Lakes Pipe Line Co., (C. C. A. 8th, 1933) 63 F. (2d) 523; Carnegie Steel Co. v. United States, 240 U. S. 156, 36 S. Ct. 342 (1916).

[4] Crystal Spring Distillery Co. v. Dox, (C. C. A. 6th, 1892) 49 F. 555; Edson v. Hayden, 20 Wis. 715 (1866); Pulom v. Jacob Dold Packing Co., (C. C. Tex. 1910) 182 F. 356.

[5] United States v. Mescall, 215 U. S. 26, 30 S. Ct. 19 (1909); Hall v. State, 48 Wis. 688, 4 N. W. 1068 (1880); State v. Holman, 3 McCord (S. C.) 306 (1825).

words must be held to embrace something beyond the class or they would be meaningless.[6] Unwise application of the rule is not without adverse criticism. Mr. H. T. Elder in his article on the doctrine of ejusdem generis said, "One of the favorite methods employed by common law courts to defeat the intention of the legislator is the ejusdem generis rule." [7] It seems that in construing the phrase "or other casualty" in the principal case, the court correctly applied the rule of ejusdem generis. There are no other provisions in the act that indicated any other intention on the part of Congress. Unless the rule is applied, Congress may just as well have said "or *any* casualty" instead of "or *other* casualty." [8] It cannot be argued that the specific words exhaust the class. As the court pointed out, floods and earthquakes have not been listed specifically, but they are injuries of the same class. All the causes mentioned are such as would directly affect the property, and it was reasonable to limit the general term to like causes.[9] Under a subsequent section of the Revenue Act [10] the same term must be interpreted in order to determine the losses to be deducted in computing the net income. These decisions prove to be both interesting and enlightening. In *Shearer v. Anderson*,[11] the deduction of damage from wreck of an automobile was held to be authorized as a loss from "other casualty" analogous to a shipwreck. On the other hand, it was decided that loss of a ring was not within the meaning of the act because it did not arise through the action of natural physical forces.[12] Loss resulting from explosion of a bomb is said to be not deductible unless the explosion results in a fire which damages the taxpayer's house.[13] In *Appeal of Horr-Warner Co.*, damage to onion land due to onion smut was held not a loss by "other casualty." [14] The problem of tax deduction should be viewed in the same light as that of tax exemption. In general, one claiming to be exempt must be able to show such exemption by clear and express provision of some law.[15] In *Leach v. Nichols* [16] the court interpreted another general term in the Revenue Act.[17] It was held that "other

[6] United States v. Mescall, 215 U. S. 26, 30 S. Ct. 19 (1909).

[7] Elder, "Interpretation of Codes and Statutes by Civil and Common Law Courts, the Doctrine of Ejusdem Generis," 5 TUL. L. REV. 266 (1931).

[8] This argument is developed in Hickman v. Cabot, (C. C. A. 4th, 1910) 183 F. 747.

[9] Shearer v. Anderson, (C. C. A. 2nd, 1927) 16 F. (2d) 995, 51 A. L. R. 534.

[10] Revenue Act of 1924, § 214 (a) (6), 43 Stat. L. 270. The Act here provides: "In computing net income there shall be allowed as deductions: (6) Losses sustained during the taxable year of property not connected with the trade or business . . . if arising from fires, storms, shipwreck, or other casualty, or from theft, and if not compensated for by insurance or otherwise."

[11] (C. C. A. 2d, 1927) 16 F. (2d) 995.

[12] O. D. 526, 2 C. B. 130 (1920).

[13] I. T. 2037, III-1 C. B. 146 (1924).

[14] Appeal of Horr-Warner Co., Dec. 1106, 3 B. T. A. 277 (1926). See also, O. D. 1076, 5 C. B. 138 (1921).

[15] Baker, "Judicial Interpretation of Tax Exemption Statutes," 7 TEX. L. REV. 385 (1929).

[16] Nichols v. Leach, (C. C. A. 1st, 1931) 50 F. (2d) 787.

[17] Revenue Act 1916, § 203 (a) (1), 39 Stat. L. 778; Revenue Act of 1918, § 403 (a) (1), 40 Stat. L. 1098.

charges against the estate" referred to charges similar or of the same class as those enumerated. It appears that the instant case is in accordance with other decisions and correctly applied the rule of ejusdem generis. By virtue of this interpretation a "casualty" under the Revenue Act is limited to acts falling within the same class as those enumerated, and whether particular acts fall within this class remains a matter to be decided by the court as each case arises.

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