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Review of Pennsylvania Legislation 1939 - Fiduciaries and Decedents' Estate Taxes

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applies to cases where the words of the instrument or the words added to the signature disclose the *estate or trust* for which the fiduciary contracts or signs. These words do not include a natural personal principal. The definition of "fiduciary" conspicuously omits reference to an agent as being within the classification of fiduciaries. It is submitted, however, that under the common law of Pennsylvania as well as Section 20 of the Negotiable Instruments Law, an agent who makes a written contract and who signs as agent, disclosing in the body of the instrument or by words added to the signature the name of the principal, is not personally liable on the contract if he was authorized to so contract.⁷ As indicated above, this was not true as to fiduciaries such as trustees and executors and administrators.

A nice constitutional question may well be raised as to the validity of the provision taking away from a creditor the existing right to the personal liability of a trustee or executor or administrator on a pre-existing contract. The Act did provide for a period in which suit could be brought on such personal liability on previously executed contracts, but the period was six days only, and if otherwise unconstitutional, this grace period will certainly not save the provision. It is believed that the separability provision was inserted because of a doubt as to constitutionality on this point.

The Act is a helpful one in clarifying the law as to personal liability in the situations to which it applies.

HAROLD S. IRWIN*

c. Estate Taxes

The following amendments affect taxation of decedents' estates:

The Act of June 21, 1939,¹ amends Section 3 of the Death Transfer Tax Act² by permitting a fiduciary to sell or mortgage real estate devised in remainder by entering into security for the payment of the tax when due upon the remainder interests, and thus permitting such real estate to be sold or mortgaged free of the lien of the tax interest, the Department of Revenue then looking to the security as approved rather than the property. Heretofore, a settlement would have to be made for the tax before its due date or the property sold or mortgaged subject to the lien of the tax to be paid when due by the remainder interests.

The Act of June 24, 1939,³ is an amendment adding provisions to Section 2 of the Death Transfer Tax Act, precluding the allowance of deductions where no notice is given of the claim to the executor, administrator, or register of wills

⁷See *Chatham Nat. Bank v. Gardner*, 31 Pa. Super. 135 (1906).

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¹P. L. 619, 72 PURD. STATS. (Pa.) § 2304.

²Act of June 20, 1919, P. L. 521.

³P. L. 721, 72 PURD. STATS. (Pa.) § 2302.

within one year of the date of the decedent's death, and also providing that any deductions by reason of indebtedness of the decedent shall, when founded upon a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth. New sections, 24 and 33, are added, providing in detail for supplemental appraisements and stipulating particularly that a supplemental appraisal of assets that have been revealed to the appraiser prior to the original appraisal must be made by the appraiser within a period of one year from the decedent's death. These provisions in the two sections apply to both resident and non-resident decedents.

The Act of June 24, 1939⁴ broadens the former inheritance tax exemption of all estates in buildings, ground, books, etc., given by will to any municipality, corporation, or unincorporated body for the sole use of the public by way of free exhibition within the State, to include within it any money or funds which are given either directly or through the exercise of some power of appointment.

The Act of June 24, 1939,⁵ refers particularly to the imposition of additional death transfer taxes equal to any federal credits allowed, by stipulating that any tax imposed under the provisions of the law pertaining to additional taxes equal to federal credits shall become due and payable at the expiration of 18 months from the death of the decedent and, if not paid then, shall bear interest at the rate of twelve per cent per annum. However, if the settlement of the estate is delayed by reason of litigation or other unavoidable delay, and the additional tax cannot be ascertained, interest shall be charged only at the rate of six per cent per annum until the same becomes ascertainable. If there is real or personal estate so withheld by reason of litigation or other cause, subject to the additional estate tax, and not productive to the extent of six per cent, then the parties shall not pay a greater amount as interest to the Commonwealth than has been realized from such portion of the estate, provided that proof of these facts is furnished to the Department of Revenue, and is satisfactory to that body.

d. *Miscellaneous Provisions*

Other legislation affecting decedents' estates and trusts is summarized below.

The Act of May 5, 1939,¹ requires certification of verdicts and judgments from the orphans court to the common pleas, and the filing, docketing and indexing of the same by the prothonotary, thus amending the Act of July 1, 1937,² which authorized jury trials in the orphans court.

The Act of May 5, 1939,³ further amends Section 58 (c) of the Fiduciaries

⁴P. L. 724, 72 PURD. STATS. (Pa.) § 2483.

⁵P. L. 725, 72 PURD. STATS. (Pa.) § 2303.

¹P. L. 94, 20 PURD. STATS. (Pa.) § 585.

²P. L. 2665.

³P. L. 95, 20 PURD. STATS. (Pa.) § 995.

Act. The original paragraph empowers foreign fiduciaries to transfer without the aid of local letters certain forms of personal property of a foreign decedent, consisting of bonds or stock in Pennsylvania municipal or private corporations. The paragraph was amended by the Act of July 2, 1937,⁴ broadening the classes of property affected, and the present Act extends the powers of foreign fiduciaries to foreclose on Pennsylvania mortgages so held and to enter judgment on mortgage bonds to sell the property bound thereby, to take title to the property so sold, and to resell such property, all under the general permission to act without the aid of local letters.

The Act of May 5, 1939,⁵ enables fiduciaries holding defaulted mortgages to accept from the owners a deed for the same in lieu of foreclosure, preserving the fiction of personalty to the same extent as though title had been acquired by foreclosure. This is an enabling act adding to the powers of fiduciaries the need for which developed through situations created by the effect of the depression of real estate values.

The Act of May 11, 1939,⁶ amends the Fiduciaries Act⁷ by adding the words "trustee or co-trustee," thus extending to such fiduciaries the powers given in the original paragraph to surviving executors or administrators c. t. a. in disposing of real estate under directions in a will, with the same effect as the joint act of the original fiduciaries.

The Act of May 12, 1939⁸ amends the Revised Price Act of 1917⁹ by conferring on the orphans' court concurrent jurisdiction with the court of common pleas in all cases where real estate, or a ground rent issuing thereout, shall be or shall have been acquired by deed or last will, partly by deed and partly by last will, or by purchase by trustee of a trust inter vivos subject to the jurisdiction of the orphans' court. The effect of this amendment is jurisdictional and gives to both the common pleas and the orphans' courts powers of disposition in the matter of sales, leases, mortgages and conveyances of real estate, together with matters of ground rents and their extinguishments, and also partitioning and subdivision of premises in what heretofore has been considered as the twilight zone, where the jurisdiction of either court might, under the facts, be in question.

The Act of May 16, 1939,¹⁰ further amends Section 6 of the Wills Act of 1917.¹¹ The Act of July 2, 1935,¹² amended this Section by deleting the requirement of attesting witnesses in cases of bequests or devises for religious or charitable uses, and the present amending Act further defines the thirty days before death provision by specifying that the period "shall be so computed as to ex-

⁴P. L. 2758.

⁵P. L. 99, 20 PURD. STATS. (Pa.) § 805.1.

⁶P. L. 120, 20 PURD. STATS. (Pa.) § 714.

⁷Section 28 (d).

⁸P. L. 126, 20 PURD. STATS. (Pa.) § 1561.

⁹P. L. 388, Section 1, clause 2.

¹⁰P. L. 141 (No. 71), 20 PURD. STATS. (Pa.) § 195.

¹¹P. L. 403.

¹²P. L. 573.

clude the first and to include the last day thereof." The Act of May 16, 1939¹³ is a complementary enactment repealing Section 11 of the Charities Act of 1855¹⁴ and substituting a provision similar to that in the above amendment to the Wills Act.

The Act of May 25, 1939,¹⁵ further amends Section 12 (f) of the Fiduciaries Act by simplifying the setting aside of the exemption to the widow or children where the estate does not exceed \$500.00, and provides in this amendment that the court may, upon petition, set aside the exemption without notice or appraisal whether or not letters have been issued or a will probated, and, further, that the court may appoint two appraisers whether or not letters have been issued or a will probated. Thus, by this last amendment, the necessity for the issuance of letters or for the probate of any will in such estates is eliminated.

The Act of May 25, 1939,¹⁶ further amends Section 2 (d) of the Fiduciaries Act by providing that an applicant for letters testamentary residing in the Commonwealth but outside the county where the letters are to be issued, may make affidavit to the petition before the register of wills of the county in which the applicant resides, instead of before the register of the county issuing the letters, as was previously required.

The Act of June 24, 1939¹⁷ amends Section 23 of the Wills Act of 1917 by providing that an extension of time may, on application to the court, be given to a surviving spouse to elect to take under or against the will of the deceased spouse if such application is made within seven months from the date of the death of the testator. A citation being issued to show cause, the court, if necessary, may refer the matter to auditors and on the facts found may enter a final decree fixing a date by extension beyond the period of one year already provided in the same Section. Cases have arisen where the surviving spouse could not intelligently elect owing to the condition of the estate, and the present enactment is to meet this situation, at least to some degree.

The Act of June 24, 1939,¹⁸ extends the jurisdiction of the orphans' court to include partition proceedings by the heirs of a deceased co-tenant and the surviving co-tenant. Heretofore, the court had jurisdiction over the interests of the heirs of the deceased co-tenant, but this did not extend to sever these interests from those of the surviving co-tenant.

The Act of June 24, 1939,¹⁹ permits fiduciaries to dispense with formal accounts where estates do not exceed \$500.00, the former sum having been \$300.00, and also reduces the time for presentation of petitions to the court in such cases from one year, as formerly, to six months from the date of death.

¹³P. L. 141 (No. 70).

¹⁴P. L. 328.

¹⁵P. L. 199, 20 PURD. STATS. (Pa.) § 477.

¹⁶P. L. 209, 20 PURD. STATS. (Pa.) § 348.

¹⁷P. L. 705, 20 PURD. STATS. (Pa.) § 266.

¹⁸P. L. 707, 20 PURD. STATS. (Pa.) § 1181.

¹⁹P. L. 708, 20 PURD. STATS. (Pa.) § 863.

The Act of June 24, 1939,²⁰ increases the amount in value of estates of minors that may be paid to the natural guardian, or to a person maintaining the minor, or even to the minor himself, without a formal appointment of a guardian by the court or the entry of security. The former sum of \$200.00 is now raised to \$500.00.

The Act of June 24, 1939,²¹ further amends Section 2 (c) of the Fiduciaries Act, which designates the classes of persons entitled to letters of administration, by providing that letters are not necessary where the value of the estate is not over \$200.00 and conferring jurisdiction upon the orphans' court to make distribution to the parties entitled by such procedure and in such manner as the court may establish by general order or special order in each estate.

The Act of June 24, 1939,²² clarifies the provisions relative to the payment of interest upon legacies by stipulating that interest at the legal rate shall begin to run at the expiration of one year from the death of the testator, unless otherwise provided in the will, and also providing that where the executor has filed an account which has been confirmed and distribution awarded before the end of the year, then interest shall run at the legal rate from the date of the award; and on the other hand, where legacies are payable at a future period or upon a contingency or other circumstances of postponement, the interest shall begin to run only from the time when such legacies become payable. In the proviso to the clause it is also inserted that a legacy for the maintenance of any person shall bear interest at the legal rate from the date of the death of the testator unless a contrary intention appears by the will. The original reading of this clause was not clear on the matter of the rate of interest, and it is hoped that the amendment will clarify.

Most, if not all, of the above acts were sponsored by the Committee on Decedents' Estates and Trusts of the Pennsylvania Bar Association. The report of the Committee, a further explanation of the acts and a tabulation thereof appear in Volume 45 of the Reports of the Association, 1939, particularly at pages 102, 209 and 309.

A. J. WHITE HUTTON*

²⁰P. L. 710, 20 PURD. STATS. (Pa.) § 1024.

²¹P. L. 712, 20 PURD. STATS. (Pa.) § 343.

²²P. L. 714, 20 PURD. STATS. (Pa.) § 633.

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