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Income-tax Department

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Income-tax Department

EDITED BY STEPHEN G. RUSK

The revenue act of 1921, the title of the income and profits-tax law now in effect, is published by the treasury department as treasury decision No. 3258. As this document is available to all, it will not be published in THE JOURNAL OF ACCOUNTANCY.

Article 941 of regulations 45, relating to the valuation of assets for the purposes of invested capital upon the change of ownership, is amended by treasury decision No. 3259.

In order that claims for refund, credit and abatement may be handled more expeditiously and to provide for refund and credit of overpayments of revenues where no claims have been filed, the department of internal revenue has set forth, in treasury decision 3260, the manner in which such matters shall be handled.

The first decision bearing upon the revenue act of 1921 deals with the manner in which, in exceptional cases, a loss sustained in one year may be deducted in another. It recites that the allowance to deduct in one year a loss sustained in another is entirely within the discretion of the commissioner, and his decision will follow an audit of the return. This does not deal with net loss as distinguished from net income, but rather to losses deductible in determining net income or net loss.

Treasury decision 3262 prescribes the rules for the deduction of bad debts under the provisions of the new law, which latter permits a deduction of a reasonable reserve for uncollectible accounts, and also that a debt may be charged off even if it is known that collection of a part of it will be made.

Section 250 (f) of the new law provides for extension of time in certain cases where an audit of a return reveals additional taxes due, if the said tax did not arise from negligence or fraud, and then this extension will only be made where its immediate collection would result in great financial hardship to the taxpayer.

Other decisions published in this issue need no comment.

(T. D. 3259—December 7, 1921)

Income tax—Valuation of asset upon change of ownership.

Article 941, Regulations No. 45, amended.

Article 941, regulations No. 45, is hereby amended to read as follows:

ART. 941. *Valuation of asset upon change of ownership.*—Where a business is reorganized, consolidated or transferred, or property is transferred, after March 3, 1917, and an interest or control of 50 per cent. or greater in such business or property remains in the same persons or any of them, then for the purpose of determining invested capital each asset so transferred is valued (a) at an amount representing its actual cash value, subject to the limitations imposed by section 326, but not exceeding its allowable value, for invested capital purposes, in the possession of the previous owner, if a corporation, or, if not a corporation (b) at its cost to such previous owner, with proper adjustments for losses and improvements. This provision is accordingly concerned with the computation of invested capital for the taxable year, while section 330 of the statute is chiefly concerned with the determination of invested capital for the pre-war period. See articles 931, 932 and 1561-1570.

(T. D. 3260—December 8, 1921)

Refund, credit and abatement adjustments

For the more expeditious handling of refund, credit and abatement claims, and to provide for the refund or credit of overpayments of revenues

where no claims have been filed, the following procedure is established, to become effective December 16, 1921:

1. Reduction of internal-revenue assessments and adjustments of overpayments of revenues will hereafter be accomplished in one of three ways:

(a) On the basis of an application submitted by a taxpayer on form 46, 47, or 47a, together with appropriate supporting evidence to be filed in the office of the collector of internal revenue of the district in which the tax is assessed.

(b) On the basis of a certificate of overassessment prepared by the appropriate administrative unit in the bureau in each case in which an overassessment of tax is disclosed through the audit of a return.

(c) On the basis of a blanket claim (form 751); a schedule of taxes found to be uncollectible (form 53); or a schedule of duplicate payments and overpayments due to obvious error on all forms of taxable returns (blanket form 47 or 47B) submitted by a collector of internal revenue. Form 751 will be used only in cases where credit balances exist, regardless of the class of return filed.

2. Claims of taxpayers and the items of collectors' blanket claims (if and when found by an administrative unit to be allowable), and certificates of overassessment (upon final approval), and items credited in account 9 (e) shall be scheduled on form 7777 and submitted to the commissioner of internal revenue for approval. Upon approval by the commissioner, such schedules shall be forwarded to the collectors of internal revenue of the several districts.

3. Upon receipt of such schedules the several collectors of internal revenue shall immediately check the items thereon against the accounts of the several taxpayers concerned and determine whether the several amounts of overassessments should be abated, refunded, or credited against assessments remaining unpaid. Only overpayments of income and profits taxes may be credited against unpaid assessments of such taxes (sec. 252, revenue act 1921). Whenever, on such examination of a taxpayer's account and of the items in account 9 (e), a collector finds an amount of overpayment, he shall examine all accounts of the taxpayer for subsequent periods and determine and certify the amount, if any, of such overpayment that shall be credited against the taxpayer's account for any subsequent year or years and the amount of such overpayment for which a disbursement check should be issued. He shall thereupon make appropriate entries upon all copies of the schedules and upon the assessment list, indicating the application made by him of the several amounts of overassessment and overpayment (whether by abatement or by credit), and the amounts to be refunded; summarize the amounts applied in abatement, the amounts of overpayment and of credit; certify all copies of the schedule; retain one copy, and forward the others to the commissioner of internal revenue at Washington.

4. The collector shall, at the same time, prepare (in quadruplicate) on form 7777 A a schedule of net refundable amounts for which disbursement checks are to be issued; retain one copy of the schedule for his record; certify the other three copies and forward them together with the copies of the schedules on form 7777 to the commissioner of internal revenue at Washington.

5. Upon application of the several amounts of overassessment and overpayment as abatements or credits, and the determination of the amounts to be refunded, the collector of internal revenue shall make the appropriate entries upon the certificates of overassessment which will be forwarded to him with the schedules; and transmit appropriate copies of such certificates to the several taxpayers as notification of the action taken by the collector in the way of abatement or credit; provided, however, that in those cases in which any amount of overpayment is to be refunded, the collector shall not send the certificate of overassessment to the taxpayer, but shall make the appropriate entries thereon and forward

such certificates of overassessment with the schedule of refundable amounts to the commissioner of internal revenue at Washington.

6. Upon completion and certification of a schedule the collector of internal revenue shall credit the accounts with the amounts abated and credited and make proper notations of the refunds. The proper account 6 will be credited, and account 18 will be debited with the total amount abated and applied as credits for the reduction of tax liability. Account 9 (e) will be debited with the total amount applied as credits from items in account 9 (e). The procedure as outlined in section 583 of the internal revenue manual, in cases of this nature, should be carefully followed.

7. Upon receipt of properly certified copies of form 7777 and 7777 A, the commissioner shall cause to be made the necessary entries in the control accounts of the bureau of internal revenue and the necessary allowance documents prepared. Upon receipt of these schedules the accounts unit of the bureau of internal revenue shall retain one copy of form 7777 for its records and forward a copy to the general accounting office of the comptroller general as a voucher for the collection accounts of the collector. He shall retain one copy of the schedule of refunds (form 7777 A) for his records, make the necessary entries upon, and forward two copies with the allowance documents to the commissioner for his approval.

8. Upon approval of schedules of refunds (form 7777 A) the commissioner will forward such schedules with the allowance documents to the disbursing clerk of the treasury department.

9. Upon receipt of properly approved schedules and allowance documents, the disbursing clerk shall prepare disbursement checks in the amounts of the several net refundable items in favor of the respective taxpayers against whose accounts net refundable amounts shall have been allowed by the commissioner; forward such checks, together with the certificates of overassessment (which will be transmitted to him) to the respective taxpayers; retain one copy of this schedule for his record; and transmit the other copy to the general accounting office of the comptroller general as a voucher for his disbursement account.

(T. D. 3261—December 20, 1921)

Income tax—Losses.

The losses allowed as deductions under sections 214 (a), (4), (5) and (6), and 234 (a) (4) of the revenue act of 1921 shall be deducted as of the taxable year in which sustained. In exceptional circumstances, however, in order to avoid injustice to the taxpayer and to more clearly reflect his income the commissioner may permit a loss to be accounted for as of a year other than the one in which sustained. For example, an embezzlement or a shipwreck may occur in 1921 but not become known until 1922 and in such a case income may be more clearly reflected by accounting for the loss as of 1922 rather than of 1921. If a taxpayer desires to account for a loss as of a period other than the one in which actually sustained, he shall attach to his return a statement setting forth his request for consideration of the case by the commissioner, together with a complete statement of the facts upon which he relies. However, in his income-tax return he shall deduct the loss only for the taxable year in which actually sustained. Upon the audit of the return the commissioner will decide whether the case is within the exception provided by the statute; if not within the exception the loss will be allowed only as of the taxable year in which sustained. The allowance of a deduction for a loss in a year other than the one in which sustained is entirely within the discretion of the commissioner and he will consider exercising this discretion only in exceptional cases. A shrinkage in the value of the taxpayer's stock in trade, as reflected in his inventory, is not such a loss as is contemplated by the provision of the statute authorizing the commissioner to allow the deduction of a loss for a taxable year other than the one in which sustained.

A person possessing securities such as stocks cannot deduct from gross income any amount claimed as a loss merely on account of the shrinkage in value of such securities through fluctuation of the market or otherwise. However, if stock of a corporation becomes worthless its cost or other basis determined under section 202, may be deducted by the owner in the taxable year in which the stock became worthless, provided a satisfactory showing of its worthlessness be made, as in the case of bad debts. Where banks or other corporations which are subject to supervision by federal authorities (or by state authorities maintaining substantially equivalent standards) in obedience to the specific orders or general policy of such supervisory officers charge off stock as worthless or write it down to a nominal value, such stock shall, in the absence of affirmative evidence clearly establishing the contrary, be presumed for income tax purposes to be worthless.

(T. D. 3262—December 21, 1921)

Income tax—Bad debts

Sections 214 (a) (7) and 234 (a) (5) of the revenue act of 1921 provide that in computing the net income of an individual or corporation there shall be allowed as a deduction:

Debts ascertained to be worthless and charged off within the taxable year (or, in the discretion of the commissioner, a reasonable addition to a reserve for bad debts); and, when satisfied that a debt is recoverable only in part, the commissioner may allow such debt to be charged off in part.

The foregoing provision changes the previous practice in two particulars—first, by recognizing a reserve for bad debts, and second, allowing a debt to be charged off in part. Under this provision, bad debts may be treated in either of two ways—(1) by a deduction from income in respect of debts ascertained to be worthless in whole or in part, or (2) by a deduction from income of an addition to a reserve for bad debts. For the year 1921 taxpayers may, regardless of their previous practice, elect either of these two methods and will be required to continue the use in later years of the method so elected unless permission to change to the other method is granted by the commissioner.

(1) Where all the surrounding and attending circumstances indicate that the debt is worthless, either wholly or in part, the part thereof which is worthless and charged off or written down to a nominal amount on the books of the taxpayer shall be allowed as a reduction in computing net income. There should accompany the return a statement showing the propriety of any deduction claimed for bad debts. No deduction shall be allowed for the part of a debt ascertained to be worthless and charged off prior to January 1, 1921, unless and until the debt is ascertained to be totally worthless and is finally charged off or is charged down to a nominal amount, or the loss is determined in some other manner by a closed and completed transaction. Before a taxpayer may charge off and deduct a debt in part, he must ascertain and be able to demonstrate, with a reasonable degree of certainty, the amount thereof which is uncollectible. Any amount subsequently received on account of a bad debt previously charged off in whole or in part, and allowed as a deduction for income-tax purposes, in excess of the amount not charged off, must be included in gross income for the taxable year in which received. In determining whether a debt is worthless in whole or in part the commissioner will consider all pertinent evidence, including the value of the collateral, if any, securing the debt and the financial condition of the debtor. Partial deductions will be allowed with respect to specific debts only.

(2) Taxpayers who have, prior to 1921, maintained reserve accounts for bad debts may deduct a reasonable addition to such reserves in lieu of a deduction for specific bad-debt items. Taxpayers who have not heretofore maintained such reserve accounts may now elect to do so, and in such case shall proceed to determine the amount of the reserve that should reasonably have been set up as at December 31, 1920, (which

shall not be deducted in computing net income) and, in respect of 1921 and subsequent years, may add a reasonable addition to such reserve and deduct the amount in computing taxable net income. Where a reserve account is maintained, debts ascertained to be worthless in whole or in part should be charged against the reserve and not deducted from income. That constitutes a reasonable addition to a reserve, for bad debts must be determined in the light of the facts and will vary as between classes of business and with conditions of business prosperity. A taxpayer using the reserve method should make a statement in his return showing the volume of his charge sales (or other business transactions) for the year and the percentage of the reserve to such amount, the total amount of notes and accounts receivable at the beginning and close of the taxable year, and the amount of the debts which have been ascertained to be wholly or partially worthless and charged against the reserve account during the taxable year.

Where banks or other corporations which are subject to supervision by federal authorities (or by state authorities maintaining substantially equivalent standards) in obedience to the specific orders, or in accordance with the general policy of such supervisory officers, charge off debts in whole or in part such debts shall, in the absence of affirmative evidence clearly establishing the contrary, be presumed, for income-tax purposes, to be worthless or recoverable only in part, as the case may be.

Accrued interest may be included as part of the deduction for bad debts only when it has previously been returned as income.

A taxpayer (other than a dealer in securities) possessing debts evidenced by bonds or other similar obligations cannot deduct from gross income any amount merely on account of market fluctuation. Where a taxpayer ascertains, however, that due, for instance, to the financial condition of the debtor, or conditions other than market fluctuation, he will recover upon maturity none or only a part of the debt evidenced by the bonds or other similar obligations and is able to so demonstrate to the satisfaction of the commissioner, he may deduct in computing net income the uncollectible part of the debt evidenced by the bonds or other similar obligations.

Where mortgaged or pledged property is lawfully sold (whether to the creditor or other purchaser) for less than the amount of the debt, and the mortgagee or pledgee ascertains that the portion of the indebtedness remaining unsatisfied after such sale is wholly or partially uncollectible, and charges it off, he may deduct such amount as a bad debt for the taxable year in which it is ascertained to be wholly or partially worthless and charged off. Where a taxpayer buys in mortgaged or pledged property for the amount of the debt, no deduction shall be allowed for any part of the debt. Gain or loss is realized when the property bought in is sold or disposed of.

(T. D. 3263—December 21, 1921)

Income tax—Section 250 (f), revenue act of 1921.

Extension of time for payment of deficiency under section 250 (f), revenue act of 1921.

Section 250 (f) of the revenue act of 1921 contains a special relief provision which will be in effect for only 18 months after November 23, 1921, the date of the passage of the act. It provides that in the case of any deficiency in tax revealed on the examination of an income or profits-tax return (except where the deficiency is due to negligence or to fraud with intent to evade tax) where it is shown to the satisfaction of the commissioner that the payment of such deficiency would result in undue hardship to the taxpayer, the commissioner may, with the approval of the secretary, extend the time for the payment of such deficiency or any part thereof for a period not to extend beyond 18 months from November 23, 1921. Where such an extension is granted there is to be added as part of the deficiency in lieu of other interest provided by law,

interest at the rate of two-thirds of 1 per cent. per month from the time the extension is granted. Where such other interest provided by law, however, is in excess of two-thirds of 1 per cent. per month the higher rate will be charged. If the deficiency or any part thereof is not paid in accordance with the terms of the extension agreement, there is to be added as part of the deficiency, in lieu of other interest and penalties provided by law, the sum of 5 per cent. of the deficiency together with interest on the deficiency at the rate of 1 per cent. per month from the time it became payable under the terms of the extension agreement. The extension will be granted only in case the taxpayer establishes to the satisfaction of the commissioner that without such extension undue hardship will result to the taxpayer. The term "undue hardship" means more than an inconvenience to the taxpayer. It is defined as meaning that substantial financial loss or sacrifice will result to the taxpayer from making payments of the deficiency at the due date. This provision of the statute is applicable only to deficiencies in taxes which have accrued or may accrue under the revenue act of 1917, the revenue act of 1918, or the revenue act of 1921, and the deficiency referred to is only such deficiency in tax as is revealed on the examination of an income or profits tax return. It has no application to deficiencies in taxes other than deficiencies in income and profits taxes under the three acts named.

Any application for the extension must be made under oath on form 1127 in accordance with instructions printed thereon and must be accompanied by evidence showing that undue hardship to the taxpayer would result if the extension were refused. The extension will not be granted on a general statement of hardship, but in each case there must be furnished a statement of the specific facts showing what, if any, financial loss or sacrifice will result if the extension is not granted. The application, with the evidence, must be filed with the collector who will at once transmit it to the commissioner with his recommendations as to the extension. When it is received by the commissioner it will be examined and within 30 days either rejected or tentatively approved.

The application should, wherever practicable, contain a certified statement of assets and liabilities of the taxpayer. Where the application is tentatively approved and a bond is required it must be filed with the collector within 10 days after the notification by the commissioner that a bond is required. It shall be conditioned for the payment of the deficiency and applicable penalties, if any, and interest in accordance with the terms of the extension to be granted and shall be executed by a surety company holding a certificate of authority from the secretary of the treasury as an acceptable surety on federal bonds and shall be subject to the approval of the commissioner. In lieu of such a bond the taxpayer may file a bond secured by deposit of Liberty bonds or other bonds or notes of the United States equal in their total par value to the amount of the deficiency and applicable penalties, if any, and interest, as provided in section 1329 of the revenue act of 1921.

(T. D. 3264—December 21, 1921)

Income tax—Revenue act of 1916, section 5 (a) (6).

That portion of article 8, designated as paragraphs 98 and 99, of regulations No. 33 (revised) is amended to read as follows:

Bad debts—Uncollectible deficiency upon sale of mortgaged or pledged property.—Where mortgaged or pledged property is sold, in the manner prescribed by law to satisfy the debt secured, for less than the debt, and the mortgagee or pledgee at that time or thereafter ascertains that the portion of the indebtedness remaining unsatisfied after such sale is uncollectible, and charges it off, he may deduct such amount as a bad debt for the taxable year in which it is ascertained to be worthless and charged off. Accrued interest may be included as part of the deduction only when it has previously been returned as income.

(T. D. 3265—December 21, 1921)

Income tax—Revenue act of 1918, section 214 (a) (7).

Article 153 of regulations No. 45 (1920 edition) is amended to read as follows:

ART. 153. *Uncollectible deficiency upon sale of mortgaged or pledged property.*—Where mortgaged or pledged property is sold, in the manner prescribed by law to satisfy the debt secured, for less than the debt, and the mortgagee or pledgee at that time or thereafter ascertains that the portion of the indebtedness remaining unsatisfied after such sale is uncollectible, and charges it off, he may deduct such amount as a bad debt for the taxable year in which it is ascertained to be worthless and charged off. Accrued interest may be included as part of the deduction only when it has previously been returned as income.

(T. D. 3266—December 21, 1921)

Income tax—Foreign governments.

Exempting the wives and minor children of foreign ambassadors and ministers and the members of their households from taxation with respect to income derived from certain sources.

Regulations No. 45 (1920 edition) is hereby amended by amplifying article 83 as follows:

ART. 83. *Income of foreign governments.*—The exemption of foreign governments applies also to their political subdivisions. Any income collected by foreign governments from investments in the United States in stocks, bonds, or other domestic securities, which are not actually owned by but are loaned to such foreign governments, is subject to tax. The income from investments in the United States in bonds and stocks and from interest on bank balances received by ambassadors and ministers accredited to the United States and the fees of foreign consuls, are exempt from tax but income of such foreign officials from any business carried on by them in the United States would be taxable. As under international law, the benefits and immunities of ambassadors and ministers of foreign countries extend to the members of their households, including attachés, secretaries, and servants, the foregoing provision is likewise applicable to the wives and minor children of foreign ambassadors and ministers and the members of their households. The compensation of citizens of the United States who are officers or employees of a foreign government is, however, not exempt from tax.

(T. D. 3267—September 28, 1921)

Estate tax—Act of September 8, 1916—Decision of Supreme Court.

1. CONSTITUTIONALITY OF ACT.

Title II, act of September 8, 1916, is not unconstitutional as an interference with the rights of the states to regulate descent and distribution as unequal or as a direct tax not apportioned as the constitution requires.

2. NET ESTATE DEDUCTION OF STATE INHERITANCE AND SUCCESSION TAXES.

State inheritance and succession taxes paid to New York and other states are not deductible under section 203 as "charges against the estate," for the purpose of determining the net estate subject to tax.

The appended decision of the supreme court of the United States, in the case of New York Trust Co. and Albert W. Pross, as executors of the will of *J. Harsen Purdy, deceased, v. Mark Eisner,* affirming the decision of the United States District Court for the Southern District of New York (T. D. 2976), is published for the information of internal-revenue officers and others concerned.

SUPREME COURT OF THE UNITED STATES. No. 286. OCTOBER TERM, 1920.

New York Trust Co. and Albert W. Pross, as executors of the will of J. Harsen Purdy, plaintiffs in error, v. Mark Eisner.

ERROR to the District Court of the United States for the Southern District of New York.

[May 16, 1921.]

Mr. Justice HOLMES delivered the opinion of the court:

This is a suit brought by the executors of one Purdy to recover an

estate tax levied under the act of congress of September 8, 1916 (ch. 463, Title II, sec. 201, 39 Stat., 736, 777), and paid under duress on December 14, 1917. According to the complaint Purdy died leaving a will and codicil directing that all succession, inheritance and transfer taxes should be paid out of the residuary estate, which was bequethed to the descendants of his brother. The value of the residuary estate was $427,414.96, subject to some administration expenses. The executors had been required to pay and had paid inheritance and succession taxes to New York ($32,988.97) and other states ($4,780.91) amounting in all to $37,769.88. The gross estate as defined in section 202 of the act of congress was $769,799.39; funeral expenses and expenses of administration, except the above taxes, $61,322.08; leaving a net value for the payment of legacies, except as reduced by the taxes of the United States, of $670,707.43. The plaintiffs were compelled to pay $23,910.77 to the United States, no deduction of any part of the above mentioned $37,769.88 being allowed. They allege that the act of congress is unconstitutional, and also that it was misconstrued in not allowing a deduction of state inheritance and succession taxes as charges within the meaning of section 203. On demurrer the district court dismissed the suit.

By section 201 of the act, "a tax * * * equal to the following percentage of the value of the net estate, to be determined as provided in section 203, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this act." * * * with percentages rising from 1 per centum of the amount of the net estate not in excess of $50,000 to 10 per centum of the amount in excess of $5,000,000. Section 202 gives the mode of determining the value of the gross estate. Then, by section 203 it is enacted "That for the purpose of the tax the value of the net estate shall be determined—(a) In the case of a resident, by deducting from the value of the gross estate—(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise, support during the settlement of the estate of those dependent upon the decedent, and such other charges against the estate as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered; and (2) an exemption of $50,000." The tax is to be due in one year after the decedent's death. Section 204: Within 30 days after qualifying the executor is to give written notice to the collector and later to make return of the gross estate, deductions allowed, net estate and the tax payable thereon. Section 205: The executor is to pay the tax. Section 207: The tax is a lien for two years on the gross estate except such part as is paid out for allowed charges; section 209, and if not paid within 60 days after it is due is to be collected by a suit to subject the decedent's property to be sold. Section 208: In case of collection from some person other than the executor, the same section provides for contribution from or marshaling of persons subject to equal or prior liability, "it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution." These provisions are assailed by the plaintiffs in error as an unconstitutional interference with the rights of the states to regulate descent and distribution, as unequal and a direct tax not apportioned as the constitution requires.

The statement of the constitutional objections urged imports on its face a distinction that, if correct, evidently hitherto has escaped this court. See *United States v. Field* (Feb. 28, 1921). It is admitted, as since *Knowlton v. Moore* (178 U. S., 41) it has to be, that the United States has power to tax legacies, but it is said that this tax is cast upon a transfer while it is being effectuated by the state itself, and therefore

is an intrusion upon its processes, whereas a legacy tax is not imposed until the process is complete. An analogy is sought in the difference between the attempt of a state to tax commerce among the states and its right after the goods have become mingled with the general stock in the state. A consideration of the parallel is enough to detect the fallacy. A tax that was directed solely against goods imported into the state and that was determined by the fact of importation would be no better after the goods were at rest in the state than before. It would be as much an interference with commerce in one case as in the other.—*I. M. Darnell & Son Co. v. Memphis* (208 U. S., 113); *Welton v. Missouri* (91 U. S., 275). Conversely, if a tax on the property distributed by the laws of a state, determined by the fact that distribution has been accomplished, is valid, a tax determined by the fact that distribution is about to begin is no greater interference and is equally good.

Knowlton v. Moore (178 U. S., 41) dealt, it is true, with a legacy tax. But the tax was met with the same objection, that it usurped or interfered with the exercise of state powers, and the answer to the objection was based upon general considerations and treated the "power to transmit or the transmission or receipt of property by death" as all standing on the same footing (178 U. S., 57, 59). After the elaborate discussion that the subject received in that case we think it unnecessary to dwell upon matters that in principle were disposed of there. The same may be said of the argument that the tax is direct and therefore is void for want of apportionment. It is argued that when the tax is on the privilege of receiving, the tax is indirect because it may be avoided, whereas here the tax is inevitable and therefore direct. But that matter also is disposed of by *Knowlton v. Moore,* not by an attempt to make some scientific distinction, which would be at least difficult, but on an interpretation of language by its traditional use—on the practical and historical ground that this kind of tax always has been regarded as the antithesis of a direct tax; "has ever been treated as a duty or excise, because of the particular occasion which gives rise to its levy" (178 U. S., 81-83). Upon this point a page of history is worth a volume of logic.

The inequalities charged upon the statute, if there is an intestacy, are all inequalities in the amounts that beneficiaries might receive in case of estates of different values, of different proportions between real and personal estate, and of different numbers of recipients; or if there is a will affect legatees. As to the inequalities in case of a will they must be taken to be contemplated by the testator. He knows the law and the consequences of the disposition that he makes. As to intestate successors the tax is not imposed upon them but precedes them and the fact that they may receive less or different sums because of the statute does not concern the United States.

There remains only the construction of the act. The argument against its constitutionality is based upon a premise that is unfavorable to the contention of the plaintiffs in error upon this point. For if the tax attaches to the estate before distribution—if it is a tax on the right to transmit, or on the transmission at its beginning, obviously it attaches to the whole estate except so far as the statute sets a limit. "Charges against the estate" as pointed out by the court below are only charges that affect the estate as a whole, and therefore do not include taxes on the right of individual beneficiaries. This reasoning excludes not only the New York succession tax but those paid to other states, which can stand no better than that paid in New York. What amount New York may take as the basis of taxation and questions of priority between the United States and the state are not open in this case. Decree affirmed.

Edwin S. Doubleday announces that Herbert G. Farquhar and Edwin C. Doubleday are now associated with him as members of the firm of Doubleday, Farquhar & Doubleday, with offices at 293 Bridge street, Springfield, Massachusetts.