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Had the plaintiff in the *Spriggs* case based his claim on right of privacy, the court by using the test of whether the true publication violated ordinary decencies would undoubtedly have reached the same conclusion as by using the test of whether the true publication was published with good intent and for justifiable ends. By applying the test in the *Spriggs* case to the right of privacy cases involving true publications violating ordinary decencies, the same results would be reached. The true publication that a plaintiff has not paid his debts is actionable in right of privacy,[33] and would probably be so under the constitutional provision as not being published with good intent and for justifiable ends. On the other hand, newsworthiness has been held to destroy one's right of privacy as being a matter of legitimate public interest and concern,[34] and this is almost the situation presented by the *Spriggs* case in which relief in an action for civil libel was denied.

The practical effect is that Wyoming's Constitution affords a plaintiff the same relief in a civil libel action as other states afford in an action for right of privacy. Since this right was probably developed to evade the rule that the truth is a complete defense in a civil libel action, a Wyoming plaintiff need not resort to an action for right of privacy for this relief. In Wyoming the two actions are in effect identical as they reach the same result when their rules are applied to cases involving the publication of a true defamatory statement.

JOHN F. LYNCH

TAX LIABILITY OF A TRANSFEREE

From a tax viewpoint, the United States is interested in transfers of property because of the possibility of assessing the tax, originally due from the transferor, against the transferee. The problem has centered on the question of whether such a transferee status exists that the assessment of the tax might be upheld in courts. The purpose of this article is to explore the case law regarding transfers of property, both as to corporations and individuals, and to attempt to show when such a transfer is not taxable.

The Internal Revenue Code does not attempt to define a transferee. The pertinent section[1] merely states:

> (A) Transferees. . . . The liability, at law or in equity of a transferee of property. . . .
>
> (2) Other taxes, . . . The liability, at law or in equity of a transferee of property of any person liable of any tax imposed by this title. . . .

33. Brents v. Morgan, 221 Ky. 765, 299 S.W. 967, 55 A.L.R. 964 (1927).
34. Sidis v. F-R Pub. Corp., 113 F.2d 806 (2nd Cir. 1940).

1. I.R.C. § 6901 (a), (1), (2).

This is the extent of a statutory definition of a transferee. In view of this statutory void, it is the further purpose of this article to show that transferee liability is determined by the fraudulent conveyance law of the state in which the transaction occurred. The cases define a transferee as one who takes the property of another without full, fair and adequate consideration; and regardless of what the transferor may owe, the liability of the transferee is limited to the value of the property which he has received without paying compensation therefor.[2] Thus we could visualize a situation in which a transfer would be valid as for consideration received but invalid as a transfer of the whole, since its value exceeded the consideration received.

Aside from the discrepancies in statutory construction, the question facing all courts is the proper application of existing law. According to the reported cases, transferees can be broken down into two main groupings; the transferee of corporate assets and the transferee who receives through another individual. Insurance beneficiaries are most numerous in the latter group.

Before examining the substantive law it would be well to note the struggle with statutory interpretation. The phrase "liability at law or in equity"[3] has been the most significant obstacle. The second circuit,[4] along with several other circuits,[5] has held that neither the above quoted section nor any other federal statute defines the liability of a transferee. Since there was no source to which the court felt that it could turn, it held that the state law governed transferee liability.

Transferee liability in a corporate situation may arise in the following manner: A, a stockholder, holds stock in two corporations, X and Y, or in one corporation, X, which holds all the stock of the Y corporation. A transfers all of his X stock to Y corporation and in exchange receives value in Y stock. Then the X corporation is dissolved and assets subject to liabilities are transferred to the Y corporation. Shortly thereafter the Internal Revenue Bureau seeks to assess A as a transferee for a tax deficiency of X corporation. One case[6] held that A must pay even though Y shares

2. Shelton v. Gill, 202 F.2d 503 (4th Cir. 1953).
3. I.R.C. § 6901 (a), (1).
4. Rowen v. Commissioner of Internal Revenue, 215 F.2d 641 (2d Cir. 1954). But see: United States v. New, 123 F.Supp. 312 (N.D. Ill. 1954), reversed, 217 F.2d 166 (7th Cir. 1954). The U.S. district court was of the opinion that federal law was sufficient to determine liability, citing Muller v. Commissioner of Internal Revenue, 10 T.C. 678 (1948); Commissioner of Internal Revenue v. Western Union Telegraph Company, 144 F.2d 774 (2d Cir. 1944); Pearlman v. Commissioner of Internal Revenue, 153 F.2d 560 (3rd Cir. 1945) and other cases. Yet, nowhere in these cases does the court refer to a statute defining liability. The assumption appears to be that the point is so well taken that it needs no further explanation. The court also felt that transferee liability was sufficiently established to overcome any contra arguments raised. The question of whether state or federal law applied was never reached by the Court of Appeals.
5. Tyson v. Commissioner of Internal Revenue, 212 F.2d 16 (6th Cir. 1954); United States v. New, 217 F.2d 166 (7th Cir. 1954); United States v. Truax, 223 F.2d 229 (5th Cir. 1955).
6. Bates Motor Transport Lines, Inc. v. Commissioner of Internal Revenue, 200 F.2d 20 (7th Cir. 1952).

were issued directly to him. This holding overthrew former decisions[7] stating that A was not liable if Y issued stock directly to him when he turned over his X stock. However, liability always resulted if Y corporation gave its stock to the X corporation and allowed it to distribute the stock.[8] Rationale for the later decision was limited to a recognition of the fact that the liquidated corporation was left insolvent and unable to pay its debts. The better view is that there is no liability to A since he never received property of the X corporation.[9] To be liable as a transferee, this fact must appear. Assumption of liability of the X corporation by the Y corporation renders the latter liable for X corporate taxes but not A. A should be careful of his procedure, however. Even the better reasoned cases have said that if Y corporation pays A directly for his X shares liability will result, since it leaves the X corporation without assets.[10]

Contract law coupled with basic principles of corporation law has helped the corporate stockholder.[11] Both were considered in a case involving a lessor and lessee corporation with provisions for payment of rent directly to stockholders of the lessor if certain conditions were met. The Commissioner argued that rental payments to stockholders constituted income to the corporation. Failing to collect from the corporation, he went against the stockholder. But the court held that such payments were to obligees under the contract as third party beneficiaries. The court could find no legal principle in existence for a subsequent creditor to reach those rights. In passing it also stated that a corporation was an entity distinct from its stockholders, and if payment failed from the corporation, it could not be traced to the stockholder.

Assumption of an individual guarantor's contract for a consideration which subsequently failed rendering the corporation insolvent, has been upheld.[12] Briefly the facts were that the National Security Company assumed a contract of guaranty that one of its officers had made with the Exchange National Bank. The officer had deposited $43,750 in the bank as security for the guaranty. Officers of the Security Company believing that the deposit would more than cover the bad accounts assumed the contract for the Company. The $43,750 was insufficient to cover losses

7. Metropolitan Securities Corporation, Petitioner v. Commissioner of Internal Revenue, Respondent, 19 B.T.A. 299 (1930).
8. Phillips v. Commissioner, 283 U.S. 589, 51 S.Ct. 608, 75 L.Ed. 1289 (1931); Hunn v. United States, 60 F.2d 430 (8th Cir. 1932).
9. Vendig v. Commissioner of Internal Revenue, 229 F.2d 93 (2d Cir. 1956). The *Vendig* case, four years later, overruled the *Bates* case where the fact situation coincided.
10. Shepard v. Commissioner of Internal Revenue, 101 F.2d 595 (7th Cir. 1939).
11. Harwood v. Eaton, Collector of Internal Revenue, 68 F.2d 12 (2d Cir. 1933). L. Hand, C.J. concurring specially, conceded that there was no tax liability if the corporation were considered as a juristic entity distinct from its shareholders. Hand felt that the corporation was an association of people who chose the corporate form for their own convenience and the shareholders enjoyed benefits, even though paid directly to them rather than through the corporation. But he felt that a transferee status did not exist since the payments were made directly to the individual from the lessee corporation.
12. Liquidaators of Exchange National Bank of Shreveport v. United States, 65 F.2d 316 (5ht Cir. 1933).

and the Security Company, while insolvent, had to turn over all of its assets to the bank to fulfill its obligations under the contract. The government claimed this transfer had made the bank a transferee. It was held that the bank was not liable for corporate debts since the corporation had assumed the contract at a time when the probability of gain was good. Since the corporation had assumed a potential benefit, it must also have assumed any resulting burdens, and no transferee status existed.

Perhaps the solution to the question of transferee liability focuses more sharply with a consideration of insurance proceeds. The problem involved is the extent that insurance proceeds may be assessed against the beneficiary for accrued income taxes of the insolvent decedant. The most simple treatment of this problem involves a determination of whether the tax liability had accrued to the transferor at the time his beneficiary received the proceeds. If such liability has not accrued when the property is transferred, the transferee-beneficiary is not liable for taxes.[13] Unusual circumstances have even frustrated the United States in this situation, however. In a situation in which X, from whom the taxes were owing, conveyed to his wife and she subsequently conveyed to her father it has been held that the transfer cannot be avoided or taxed even though the deficiency was owing.[14] An antecedent debt was the consideration and the opinion considered the equities of both parties and considered those of the father-in-law the strongest. From this case one is led to believe that consideration need not be present consideration and past performance by the transferee will support a later, seemingly gratuitous transfer to him.

Georgia[15] has allowed the Government to recover taxes from the beneficiary to the amount of premiums fraudulently paid. The maximum amount recoverable in any given situation would be the cash surrender value of the policy. The test for fraudulent payment of premiums is resolved by a determination of whether the debtor is solvent or insolvent at the time of payment.

If the beneficiary has been changed shortly before maturity of the policy[16] courts will allow tax claims against the decedant to be enforced against the beneficiary. In a case originating in Missouri,[17] tax deficiencies existed for 1945, 1946 and 1947. The deceased married Mignon Reinecke in 1948 and named her as beneficiary of the policy. In 1952 the annunity contract of an endowment policy matured. The fund was liable for tax liability of the deceased. Change of beneficiary immediately after accrued tax liability along with insolvency of the husband were sufficient grounds to sustain tax liability to his widow.

Sometimes the court, as in corporate transactions, never considers

13. Rosenthal v. Allen, 75 F.Supp. 879 (M.D. Ga. 1948).
14. Holland v. Nix, 214 F.2d 317 (5th Cir. 1954).
15 United States v. Traux, 223 F.2d 229 (5th Cir. 1955).
16. Reinecke v. Commissioner of Internal Revenue, 220 F.2d 406 (8th Cir. 1955).
17. Ibid.

transferee liability. In a case involving a joint tenancy between husband and wife[18] it was held that such an estate created while the transferor was solvent was valid. Upholding the validity of a joint tenancy the court went on to hold that the right of survivorship passed wholly to the wife and she now held the entirety. Nothing remained to which government tax claims could attach.

Analysis of the above mentioned decisions leaves one substantial inference. Courts will avoid deciding a case on fraudulent conveyance law if there exist sufficient facts and circumstances at make determination of a transferee status immaterial. Motive, though often considered, is not determinate of liability.[19] Solvency of the transferor will be among the first items of consideration. Then it is highly probable in view of the difficulty with the pertinent section of the IRC that state fraudulent conveyance law will eventually determine liability. It is submitted that while the IRC sets out the basic outline relating to transfers of property, the substantive law that actually controls is, in most cases, state law. Thus any transferee to be certain of his obligations should not only check the IRC but also his own state law.

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CONDITION SUBSEQUENT: WAIVER BY INACTION

Conditions subsequent in a grant are not favored in law and no provision will be interpreted to create such a condition if the language will bear any other reasonable construction.[1] When the courts find that there is a condition present, a waiver is readily implied by all the courts from any active conduct on the part of the grantor calculated to induce the grantee to believe that a forfeiture will not be insisted upon.[2] However, the cases are in conflict when the grantor merely stands by and silently acquiesces in the breach or delays in enforcing the condition after the breach.

Several cases express the view that mere silent acquiescence in the breach cannot preclude the grantor from insisting upon a forfeiture.[3] In

18. Irvine v. Helvering, 99 F.2d 265 (8th Cir. 1938).
19. United States v. Cummins Distilleries Corporation, 166 F.2d 17 (6th Cir. 1948); Harwood v. Eaton, 68 F.2d 12 (5th Cir. 1933).

1. J. M. Carey & Brother v. City of Casper, 66 Wyo. 437, 213 P.2d 263 (1950); Godding v. Hall, 56 Colo. 579, 140 Pac. 165 (1914); Chute v. Washburn, 44 Minn. 312, 46 N.W. 555 (1890); Jeffries v. State, 216 Ark. 657, 226 S.W.2d 810 (1950).
2. Nye-Scheinder-Fowler Grain Co. v. Hopkins, 99 Neb. 244, 155 N.W. 1097 (1916), where grantor received benefits with knowledge of the breach; M.R.M. Realty Co. v. Title Guaranty & Turst Co., 270 N.Y. 120, 200 N.E. 666 (1936), where grantor's actions rendered performance of the condition impossible.
3. Ralston v. Hatfield, 81 Ind.App. 641, 143 N.E. 887 (1924); Trustees of Union College v. City of New York, 173 N.Y. 38, 65 N.E. 853 (1903); Gray v. Blanchard, 25 Mass. (8 Pick) 284 (1829); Howe v. Lowell, 171 Mass. 575, 51 N.E. 536 (1894); Hannah v. Culpepper, 213 Ala. 319, 104 So. 751 (1925).