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The present decision seems sound since the insured had ample opportunity to follow the mode of the policies to substitute his beneficiary. It also seems indicative of a trend back toward requiring a closer adherence to the steps outlined by the policy to effect the substitution.

TAXATION—ESTOPPEL AGAINST THE GOVERNMENT BASED ON TAXPAYER'S RELIANCE UPON COMMISSIONER'S RULINGS

Petitioner filed no gift tax return in 1938 relying on the "acquiescence"¹ of the Commissioner of Internal Revenue that no duty to file existed. This view was subsequently reaffirmed by the Commissioner's representative in 1941. In 1948, the petitioner's executor was apprised of a deficiency and penalty for the calendar year 1938. *Held*, the Tax Court's ruling that the estate was liable is reversed. The Commissioner is barred from assessing this tax and penalty. *Stockstrom v. Comm'r of Internal Revenue*, 190 F.2d 283 (D.C. Cir. 1951).

The general rule is that the government is not bound by the statements,² acts³ and erroneous regulations of its agents,⁴ nor can their neglect or acquiescence commit it to an erroneous interpretation of the law.⁵ A taxpayer's claim of estoppel against the state⁶ is most often denied by a finding of an absence of authority in its agents⁷ or a lack of an essential element of estoppel.⁸ The reluctance of the courts to allow estoppel against the government⁹ has been particularly notable in the collection and assessment of revenues. Although estoppel has been invoked more frequently against

1. "The expression simply means the Commissioner does not intend to seek further judicial review and is adopting the ruling as a precedent he will follow in other cases. Thus taxpayers are assured they can rely upon it without danger of being forced to litigate the same question in their own cases." *Stockstrom v. Comm'r*, 190 F.2d 283 (note 1) (D. C. Cir. 1951).

2. *Searles Real Estate Trust v. Comm'r*, 25 B.T.A. 1115 (1932); *James Couzens*, 11 B.T.A. 1040 (1928).

3. *Niewaidomski v. United States*, 159 F.2d 683 (6th Cir.), *cert. denied*, 331 U.S. 850 (1947); *Wells v. Long*, 68 F. Supp. 671 (S.D. Idaho 1946), *aff'd*, 162 F.2d 842 (9th Cir. 1947).

4. See *Schaefer v. Helvering*, 83 F.2d 317, 320, *aff'd*, 299 U.S. 171 (1936); 10A MERTON, LAW OF FEDERAL INCOME TAXATION § 60.14 (Rev. ed. 1948).

5. *Schafer v. Helvering*, *supra* note 4.

6. It is essential to distinguish whether it is the government or the taxpayer who asserts estoppel since different rules apply. See Atlas, *The Doctrine of Estoppel in Tax Cases*, 3 TAX L. REV. 71 (1947).

7. *United States v. Stewart*, 311 U.S. 60 (1940); *Ritter v. United States* 28 F.2d 265 (3d Cir. 1928).

8. *Century Electric Co. v. United States*, 75 F.2d 589 (8th Cir.), *cert. denied*, 295 U.S. 766 (1935) (taxpayer not misled); *James Couzens*, *supra* note 2 (no reliance) see 10A MERTON, *op. cit. supra* note 4, § 60.13; *Jones, Estoppel in Tax Litigation*, 26 GEO. L. J. 868, at 871 (1938).

9. *Elrod Slug Casting Mach. Co. v. O'Malley*, 57 F. Supp. 915 (D. C. Neb. 1944); *Branson v. Wirth*, 17 Wall. 32 (U. S. 1873); *Fletcher v. Peck*, 6 Cranch 87 (U. S. 1810).

the sovereign in its proprietary and governmental functions,¹⁰ it has been allowed only with great caution in tax cases.¹¹ It has been intimated that estoppel might prevail if proved.¹² The Commissioner of Internal Revenue has been precluded from adopting inconsistent positions¹³ and has been held bound by misrepresentations of fact.¹⁴ Estoppel does not seem to be relied on in these situations, but rather the courts preclude the Commissioner from "remount(ing) in midstream."¹⁵

The instant decision¹⁶ illustrates a less strict doctrine of estoppel termed elsewhere quasi-estoppel¹⁷ or tax estoppel,¹⁸ which seeks to assert general equitable principles. The majority relied chiefly on four cases to sustain its reasoning on the estoppel issue, two of which are not tax cases.¹⁹ In the third case Justice Cardozo expressed the doctrine of quasi-estoppel and applied it *against a taxpayer*.²⁰ The fourth case approved but applied Cardozo's principle in reverse, *i.e.*, *against the government*.²¹ There, a limiting statute was allowed to bar the Commissioner from taxing an alien who filed no return because his books and accounts were seized by the government. In the present case no return was filed because of reliance on a ruling and statements of the Commissioner's agents. In failing to distinguish between reliance and physical impossibility, the decision extends the doctrine beyond the limits imposed by the Tax Court²² where it was restricted to tax refunds.²³ The succinct dissent²⁴ adheres to this restricted concept of estoppel.²⁵

10. *Sanitary District v. United States*, 266 U.S. 405 (1925); *Utah Power & Light v. United States*, 230 Fed. 328 (8th Cir. 1915); *United States v. Peck*, 102 U.S. 64 (1880).

11. See James Couzens, *supra* note 2 at 1148. ". . . there is a necessity inherent in its sovereign power of taxation which the doctrine of estoppel can resist in only the most extraordinary case." *Barnett Investment Co. v. Nee*, 7 F. Supp. 81, 82 (W.D. Mo. 1947).

12. See *Howbert v. Penrose*, 38 F.2d 577, 581 (10th Cir. 1930); *Ritter v. United States*, *supra* note 7 at 267. *But cf.* *Sugar Creek Coal & Mining Co. v. Comm'r*, 31 B.T.A. 344 (1944) (mutual mistake of law).

13. (Having proceeded on one theory of taxation, the Commissioner shifts to another.) *Borg-Warner Corp. v. United States*, 24 A.F.T.R. 1168, *aff'd*, 108 F.2d 424 (7th Cir. 1939). *Cf.* *W. H. Easley*, 8 T.C. 153, 165 (1947); *Ernest Strong*, 7 T.C. 953, 957 (1946).

14. *Borg-Warner Corp. v. United States*, *supra* note 13 (taxpayer lulled into security); *Carter Music Co. v. Bass*, 20 F.2d 390 (S.D. Tex. 1927) (closing agreement disregarded).

15. *Atlas*, *supra* note 6, at 87.

16. *Stockstrom v. Comm'r*, *supra* note 1.

17. *Naumkeog Steam Cotton Co. v. United States*, 2 F. Supp. 126 (Ct. Cl.), *cert. denied*, 289 U.S. 749 (1933).

18. *Atlas*, *supra* note 6, at 87.

19. *United States v. Peck*, *supra* note 10 (citizen's contract frustrated by military); *Swains v. Seamens*, 9 Wall, 254 (U.S. 1869) (bill to discharge mortgage).

20. *Stearns Co. v. United States*, 291 U.S. 54 (1933).

21. *Balken Nat. Ins. Co. v. Comm'r*, 101 F.2d 75 (2d Cir. 1939).

22. See *Sugar Creek Coal & Mining Co. v. Comm'r*, *supra* note 12 at 347; *Tide-water Oil Co.*, 29 B.T.A. 1208, 1220 (1934).

23. 10A *Merton*, *op. cit.* *supra* note 4, § 60.01.

24. *Stockstrom v. Comm'r*, *supra* note 1 at 289.

25. *Turks Head Club v. Broderick*, 166 F.2d 877 (1st Cir. 1948); *Elrod Slug Casting Mach. Co. v. O'Malley*, *supra* note 9; *Schafer v. Helvering*, *supra* note 4; *Searles Real Estate Trust v. Comm'r*, *supra* note 2; *James Couzens*, *supra* note 2.

The instant decision introduces a liberal concept into tax litigation which makes a marked inroad against the former inviolability of the sovereign's tax power. Taxpayers may now require a standard of conduct from the government commensurate with that prevailing between man and man by invoking estoppel.

WILLS — DIVORCE — IMPLIED REVOCATION

A wife divorced her spouse and secured a property settlement. She took no steps to revoke an existing will and upon her death the ex-husband petitioned for his legacy under the will. *Held*, divorce by the testatrix does not impliedly revoke the will. *Ireland v. Terwilliger*, 54 So.2d 52 (Fla. 1951).

The English common law early recognized that certain changes in a testator's circumstances would raise the presumption of an intent to revoke an existing will. The English courts applied this presumption in cases of the subsequent marriage of a *femme sole*¹ and of the subsequent marriage of a man followed by birth of issue.² This was done even though such action seemed to fly in the face of the English Statute of Frauds³ which said that no devise would be revocable except one revoked by a subsequent instrument or mutilated with *animus revocandi*. The death knell was sounded for the doctrine of implied revocation by change of circumstances in the English Wills Statute of 1837⁴ which provided for revocation by subsequent marriage and explicitly prohibited other forms of revocation. Divorce, as it is known today, was not in the contemplation of the English courts of that time and there were no cases deciding the effect of divorce on an existing will.⁵

The doctrine of implied revocation of a will from a change in the testator's circumstances has been widely accepted in the United States.⁶ Many states have embodied the common law concepts of it into statutes.⁷ Some of these statutes state specifically what circumstances will effect the revocation,⁸ while others provide for implied revocation by operation of law in addition to the prescribed methods of express revocation.⁹ A large number

1. *Hodsden v. Lloyd*, 2 Bro. C.C. 534, 29 Eng. 293 (1789).

2. *Marston v. Roe*, 8 A. & E. 14, 112 Eng. Rep. 742 (Ex. Ch. 1838).

3. 29 CAR. II, c. 3, § 6.

4. 7 WM. IV & 1 VICT., c. 26, § 20.

5. 1 PACE ON WILLS § 522 (3d ed. 1942); REDFEARN, WILLS AND ADMINISTRATION OF ESTATES IN FLORIDA (2d ed. 1946).

6. *Gay v. Gay*, 84 Ala. 38, 4 So. 42 (1888); *Corker v. Corker*, 87 Cal. 643, 25 Pac. 922 (1891); *Herzog v. Trust Co. of Easton*, 67 Fla. 54, 64 So. 426 (1914); *Ellis v. Darden*, 86 Ga. 368, 12 S.E. 652 (1890); *Hudnall v. Ham*, 183 Ill. 486, 56 N.E. 172 (1899); *Nutt v. Norton*, 142 Mass. 242, 7 N.E. 720 (1886); *Wirth v. Wirth*, 149 Mich. 687, 113 N.W. 306 (1907); *In re Estate of O'Connor*, 191 Minn. 34, 253 N.W. 18 (1934); *Hilton v. Johnson*, 194 Miss. 671, 12 So.2d 524 (1943); *Hoitt v. Hoitt*, 63 N.H. 475, 3 Atl. 604 (1885); *Hale v. Hale*, 90 Va. 728, 19 S.E. 739 (1894); *In re Battis*, 143 Wis. 234, 126 N.W. 9 (1910); in general, see *Durfee, Revocation of Wills by Subsequent Change in the Condition or Circumstances of the Testator*, 40 MICH. L. REV. 406 (1942).

7. See *Bordwell, Statute Law of Wills*, 14 IOWA L. REV. 283, at 290-308 (1929).

8. *Id.* at 306.

9. *Ibid.*