

TAXATION — GIFT TAX — TAX EXEMPT BONDS. — [Federal]. — Plaintiff brought suit against the United States government to recover a gift tax paid by him on United States Treasury bonds. *Held*: claim denied. A gift made in United States Treasury bonds is subject to the gift tax,<sup>1</sup> although the bonds themselves state that they are exempt from all taxation imposed by the United States except certain named taxes, such enumerated exceptions not including gift taxes. The rule of *expressio unius est exclusio alterius* was held not to be applicable.<sup>2</sup>

It is well settled that merely because a tax is in some way related to government bonds and is measured by their value does not make it a tax on the bonds themselves.<sup>3</sup> A gift tax is not a tax on property but an excise on the right to transfer such property;<sup>4</sup> hence the words on the bonds, "exempt from all taxation," of itself, would not include and prevent the assessment of such a tax. In answer to the argument that the enumerating of certain exceptions to the exemption clause prevented other exceptions by the rule of *expressio unius est exclusio alterius*, the court declared that since the clause standing alone did not include gift taxes it is unreasonable that exceptions limiting such a clause should be so construed as to expand it beyond its original meaning.

Assuming the correctness of its premise, the logic of the court's argument is unassailable. To assume that the phrase "exempt from all taxes" does not include taxes on transfer by gift, is to beg the question. It may be equally well argued that since the right to give property away is an essential attribute of property, any tax on it is a tax on the property.

If, on the other hand, it can be said that the court is making a distinction between that type of attribute subject to an "excise" tax as distinguished from the kind that is taxed by a "property" tax,<sup>5</sup> there is presented a further difficulty. One of the enumerated exceptions to the "tax exempt" clause in the bond, the inheritance tax, is an excise tax. The rule of this case then must be taken to be, that the enumeration of one type of excise tax does not have the effect of excluding other excise taxes by the rule of *expressio unius*, etc. In the face of the universal approval of this

1. 47 Stat. 245-59; 26 U. S. C. A. sec. 550-580 (1932).

2. *Hammersley v. United States*, 82 Ct. Cl.—, Prentice-Hall Fed. Tax Service, par. 1758 (1936).

3. *Central Hanover Bank and Trust Co. v. United States*, 82 Ct. Cl.—, Prentice-Hall Fed. Tax Service, par. 1137 (1936); *Willcuts v. Bunn*, 282 U. S. 216, 51 S. Ct. 125, 75 L. ed. 304, 9 Am. Fed. Rep. 584 (1930); *Hitner v. Lederer*, 14 F. (2d) 991 (D. C. E. D. Pa., 1926), *aff'd*, 63F. (2d) 877 (C. C. A. 3, 1933); *James v. Commissioners*, 13 B. T. A. 764 (1928); *Murdock v. Ward*, 178 U. S. 139, 20 S. Ct. 775, 44 L. ed. 1009 (1900); *Bromley v. McCaughn*, 280 U. S. 124, 50 S. Ct. 46, 74 L. ed. 226 (1929).

4. *Bromley v. McCaughn*, *supra*, note 3; *Phipps v. Commissioners*, 34 B. T. A. 641 (1936), Prentice-Hall Fed. Tax Service, par. 1267; see also Prentice-Hall Fed. Tax Service, par. 24, 604; *Knowlton v. Moore*, 178 U. S. 41, 21 S. Ct. 747, 44 L. ed. 969 (1900); *Plumber v. Coler*, 173 U. S. 115, 20 S. Ct. 829, 44 L. ed. 999 (1899); *N. Y. Trust Co. v. Eisner*, 256 U. S. 345, 41 S. Ct. 506, 65 L. ed. 963 (1920).

5. 1 Cooley, *Taxation* (4th ed. 1924) sec. 46.

rule of construction<sup>6</sup> and pronouncements by the Supreme Court that contracts of the United States with an individual are to be construed by the same rules as would be a similar contract between private individuals,<sup>7</sup> a logical impasse is reached in attempting to justify the result of the instant case.

It is submitted that while the court's position may be essentially just, it is far from logical. Would it not be better to say that this case falls within a limitation of the rule of *expressio unius*, etc. This rule of construction has application only to situations where Congress understood that unless the exceptions were made, such exceptions would fall within the general rule.<sup>8</sup> It is apparent from the inclusion of inheritance taxes in the enumerated exceptions that this was not true. The listed exceptions to the tax exempt clause were merely *ex majori cautela*, made only for greater caution, to apprise the general public of the nature of the exemption<sup>9</sup> and do not call for the application of any technical rule of construction.

M. B.

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TORTS—MUNICIPAL CORPORATIONS—SUFFICIENCY OF NOTICE OF INJURIES.—[Missouri].—In compliance with a statutory provision<sup>1</sup> plaintiff gave notice<sup>2</sup> to the mayor that she intended to maintain an action against the

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6. See cases enumerated 25 C. J. 220.

7. A contract between a corporation and the United States government is to be construed by the application of the same principles as if the contract were between individuals. *Reading Steel Casting Co. v. United States*, 268 U. S. 186, 45 S. Ct. 469, 69 L. ed. 907 (1925); see also *Perry v. United States*, 294 U. S. 330, 352, 55 S. Ct. 432, 79 L. ed. 912, 95 A. L. R. 1335 (1935); *Lynch v. United States*, 292 U. S. 571, 580, 54 S. Ct. 840, 78 L. ed. 1434 (1934).

8. This element is recognized as essential before the rule of *expressio unius*, etc., will apply in *Helvering v. Stockholms Enskilda Bank*, 293 U. S. 84, 55 S. Ct. 50, 79 L. ed. 211 (1934), citing and following the early English case, *King v. Trustees for paving Shrewsbury*, 3 Barn. and Ad. 216, 110 Eng. Rep. 80 (1832).

9. The omission of the gift tax from these exceptions can be explained by the fact that the gift tax act was passed after the issuance of the bonds.

1. R. S. Mo., 1929, Sec. 7493: "No action shall be maintained against any city of this state which now has, or may hereafter attain the population of one hundred thousand inhabitants, on account of any injuries growing out of any defect in the condition of any bridge, boulevard, street, sidewalk or thoroughfare in said city, until notice shall first have been given in writing to the mayor of said city, within ninety days of the occurrence for which such damage is claimed, stating the place where, the time when such injury was received, and the character and circumstances of the injury, and that the person so injured will claim damages therefor from such city."

2. The notice given in this case in substance is as follows: ". . . You are hereby notified that the undersigned, Helen B. David, of the city of St. Louis, Mo., was injured on the 13th day of January, 1931, on the sidewalk situated at 6058 Kingsbury, when the said Miss Helen B. David was walking along the sidewalk in front of the above premises, when she was caused to fall due to the defective condition thereof. . . ."