FEDERAL AND STATE DEATH TAXES

REPORTS

to the

Joint Committee on Internal Revenue Taxation

Pursuant to

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NOTE.—This report has been ordered printed for purposes of information and discussion, but it has not yet been considered or approved by the committee or any member thereof

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JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

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LETTER OF TRANSMITTAL

Congress of the United States,
Joint Committee on Internal Revenue Taxation,
Washington, January 28, 1933.

To Members of the Joint Committee on Internal Revenue Taxation:

There is transmitted herewith a report on "Federal and State Death Taxes," as prepared by the staff of the committee.

The report deals not only with the present status of estate and inheritance taxes, but also with the history and development of these levies. In addition, there is a brief discussion of the principles upon which death taxes are based and of the difficulties encountered in their administration. The report concludes with comments on various phases of the subject matter and suggestions for improving this form of taxation.

It is hoped that this discussion of death duties may serve a useful purpose in connection with future legislation on the subject.

Very truly yours,

J. W. Collier,
Chairman Joint Committee on Internal Revenue Taxation.

LETTER OF SUBMITTAL

Congress of the United States,
Joint Committee on Internal Revenue Taxation,
Washington, December 5, 1932.

Hon. James W. Collier,
Chairman Joint Committee on Internal Revenue Taxation.

My Dear Mr. Chairman: There is respectfully submitted herewith a report on Federal and State death taxes, as of July 1, 1932. The study is chiefly factual in character, although some comments and suggestions have been made on various phases of the subject. The report has been divided into five main parts, as follows: Part I, historical facts; Part II, present status of death taxes; Part III, principles upon which death taxes are based; Part IV, difficulties of subject matter; and Part V, comments and suggestions. There is also included an appendix containing important data on this subject.

At the conclusion of our extended study of this subject, we do not hesitate to state that, in our opinion, a tax on the transfer of property resulting from the death of the owner appears fully justified. When the tax is graduated in a proper manner it is based on the principle of ability to pay and is a good revenue producer.

There is more doubt in regard to the best form of death duty. The two principal existing forms are the estate tax and the inheritance tax. The first is levied upon the entire net estate before distribution and the second upon the respective shares of the beneficiaries. The first form is the easier of administration, but the second appears to be more equitable.

Much is to be desired in regard to the simplification of our death duties. The Federal Government has two estate tax laws in force, 1 State has two estate taxes and one inheritance tax, 27 States have both an estate and an inheritance tax, 19 States have either an estate tax or an inheritance tax, and only 1 State has no death duty of any kind. Some of the State laws have many points in common, but the majority are quite divergent. It is apparent that much could be done in the direction of simplification and uniformity by the cooperative efforts of our Federal and State Governments.

A case recently came to our attention where the property of the decedent was located in 10 States. The difficulty is dealing with the Federal statutes and 10 different State statutes is obvious.

No final conclusions have been arrived at on these questions in the report, but it is hoped that a basis of fact has been established for their ultimate solution.

Respectfully submitted.

L. H. Parker, *Chief of Staff.*

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REPORT ON FEDERAL AND STATE DEATH TAXES

FOREWORD

In presenting a report on Federal and State death taxes, the primary object is to set forth those facts which seem most important for consideration in connection with the enactment or revision of legislation imposing such taxes.

While the Federal Government has no jurisdiction in the case of States taxes, nevertheless it has been deemed necessary to treat of the taxes imposed by the separate States as well as those imposed by the United States. Three reasons exist for such treatment; first, because the citizen is chiefly interested in the total burden imposed by death taxes, not in the sovereignty to which the tax is paid; second, because the Federal estate tax is definitely connected with and is dependent upon the State taxes derived from the same source through the 80 per cent credit provision of the Federal law of 1926; and third, because it is important to study the relative merits of the different forms of death duties now in force in this country.

Inasmuch as the inheritance tax and the estate tax produce the principal revenue, these two forms of death duties will receive the most attention. Other death duties, such as probate taxes, stamp taxes, and the like, will receive but brief treatment as they have become of relatively minor importance.

It has also been deemed necessary to describe briefly the laws of inheritance and the taxes imposed on the transmission of property since ancient times. This is because of a lack of agreement in regard to the correct laws of succession and the proper form of death taxes. In fact, the laws of succession appear to be only a slight improvement over those which were in effect 1,500 years before the commencement of the Christian era, except possibly in regard to the right of female heirs to take equally with male. In regard to death taxes the important change has been the principle of graduation in rates.

Following a statement of those facts which seems pertinent for consideration in connection with future legislation in regard to death taxes, a discussion of such facts will be attempted with a view of drawing attention to the controversial issues in connection with this subject.

The confusion which exists in regard to the proper principles upon which death taxes should be based, the inconsistency of our present taxes, the double taxation which sometimes results from their application, all combine to make this subject an important but difficult one. It is believed that comprehensive and just death taxes which would operate without conflict in the various jurisdictions of this country would be of very substantial benefit to its citizens.

It is hoped that the report will be found to be substantially accurate as of July 1, 1932, except as otherwise noted.

SYNOPSIS

SYNOPSIS

Part I. Historical Facts

A. HISTORY OF DESCENT AND DISTRIBUTION

A knowledge of the laws of descent and distribution is necessary in order fully to comprehend the principles underlying the imposition of death duties. From a study of these laws, it is believed that the following facts may be substantiated:

(*a*) The inherent right of the sovereign to regulate the descent and distribution of property passing at death has been recognized from the earliest times.

(*b*) The most important change which has taken place in the rules of inheritance and succession has been with respect to the increased rights of a wife in the property of her husband.

(*c*) The rule of primogeniture giving preference to the eldest male heir, which flourished in the feudal period, has now become practically extinct.

(*d*) Subject to the rights of the surviving spouse, the present rule in practically every country places children first in the order of succession.

(*e*) The father and mother are generally next in line after lineal descendents. In some jurisdictions, however, brothers and sisters precede parents, and in others both groups share the property equally.

(*f*) There is no longer any distinction between male and female heirs.

(*g*) The power of a person to dispose of his property by will is generally recognized, except as limited by certain rights granted to the surviving spouse and in some countries to certain lineal descendents.

(*h*) In a number of foreign countries, and in 8 States of the Union, the surviving spouse is entitled to one-half the property acquired during marriage, under the community property principle.

B. HISTORY OF DEATH TAXES

1. IN ANCIENT TIMES

Inheritance taxes have existed from the earliest times, being known in Egypt as early as 700 B. C. The Greeks and Romans also used the tax.

2. IN EUROPE

After the fall of the Roman Empire, true inheritance taxes no longer were levied in Europe, but under the feudal system other forms of death taxes were developed which were levied by the feudal lords. Following the breakdown of this system, new forms of death taxes were imposed. Thus, in England a probate duty was levied; in France, a registration tax; in Germany, an inheritance tax on collateral heirs and strangers in blood; in many of the Italian cities, an inheritance tax; and in Spain, a transfer tax applicable to realty only. These taxes all underwent considerable development. The scope of the tax was extended to direct heirs in most cases; progressive rates were adopted; and different rates were applied to the several classes of heirs and beneficiaries. England added a legacy tax and a succession tax and converted her probate duty into a true estate tax; France developed an inheritance tax and added an estate tax and a gift tax; Germany adopted an imperial inheritance tax, a gift tax, and an estate tax, the latter being afterwards abandoned; Italy adopted a national inheritance tax; and Spain developed an inheritance tax and added a gift tax and an estate duty.

3. IN THE UNITED STATES

(*a*) *Federal death taxes.*—The first Federal death duty was a stamp tax on receipts for legacies and shares of personal property, which was enacted in 1797 and repealed in 1802. No further death taxes were imposed until the Civil War, when legacy, probate, and succession duties were levied. The legacy and succession duties were repealed in 1870, and the probate duty in 1872. The next death tax which met the test of constitutionality was imposed during the Spanish-American War period, and consisted of a legacy tax applicable only to personal property. This tax was repealed in 1902.

In 1916 the first Federal estate tax was imposed, which, as amended, has been in force continuously ever since. The tax was levied upon the entire net estate of a decedent, and not upon the distributive shares of the beneficiaries. An exemption of $50,000 was provided, and the rates were graduated from 1 per cent on the first $50,000 of the net estate to 10 per cent on the excess over $5,000,000. Increases were made in the tax in 1917 and 1919. The latter increase brought the maximum rate up to 25 per cent, which was applicable to the amount of the net estate in excess of $10,000,000. The next change in rates was in 1924, when the maximum rate was raised to 40 per cent and a gift tax was enacted to prevent the avoidance of the estate tax. An important feature of the 1924 act was the credit allowed, up to 25 per cent of the Federal tax, for State death taxes paid. The higher rates of the 1924 act were retroactively reduced by the 1926 act to the level of the 1919 rates, and the gift tax was repealed as of January 1, 1926. For decedents dying after the enactment of the 1928 act, the maximum rate was lowered to 20 per cent, the exemption increased to $100,000, and the credit for State death taxes paid increased to 80 per cent of the tax computed at Federal rates. In 1932 an important revision was made in the Federal estate tax and a gift tax was reimposed, both of which changes are discussed in a later paragraph describing our present system of death taxes.

(*b*) *State death taxes.*—Probate duties were imposed in the Colonies, the earliest apparently being levied by Virginia in 1687. Pennsylvania became the first State to levy a true inheritance tax in 1826, the tax being imposed at a flat rate of 2½ per cent on collateral heirs only. By 1892, 14 States had enacted some form of death tax legislation, applicable either to collaterals or nonresidents, although at that time only 9 States still retained their tax.

Economic conditions, the necessity for additional State revenue, and the concentration of wealth, undoubtedly resulted, beginning with 1892, in renewed activity in the death-tax field. New York enacted a new inheritance tax law in that year, initiating the principle of applying the tax to direct as well as collateral heirs. Between 1892 and 1916, 30 States enacted death-tax legislation for the first time. Ten of these States imposed inheritance taxes on collaterals only; 19 included direct heirs within the scope of their tax; and one State (Utah) imposed an estate duty at a flat rate of 5 per cent. In addition, four of the States which had previously imposed death taxes resumed the taxation of inheritances. The most important principle developed in this period was that of progressive rates, which was initiated by Ohio in 1894 and which went hand in hand with the classification of the heirs into groups according to their relationship to the decedent.

At the time of the enactment of the Federal tax in 1916, 43 States had a death duty of some kind. Of these States, 31 had an inheritance tax on both direct and collateral heirs, 11 had an inheritance tax on collaterals only, and 1 had an estate tax. The principle of progressive rates was recognized, to some extent at least, in 28 of the States, while the principle of consanguinity was found in all of the 42 inheritance tax statutes. The average graduation in the rates of tax on direct heirs was from 1 to 3 per cent, and on distant relatives and strangers from 5 to 11 per cent.

War and postwar conditions and the enactment of the Federal estate tax had a profound effect upon State death-tax legislation subsequent to 1916. The necessity for added revenue brought about increased rates, and the Federal credit for State death taxes resulted in the enactment of additional estate taxes by many of the States to take advantage of this provision. While prior to the enactment of the Federal tax in 1916 only 5 States had no death duty in any form, all of these States enacted death taxes in subsequent years. At the present time only one State (Nevada) has no death tax, it having repealed its inheritance tax in 1925. The District of Columbia likewise has no such tax. The important developments in this recent period of death-tax legislation were the general increase in the tax burden, the improvement of the administration of the laws, and the tendency toward estate-tax enactments inevitably resulting from the credit clause of the Federal law.

Part II. Present Status of Death Taxes

A. IN FOREIGN COUNTRIES

Death taxes are at present imposed in all the principal countries of Europe. They take many forms, and often several different taxes are imposed in the same country. Great Britain, France, Germany, Italy, and Spain all use a form of inheritance tax, imposed on the distributive shares of an estate. In Great Britain, France, and Spain estate taxes, levied against the estate as a unit, are also imposed. The estate duty makes up over 90 per cent of Great Britain's death-tax revenue. Gifts inter vivos are taxed in France, Germany, Italy, and Spain, either under the inheritance or estate tax or by a separate levy.

The estate taxes imposed in Great Britain, France, and Spain are quite dissimilar. In Great Britain the estate tax is very wide in its scope, provides an exemption of 100 pounds (about $500), and is imposed by brackets at rates graduated from 1 to 50 per cent, without regard to the principle of consanguinity. In France the tax is imposed only on estates of decedents leaving fewer than two children, and the rates are graduated from 1.2 to 46.8 per cent. Two different schedules of rates are applied, depending on whether the decedent had one child or no children. In Spain the tax is imposed by brackets at rates ranging from 1 to 10 per cent, and any property passing to direct heirs is entirely exempt.

The inheritance tax in Great Britain takes the form of legacy and succession duties, which are relatively unimportant from a revenue standpoint. In the other European countries previously mentioned, the inheritance tax is generally the principal levy. In these countries the rates of tax vary with the amount of the share and with the relationship of the beneficiary to the decedent. Usually the progressive rates are applied by brackets, but in Germany the whole share is taxed at a single rate according to its size; that is, the rates are progressive but are applied by totality instead of by bracket. In France and Germany the maximum rate applicable to children is 15 per cent; in Italy, 10 per cent; and in Spain, 5 per cent. On strangers in blood, the maximum rate is 60 per cent in Germany, 56.4 per cent in France, 50 per cent in Italy, and 30.75 per cent in Spain. In Italy transfers to two or more children or to husband or wife with two or more children are entirely exempt, while in France there is a deduction of 10 per cent from the net amount of the estate for each child after the fourth. The Italian tax also exempts transfers of 3,000 lire or less to those of the direct line or between husband and wife. In Germany a husband or wife is exempt from the tax if there are children living or represented by issue, while other heirs and distributees are granted specific exemptions which vary according to their relationship to the deceased.

Mortmain taxes are imposed by France, Italy, and Spain upon real estate owned by corporations, charitable organizations, and so forth. Such taxes are levied to compensate the Government for the loss of revenue resulting from its inability to impose death and transfer taxes on such real estate due to the perpetual character of corporations. Other miscellaneous death taxes are also imposed in the various countries, especially in France.

As a general rule, the British dominions have inheritance or estate taxes, or both, and the Canadian Provinces all have such taxes. Inheritance taxes are imposed in European countries other than those mentioned, including Belgium, Switzerland, Rumania, and the Scandinavian countries. Yugoslavia has an estate duty, while in Russia the state takes all of a decedent's property over a certain amount. Japan imposes an inheritance tax which is applicable also to gifts inter vivos.

B. IN THE UNITED STATES

1. FEDERAL ESTATE TAX

The Federal death tax is a levy on the decedent's entire net estate, and not on the distributive shares. The rates of tax are graduated according to the amount of the net estate, and are applied by brackets. No recognition is given to consanguinity. The tax is imposed by two separate acts, each having its own schedule of rates. One schedule consists of the rates imposed by the revenue act of 1926, the other of the additional tax imposed under the revenue act of 1932. Under the basic act of 1926 an exemption of $100,000 is provided in computing the net taxable estate, and there may be credited against the tax imposed thereby, up to 80 per cent thereof, any death taxes paid to the States or Territories. Under the 1932 act, the exemption is only $50,000, and no credit is allowed for State death taxes. The gross and net estates are computed in the same manner under both the 1926 and 1932 acts.

In determining the gross estate of the decedent, there is included, broadly speaking, any property in which the decedent had an interest at the time of his death; the dower or curtesy interest of the surviving spouse; property transferred by the decedent in contemplation of death; property transferred under an agreement reserving a life interest in the decedent; property transferred by the decedent the enjoyment of which was, at the time of his death, subject to his power to alter, amend, or revoke; joint interests held by the decedent with other persons; property passing under a general power of appointment exercised by the decedent; the proceeds of life-insurance policies payable to the estate; and the proceeds of any such policies payable to named beneficiaries in excess of $40,000.

In computing the net estate under both the 1926 and 1932 acts there are deducted, in addition to the respective specific exemptions heretofore mentioned, the funeral and administration expenses; losses through fire, theft, etc.; property included in the gross estate which had been taxed in the estate of a prior decedent within five years; and devises and bequests to religious, charitable, and similar organizations. The specific exemption is allowed only to estates of citizens and residents of the United States.

The rates under the basic act of 1926 range from 1 per cent on the first $50,000 of the net estate to 20 per cent on that portion of the net estate in excess of $10,000,000. From the tax due under this schedule of rates there may be deducted, as previously pointed out, any death taxes paid to any State or Territory not in excess of 80 per cent of the tax computed at Federal rates.

The additional estate tax imposed by the revenue act of 1932 is determined by first computing a tentative tax at rates ranging from 1 per cent on the first $10,000 of the net estate, to 45 per cent on the excess over $10,000,000. From this tentative tax there is deducted the gross tax levied by the revenue act of 1926 before credit is taken for State death taxes paid. The resulting excess is the additional Federal estate tax. This tax, plus the net tax imposed by the revenue act of 1926 after credit is taken for State death taxes, make up the total Federal levy.

2. FEDERAL GIFT TAX

As a supplement to the estate tax, the Federal Government now imposes a tax upon gifts inter vivos which measurably approaches the estate tax which would have been payable at the donor's death if the gifts had not been made in his lifetime and the property instead had constituted a part of his estate, the rates being approximately equal to three-fourths of the total Federal estate tax levy. The tax applies to transfers of property by gift, whether in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal. The tax is measured by all gifts made after the enactment of the revenue act of 1932, although it is computed and payable yearly. The first $5,000 in value of gifts to each person in each calendar year is exempt, except gifts of future interests in property, and there is a specific exemption of $50,000 which may be applied against the aggregate net gifts made in the lifetime of the donor. In computing the tax each year, a tentative tax is first computed on the aggregate of all taxable gifts made since the enactment of the 1932 act, including the current year. From this tentative tax there is deducted a tax computed on the aggregate net gifts made prior to the current year. The resulting excess is the amount due for the current year. In this way the tax is approximately the same on gifts of any given amount whether made in one year or over a period of years. The tax is imposed by brackets, at rates ranging from three-fourths of 1 per cent on the first $10,000 of the net gifts to 33½ per cent on the excess of the net gifts over $10,000,000.

3. STATE DEATH TAXES

As of July 1, 1932, 47 States had some form of death duty in force, leaving only one State (Nevada) and the District of Columbia without such a tax. Of the 47 States levying death taxes, 14 impose an inheritance tax only, 27 levy both an inheritance tax and an additional estate tax, and 6 levy an estate tax only.

Of the 41 States which levy an inheritance tax, 37 impose the tax on both direct and collateral heirs, 3 impose it on collaterals only, and 1 State imposes it on nonresidents only. In the 27 States levying additional estate taxes, the rates are, with one exception, prima facie based on the Federal tax of 1926, and were enacted for the purpose of absorbing the 80 per cent credit allowed by that statute. These additional taxes would, in most cases, become void and ineffective by the repeal of the Federal tax or the 80 per cent credit provision. In four of the six States imposing only an estate tax, the rates are clearly based upon the Federal law. In view of these facts, it is fair to assume that if it were not for the Federal law, not over two or three States would have estate taxes to-day, and it is also clear that the favored form of death duty in the States is the inheritance tax.

The composite hypothetical inheritance tax in the 37 States imposing this levy on both direct and collateral heirs, as mathematically constructed, shows that the widow is plainly preferred over the husband and children by a larger exemption, although the applicable rates average about the same. The rates on more remote relatives are substantially in excess of those imposed on direct heirs, and the exemptions are much less. Ordinarily, the property of both residents and nonresidents is taxed, whether passing by will or under intestate law. In nearly all cases the value of the property for purposes of the tax is taken as of the date of the decedent's death. The standard deductions allowable appear to be the funeral and administration expenses and the debts and legal claims against the estate. Transfers to the State, or to religious, charitable, or educational organizations, are usually exempt. The due date of the tax is generally one year after the decedent's death, it being paid by the executor or administrator and deducted by him from the distributive shares.

The maximum rate of tax on widows and direct heirs in about half of these 37 States is 5 per cent or less, while only 4 have a maximum rate of between 10 and 16 per cent. On strangers in blood, a maximum rate of 5 per cent or less is found in only 2 States while 13 States have a maximum rate of between 10 and 16 per cent. Four States impose a maximum rate on strangers of between 25 and 40 per cent. In view of the fact that at least 75 per cent of the property passes to direct heirs, it can readily be seen that the low rates applied to this class materially lower the revenue from inheritance or share taxes.

The exemptions under the inheritance taxes vary from $5,000 to $75,000 in the case of a widow; from $2,000 to $25,000 in the case of adult children; and from nothing to $1,000 in the case of strangers in blood. In 34 out of these 37 States the rates are graduated according to the size of the share, the limit of graduation ranging from $50,000 or less to as high as $10,000,000.

C. GENERAL FACTS ON DEATH TAXES

1. THE TOTAL DEATH-TAX BURDEN

From a practical standpoint the incidence of both the inheritance and the estate tax is upon the beneficiaries. Hence, they are more interested in the total death-tax burden than in who collects the tax or in what form it takes. The total Federal and State death tax on estates of different sizes, as applicable to three different distributions of property, has therefore been computed.

On estates of $50,000 there is no Federal tax. The average State tax on a distribution to a widow and four children is $190, but it varies from nothing to $1,700. Where the property all goes to the widow, the average tax is $446, with the same variation. On a distribution to a stranger in blood, the average tax would be $3,259.

On estates of $200,000 the minimum Federal tax, after credit for State taxes, would be $8,300, except in the community-property States. The average Federal and State tax on a distribution to a widow and four children would be $9,564; on a distribution to the widow alone, $11,507; and on a distribution to a stranger, $26,645.

On estates of $1,000,000 the minimum Federal tax is $84,300, except in the community-property States. The average Federal and State tax on a distribution to a widow and four children would be $107,097; on a distribution to the widow alone, $117,441; and on a distribution to a stranger, $202,993.

On estates of $10,000,000 the minimum Federal tax is $2,026,900, except in the community-property States. The average Federal and State tax on a distribution to a widow and four children would be $2,782,299; on a distribution to the widow alone, $2,784,985; and on a distribution to a stranger, $3,553,456.

An individual with a $50,000 estate, which he desired to leave to his wife, could escape all death taxes if he lived in Alabama, California, Florida, Georgia, Kansas, Maryland, Mississippi, Nevada, New Hampshire, or Texas. In the case of estates greater than that amount, the Federal tax, at least, would always apply.

There is little uniformity among the States in the taxation of estates of $50,000, but as the size of the estate increases, the State taxes become more nearly the same, due to the influence of the credit provision of the Federal law. This results from the States having, in most cases, so amended their statutes as to take full advantage of the Federal credit.

As regards the aggregate death-tax burden on all estates, it appears that while in 1923 4.8 per cent of the Federal taxes were derived from death duties, in 1931 only 1.7 per cent of the Federal tax revenue came from this source. This was due principally to the credit allowed by the 1924 and succeeding revenue acts for State death taxes paid. Since 1915 State death duties have accounted for between 6 and 10 per cent of the total State taxes. In 1930 the total Federal and State death taxes comprised about 4.5 per cent of the tax revenue of the Federal and State Governments, while in the same year Great Britain's death tax receipts accounted for 19.6 per cent of her taxes. Just what the net revenue to the Federal Government will be as a result of the imposition of the additional estate tax in 1932 is uncertain, but it seems probable that the receipts will be about seven times the amount which would have been received if this tax had not been imposed, due partly to the increased rates and partly to the fact that no credit is allowed against the additional tax for State death taxes.

2. THE CORPUS OF THE ESTATE

Out of the total gross estates aggregating nearly $19,000,000,000 which were reached by the Federal estate tax in the 7-year period from 1922 to 1928, 68 per cent of the property was made up of stocks, bonds, mortgages, notes, and cash; 20 per cent consisted of real estate; and the balance was in miscellaneous property. The proportion of stocks, bonds, etc., is greater in the larger estates than in the smaller ones, running as high as 81 per cent in the case of net estates in excess of $10,000,000. The fact that the value of real estate in the larger estates is comparatively small constitutes an argument in favor of the retention of the estate tax, especially when consideration is given to the heavy taxes on real property and the notorious ineffectiveness of the taxes imposed on intangible personal property.

Part III. Principles Upon Which Death Taxes Are Based

A. LEGAL CONCEPTS

One legal theory advanced to justify the imposition of death duties comes down to us from feudal times, and rests upon the old feudal doctrine that the sovereign has the exclusive right to the property of his subjects after their death. Under this theory property passes by will or inheritance only by grace of the sovereign, and death duties are regarded as exactions made for the privilege granted. This theory has been abandoned in most countries, and in the United States it has been superseded by the theory that the power of the States to levy death duties rests upon their exclusive authority to regulate the transfer of property at death. To justify the Federal Government's right to levy death duties, we must necessarily look to a different theory, namely, that death duties are taxes and may be levied pursuant to the inherent power of the sovereign to lay and collect taxes. This theory is relied upon by practically all countries. In upholding the Federal tax, the Supreme Court has emphasized the fact that the occasion therefor is the transmission and receipt of property by death, not the right to regulate its disposition. The court has also held that Federal death taxes are in the nature of excises and are, therefore, indirect taxes, which do not have to be apportioned according to population.

B. ECONOMIC CONCEPTS

There are many economic theories which are used to justify the imposition of death duties, the following being those principally mentioned: (1) The privilege theory; (2) the copartnership theory; (3) the diffusion of wealth theory; (4) the fee or cost of service theory; (5) the value of service theory; (6) the back-tax theory; (7) the differentiation of income theory; (8) the faculty theory; (9) the sequence of inheritance theory; (10) the lump-sum theory; (11) the accidental or fortuitous income theory; and (12) the distinction between hereditary and acquired property theory.

The theory most often urged to justify inheritance taxes is the accidental or fortuitous income theory, under which it is contended that the death of the owner of property results in a sudden acquisition on the part of the beneficiaries which increases their ability to pay taxes. Closely allied with the right of the State to the property of a decedent at his death is the conception that the right of bequest involves a social privilege for which some compensation rightfully may be demanded. Under this theory the claim upon the estate of collaterals and strangers in blood is less than that of kindred in the direct line, and therefore the privilege of participating in its distribution granted to them by the State may be said to be greater.

C. ESTATE TAX VERSUS INHERITANCE TAX

The estate tax may be said to be imposed on the right to transfer property, the inheritance tax on the right to receive it. The inheritance tax has the advantage of being adaptable to tax the beneficiary in accordance with the benefit he receives and with due regard to his relationship to the decedent. The estate tax, on the other hand, imposes the same burden on an estate whether it is divided among a large or small number of beneficiaries, or whether it passes to direct heirs or strangers in blood.

In spite of the equitable arguments in favor of the inheritance tax, the estate tax is considered by many to be vastly superior, since it is more easily and quickly ascertained and much easier to administer. The schedule of rates is much simpler, and it is not necessary to take into account the relationship of the beneficiaries or to determine the tax on life estates and contingent remainders which give rise to so many complicated problems under an inheritance tax.

Thus, it is believed that the estate tax is the simpler and more easily administered than the inheritance tax, but that the latter is the more equitable to the beneficiaries.

D. THE PRINCIPLE OF GRADUATED RATES

Death duties may be graduated either according to the degree of relationship of the beneficiary to the decedent, or according to the size of the estate or the distributive share.

Graduation according to relationship may be accomplished either through a series of exemptions or by different schedules of rates, or both. Nearly all the State inheritance tax laws provide for both graduation by exemption and by rates.

In the case of the estate tax, the Federal Government and the States provide for graduation by rates only. There is one exception to the rule, namely, the State of New York, which has different exemptions as well as graduated rates in its new estate tax law.

Part IV.—Difficulties of Subject Matter

A. CONTEMPLATION OF DEATH

One of the principal difficulties in the enforcement of death taxes has been the inability effectively to reach by legislation so-called transfers in contemplation of death, which are widely used as a means of avoiding death duties. The Federal Government and most of the States have attempted to restrict this avoidance by providing in their statutes that gifts made in contemplation of death shall be included as a part of the taxable estate of the decedent. In practice, these provisions have been ineffectual, due to the difficulty of procuring evidence to establish contemplation of death.

The New York statute of 1891 was the first in this country to contain a contemplation of death provision, and to-day 44 States tax these transfers. The Federal statute has contained such a provision since its original enactment in 1916. Some of the States define contemplation of death in their laws while others set forth time limits within which transfers are presumed (either prima facie or conclusively) to have been made in contemplation of death. The conclusive presumption provision of the Wisconsin statute was held unconstitutional by the Supreme Court as was a similar provision of the Federal act of 1926. It is doubtful, therefore, whether any conclusive presumption provisions may be enforced at the present time.

With the conclusive presumption provisions invalidated, the only effectual way to reach transfers in contemplation of death is by a gift tax. Such a tax is now imposed under the revenue act of 1932.

B. TRUSTS

Closely allied with the avoidance of death duties by gifts in contemplation of death is the scheme to avoid such taxes through the medium of a living trust, under which the legal title to property is placed in another person but the transferor reserves to himself for life the beneficial enjoyment of the property or the income therefrom. At the present time the Federal Government and practically all the States include within their death taxes transfers taking effect in possession or enjoyment at or after death, but the Supreme Court has held that a transfer in trust with a reservation of a life interest is not subject to tax as a transfer to take effect at death if the legal title is absolutely divested by the transferor prior to his death. In view of this holding, it is doubtful if the language employed in most of the State statutes is broad enough to include transfers in trust with a reservation of a life estate.

As a result of the Supreme Court's holding, Congress amended the Federal law in 1931 to cover such transfers. It thus endeavors to include the corpus of an irrevocable trust in the gross estate of a decedent solely because the decedent had a life interest in the property. There is considerable doubt, however, whether Congress may, under the guise of an estate tax, tax transfers inter vivos which are not in contemplation of death. In the Supreme Court's decision this question was left open. Even though it may later be held that Congress has no such power, these transfers are clearly taxable under the present gift tax.

C. COMMUNITY PROPERTY

The system of community property, which is operative in Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington, has resulted in a lack of uniformity in the distribution of the Federal estate tax burden between husbands and wives living in community-property and non-community-property States. The principle underlying the system is that all property acquired during marriage by the industry of either the husband or wife, or both, together with the income therefrom, belongs one-half to the husband and one-half to the wife. The Federal Government, being bound by the property laws of the States, is forced to recognize the community-property system. Thus, on the death of one spouse or the other, the Federal estate tax may be applied to only one-half the community estate. Under the scheme of progressive rates, the total tax on the estate is much less when it is taxed as two separate parcels on the death of the respective spouses than when it is taxed as a unit, as it is when the decedent is domiciled in the States where the community-property system is not operative.

It may be said that on the death of the husband, the wife, in a community-property State, acquires not her share of the community property, for that was already hers, but the right to manage, control, and dispose of it. This right might be sufficient to permit the inclusion of the wife's portion in the gross estate of the husband, and it may be advisable to enact the necessary legislation to this end and have it tested in the courts.

D. DOWER AND CURTESY

There is no uniformity among the various States with regard to the taxation of dower and curtesy interests. Some of the States expressly tax such interests, while others tax or exempt them under rulings of administrative officers. In a few States the general exemptions allowed are in themselves considered to be sufficient without making special allowance for dower and curtesy interests. The theory upon which most States exempt these interests is that they belong to the surviving spouse as a result of the marriage relation and are independent of the right of inheritance. The Federal Government expressly taxes dower and curtesy interests or those granted in lieu thereof.

E. FUTURE INTERESTS

The problem of future interests is one of the most complicated phases of inheritance taxation, since it involves the valuation of life estates, vested and contingent interests, and interests which may be terminated by the happening of some event or the performance of some condition. These problems are largely avoided under an estate tax, which is concerned only with the value of the estate as a unit.

In most jurisdictions the valuation of life estates is accomplished by mortality tables, but as these tables are based on the law of averages they naturally disregard the physical condition of the life tenant. However, a definite, if inequitable, rule can be laid down.

Contingent interests, while taxable in most States, offer grave difficulties. In some States the tax is immediately payable at the highest rate which would be possible on the happening of the most remote contingency, with a right of refund if the tax is later found to be overpaid. Other States use the lowest rate method, with the right to make additional assessments if necessary. A few States wait until the interest vests to impose the tax, while others authorize their administrative officers to compromise the tax with the parties involved.

F. VALUATION OF PROPERTY

In most jurisdictions, the death tax is levied on the value of the property as of the date of the owner's death. In a few other States, other bases of valuation are used. The Federal law follows the general rule, and under the regulations adopted thereunder the term "value" is interpreted to mean the fair market value, which in turn is defined as the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell.

Where there is an active market, valuations may be made with considerable ease. In the case of real estate and inactive or closely held stocks, however, valuations present great difficulties. Such values, while technically fact questions, rest entirely on individual judgment, and it is well known that the judgment of different individuals varies widely in these matters.

G. POWERS OF APPOINTMENT

Owners of property, either by will or deed of trust often delegate to another person the power to appoint the beneficiary or beneficiaries who shall receive the property, generally after the termination of an intervening estate. Such powers are known in the law as powers of appointment. Transfers resulting from the exercise, and in many cases, also, from the nonexercise, of a power of appointment, are to-day taxable in a great many States. The Federal law requires the inclusion in the estate of a decedent any property with respect to which he exercised by will or testamentary disposition a general, as distinguished from a limited, power of appointment.

Under the common law the transfer under a power of appointment was deemed to originate in the donor of the power, but by statute in most States the donee is now treated as the source of title. Few States make any distinction between a general power, which is practically equivalent to ownership of the property, and a special power, under which an appointment can be made only in favor of a restricted class. Complex problems of jurisdiction arise when the donor of a power lives in one State, the donee in another, and the property is situated in still another. The situs of the property is usually controlling, however.

Part V.—Comments and Suggestions

A. LEGAL AND PRACTICAL LIMITATIONS ON FEDERAL ESTATE TAX LEGISLATION

Federal death taxes are levied pursuant to the power of Congress to lay and collect taxes, and not under any general power to regulate the devolution of property, which is a matter exclusively within the jurisdiction of the States. Being in the nature of excises, which are indirect taxes, Federal death duties do not have to be apportioned according to population, but are subject to the rule of geographic uniformity. They are also subject to the due process clause of the fifth amendment, which may be invoked when the taxing provision is so palpably arbitrary and unreasonable as to amount to a confiscation of property, or is so wanting in basis for classification as to lead to gross and patent inequality. Retroactive legislation will be invalidated under the fifth amendment if the particular kind of transfer involved were not subject to the tax when made, although a mere increase in the tax pursuant to a policy of which the taxpayer was forewarned would not invalidate it.

A practical limitation on the Federal taxing power lies in the fact that the States also have the power to levy death taxes, and unless due regard is given to the State taxes the taxpayer will be subjected to an unreasonable burden. This factor was important in connection with the granting of a credit against the Federal tax under the 1924 and succeeding revenue acts for State death taxes paid.

B. INEQUITIES OF THE PRESENT SYSTEM TO THE TAXPAYER

1. SHRINKAGE IN PROPERTY VALUES

Since death taxes are generally imposed upon the valuation of the property of a decedent as of the date of his death, any shrinkage in the property between that time and the date of distribution is not taken into account. In actual cases, shrinkage has been found to be as great as 60 per cent of the value of the estate, and situations may arise which will result in complete confiscation of the property. This could be remedied by providing that the death tax rate should be determined by the value of the property at the date of the decedent's death, but that this composite rate should be applied to the net value of the estate one year thereafter.

2. RESIDUARY LEGATEES

The widow and those nearest to a decedent are generally made t residuary legatees and devisees of his estate, and since the Federal estate tax, unless otherwise provided by the decedent in his will, is payable out of the residue of the estate, these close relatives must bear the whole burden of the tax while more remote relatives entirely escape a tax on their shares. This inequity can largely be corrected by the decedent in drawing his will.

3. UNEQUAL BURDEN ON LIKE AMOUNTS

Due to the fact that the estate tax fastens itself upon the entire estate and not upon the separate shares, a greater burden is imposed on a beneficiary who receives a given amount from a large estate than one who receives a like amount from a small estate. The testator, in his will, has the power to regulate the distribution of the tax, however, and, as pointed out, it is ordinarily payable out of the residue in any event.

4. MULTIPLE TAXATION

In the past, multiple taxation of the intangible personal property of nonresident decedents has resulted in unconscionable burdens on estates in many cases. Death taxes often had to be paid on the same intangible property to several different States upon the basis of jurisdictional claims made by these States on one ground or another. Particularly was this true of corporate stocks. Public opinion forced the States to adopt corrective measures, and some repealed their tax on the intangible property of nonresidents while others enacted reciprocity provisions exempting intangibles of decedents of those States which did not tax the intangibles of their own decedents.

While the development of reciprocity has been of great benefit to estates, the Supreme Court, by a series of recent decisions, has also taken a large part in relieving the burden of duplicate taxation. In cases involving corporate stocks, bonds, bank deposits, debts, and so forth, the court has denied the power of a State other than that of the decedent's domicile to tax these intangibles. The question of intangibles having a so-called business situs is left open by the court, however.

C. INEQUITIES OF THE PRESENT SYSTEM TO THE GOVERNMENT

1. INCREASE IN PROPERTY VALUES

Just as the shrinkage of property values after the death of the owner causes a hardship on the estate, so the increase in values works to the disadvantage of the Government. If it is desired to reach this increase in values the same plan suggested for the taxation of depreciated estates could be applied; that is, the rate of tax could be determined according to the value of the estate at the time of the decedent's death, and then be imposed on the net value of the estate one year thereafter.

2. BASIS OF PERSONAL PROPERTY IN CERTAIN CASES

Since the Federal estate tax is based on the value of the decedent's estate at the time of his death, any increment to the estate after that time escapes this tax. Whether it is reached under the income tax depends upon the basis of valuation for the purpose of determining gain or loss which the property takes in the hands of the taxpayer. If the basis is the value of the property in the hands of the decedent, the increment may be reached by the income tax; but if it is the value at the time of distribution, the increment between the decedent's death and that time is not taxed under either the estate tax or the income tax. All property acquired from the estate by the executor takes the basis it had in the hands of the decedent, but where a trustee acquires personal property by general bequest the basis to him is the value at the time of distribution. Where the executor and trustee are the same person, there is a possibility of using one basis or the other, according to which will most benefit the estate. The reason for using the date of distribution as a basis of valuation for general bequests of personalty is that for practical purposes the legatee never acquires the property until that time, but the Supreme Court has held that Congress has the power to fix the basis of personal property as the value at the date of the decedent's death in all cases if it sees fit to do so.

3. COMMUNITY PROPERTY STATES

In the case of decedent's dying in States having the community property system, only one-half of the property of the community estate is normally taxable at the death of either spouse. Even though the other half is taxed later, on the death of the surviving spouse, the total tax is much less than it would have been had the property been taxed as a unit as is done in the case of decedents of States not having the community property system. In the case of a $10,000,000 estate, for example, if it is taxed as a unit the Federal tax, after credit for State death taxes, would be $2,026,900. If taxed as two estates of $5,000,000 each, the tax would be $757,000 in each case, or a total of $1,514,000. Thus the Federal Government would lose $512,900.

4. LEGAL METHODS BY WHICH THE ESTATE TAX MAY STILL BE AVOIDED

Tax avoidance, as distinguished from tax evasion, is perfectly legal. Thus, if a person has a general power of appointment over certain property, he can avoid a tax on his estate with respect to the property subject to the power by simply failing to exercise it, or by making the appointment in his lifetime by a deed not of a testamentary character. Bequests to charitable and similar institutions may be used to reduce the net estate of a decedent and thus bring it within lower brackets of the progressive rates. Until the enactment of the present gift tax, the estate tax could be entirely avoided by the making of gifts inter vivos, and even now the first $5,000 of gifts to any one person in each year is not taxed, and there is a general exemption of $50,000 allowed against the total taxable gifts made by the donor after the effective date of the act. Life insurance payable to named beneficiaries, to the extent of $40,000, is exempt from the estate tax, while irrevocable insurance trusts may be used for the purpose of entirely avoiding the $40,000 limitation. Trusts of other property may similarly be set up for the purpose of avoiding the estate tax, but even though the trust may not be taxable under the estate tax it may be reached under the gift tax. The rates of the gift tax, however, are one-fourth less than those of the estate tax.

D. RELATION OF DEATH DUTIES TO THE ACCUMULATION OF WEALTH

The fundamental economic theory upon which the death tax is based is that every person enjoys only a life interest in his property, and that upon a person's death the State may claim the whole of his estate or any portion it sees fit. Jeremy Bentham, the English jurist and philosopher, fathered the idea of abolishing intestate succession except between near relatives, while John Stuart Mill favored the restriction of the amount which any one might receive either by will or intestacy. The agitation in this country for the limitation of inheritance through death taxes was largely projected by Theodore Roosevelt, when President. Supporting President Roosevelt in his scheme for progressive death taxes was Andrew Carnegie, the multimillionaire steel king and philanthropist, who might have been expected to be on the other side of the question.

There has been much difference of opinion as to the propriety of using taxation as a means of bringing about social reforms, but in 1924, when other taxes were being reduced due to a surplus in the Treasury, the estate tax was jumped from a maximum of 25 per cent to a maximum of 40 per cent. Clearly this was not done for the purpose of raising revenue, and as a matter of fact the proponents of the increase frankly gave a number of "social" reasons for the higher rates. One was to prevent the accumulation and perpetuation of large fortunes in the hands of those who contributed little or nothing to their creation.

It would appear that if death-tax rates are to be fixed from social considerations, the problem should be approached with the idea of arriving at a fair average rate which would not bear too heavily on any ordinary type of estate.

E. THE DEATH TAX FIELD—WHO SHOULD OCCUPY IT?

Federal death duties may be justified under the power of Congress to lay and collect taxes. State death duties, of course, are based upon the power of the States to regulate the devolution of property. In spite of the power of the Federal Government to levy a death tax, it has been contended that it should abandon the field in favor of the States, particularly on the ground that the States have absolute power of regulation over property passing at death. It is also contended that Federal death taxes involve a usurpation of State revenues; that death taxes are more readily collectible by the States; and that historically the Federal Government has used death taxes only in emergencies. On the other hand, it is urged on behalf of a Federal tax that without the Federal Government in the estate-tax field, State death taxes would disintegrate because of interstate competition for the residence of wealthy persons; that the great fortunes of the country are not created in one locality, but from all over the Nation, which should share in their taxation; that the Federal estate tax is a necessary corollary to the income tax to reach property not taxed thereunder in the lifetime of the owners; and so on.

Looking at the problem from a practical standpoint, it would appear that the following facts may be substantiated:

(1) Before the imposition of the Federal estate tax, the States made little use of death taxes, receiving only $28,000,000 from this source in 1915. Only 12 States levied an inheritance tax on lineal heirs, and they are the ones who usually receive most of a decedent's property.

(2) In spite of the entrance of the Federal Government into the death tax field in 1916, the State revenues from this source have increased each year since that time, particularly after the allowance of a credit against the Federal tax in the 1924 and succeeding revenue acts for State death taxes paid. In 1930, the State death-tax revenue was over $180,000,000.

(3) The credit provision of the Federal law, which was first limited to 25 per cent of the Federal tax and was later increased to 80 per cent, has promoted uniformity in the total death tax burden, particularly in connection with the larger estates.

(4) The additional Federal tax imposed by the revenue act of 1932, against which no credit is allowed for State death taxes paid, merely increases the total tax on estates and does not interfere with the State revenues.

(5) The withdrawal of the Federal Government from the death tax field would result in the automatic reduction of over half of the State levies, due to the fact that they impose additional taxes for the specific purpose of taking up the Federal credit. Some States would automatically have no death taxes at all and would become havens of refuge for the ultra rich.

No compelling reason can be set forth why the death-tax field should be exclusively occupied by either the Federal Government or the States. Strong arguments can of course be advanced in favor of one or the other, but it appears that the most satisfactory solution of the problem is to leave the matter in the status quo, at least until some plan can be evolved for apportioning the entire tax field.

F. SHOULD THE FEDERAL GOVERNMENT SUBSTITUTE AN INHERITANCE TAX FOR THE ESTATE TAX?

In 1916, when the present Federal death tax was first imposed, Congress adopted the estate tax rather than the inheritance tax because it was felt that such a tax could be administered with less conflict than a tax based upon the distributive shares. The determination of the rights of beneficiaries under the will of a testator or under intestate law are exclusively matters within the jurisdiction of the States, and these rights would have to be determined before a Federal inheritance tax could be applied. Under an estate tax, the Federal Government is concerned only with the estate as a unit, before distribution.

Though discrimination in favor of direct heirs is difficult under an estate tax, yet when the Federal estate tax and the State inheritance taxes are considered as a unit, the total burden will usually be found to be lighter on direct heirs than on collaterals and strangers. The principal reason for favoring direct heirs is that a man should not be penalized for making adequate provision for his family, but this can be accomplished under the estate tax by providing a large exemption. So far as the incidence of the estate tax is concerned, the whole matter is under the control of the testator in making his will.

From a theoretical standpoint, it may be argued that if an estate owes an obligation to the Federal Government, or if it has escaped its fair share of taxes in the lifetime of its owner, the estate as a unit, and not the distributive shares in the hands of the beneficiaries, should pay the death tax.

Thus, from a practical standpoint, it would seem that the estate tax is best adapted to use by the Federal Government, and its imposition is not unsupported by theory. It is true that the inheritance tax appears somewhat more equitable, but the possibilities of incorporating into the estate tax some of the equitable features of the inheritance tax should not be overlooked.

G. REVENUE POSSIBILITIES OF DEATH DUTIES

In 1930, the combined Federal and State death taxes amounted to $245,000,000, or about 2½ per cent of the estimated amount of property devolving each year. In practically the same period, Great

Britain, with a national wealth of about one-third that of this country, collected $413,000,000 from death duties, or about 12 per cent of the estimated amount of property devolving annually in that country. These death duties accounted for 4.5 per cent of the total internal taxes in this country (Federal and State), and for 19.6 per cent of Great Britain's total internal taxes. This difference may partly be accounted for by the fact that the British rates are quite high and the exemption very low, while in this country our rates are fairly low on the smaller estates and our exemptions are quite large.

What the effect of the additional estate tax levied by the Federal Government in 1932 will be on the Federal revenues is not definitely known, but it may be assumed that when the rates are fully effective the total Federal and State collections will be in the neighborhood of $400,000,000. As our total rates now measuably approach those of Great Britain, we should normally collect three times the revenue collected in that country. However, the exemption in Great Britain is only £100 (about $500), while under our basic Federal tax it is $100,000 and under the super tax $50,000. When smaller estates are thus eliminated through exemptions, the base of the tax becomes considerably narrowed as large estates are the exception and not the rule. With an exemption of $100,000, probably less than one-third the total value of property said to devolve annually in this country is reached by the Federal tax. In fact, in 1930, only 8,798 Federal estate-tax returns were filed by resident decedents.

H. SUGGESTIONS

1. POSSIBILITY OF INCLUDING SOME OF THE EQUITABLE PROVISIONS OF THE INHERITANCE TAX IN THE FEDERAL ESTATE TAX

At the expense of simplicity and certainty, it would be possible to incorporate some of the equitable provisions of the inheritance tax in the estate tax.

Plan A.—Determination of the statutory exemption according to the relationship and number of the beneficiaries.

Under this plan, the present specific exemption would be superseded by a variable one, to be determined by the number of beneficiaries and their respective relationship to the decedent. A similar plan is used in the present New York statute.

Plan B.—As an alternative to Plan A, a partial refund of the estate tax could be made to the direct heirs upon the basis of a recomputation made after the estate had been distributed.

Under this plan, a tax would first be paid on the entire estate, as at present, and then a recomputation would be made after distribution, each share being treated as a separate estate, with rates and exemptions depending upon relationship to the deceased. A refund would then be made of the excess of the original estate tax actually deducted from the share over the tax as recomputed.

2. DIVISION OF THE DEATH TAX FIELD BETWEEN THE STATES AND THE FEDERAL GOVERNMENT

It is elsewhere pointed out that the only way to preserve the field of death taxation for the States which wish to use it is for the Federal Government to levy a tax and allow a credit against it for State death taxes paid. Under the present arrangement, we have State inheritance and estate taxes, additional State estate taxes, a basic Federal estate tax, and an additional Federal estate tax. Prior to the imposition of the additional tax by the Federal Government, it actually collected a minimum of 20 per cent of the tax it levied, leaving the balance to be imposed and collected by the States. Under the additional Federal tax, the total Federal portion will be over 60 per cent of the combined levy in the case of the large estates.

The maximum rate on estates is now 45 per cent, applying to that portion in excess of $10,000,000. The determination of what burden estates can reasonably bear is a question in which the States should have a voice. After that is determined, some consideration should be given to what portion of the tax should be collected by the Federal Government and what portion by the States. Then the Federal Government could levy the maximum tax agreed upon and allow a credit against it equal to the portion of the total burden which it is considered the States should levy. The States could then impose a tax equal to that proportion of the Federal tax if they saw fit to do so, and in that way the imposition of death taxes would be greatly simplified and there would be absolute uniformity in their application.

Inasmuch as the larger estates are usually amassed under the whole national economic structure rather than in any one State, the credit might be allowed on a sliding scale, so that the Federal share of the total burden would increase with the size of the estate.

3. REVALUATION OF ESTATES

The equity of making some adjustment for depreciation in estates between the date of the decedent's death, when the tax is imposed, and the date of distribution of the property, is apparent. It is hardly the policy of the Congress to confiscate estates in any case, but unless some action is taken the tax will continue to border on confiscation in many instances. A remedy has elsewhere been suggested, namely, that the rate of tax be determined by the value of the estate at the date of the decedent's death and be applied to the net value of the estate at the time of distribution.

As an alternative to this plan, it might be provided that the tax should in no case exceed the amount which would be payable if the highest rate applicable to any portion of the net estate at death were applied to the entire net estate at its value as of the date of distribution.

Another plan which might be suggested would be to make no alteration in rates but to limit the total tax payable to an amount not exceeding a given percentage, say 50 per cent, of the value of the net estate at distribution. This method, however, would be disproportionately beneficial to the large estates.

4. DESIRABILITY OF GREATER UNIFORMITY IN STATE STATUTES

While a general uniformity in the death-tax burden has now been brought about through the influence of the Federal credit for State death taxes paid, there still remain a number of problems which should be dealt with. The following matters could profitably be considered:

(1) Simplification of death taxes by imposing only one tax instead of both inheritance and estate taxes.

(2) Uniform classification of beneficiaries in determining rates and exemptions.

(3) Uniform exemptions for each class of beneficiaries.

(4) Uniform rates for each class of beneficiaries.

(5) Fuller recognition of the principles underlying the laws of descent and distribution in determining the rates of tax applicable to each class of beneficiaries.

5. MISCELLANEOUS SUGGESTIONS FOR LEGISLATION

(*a*) Taxation of gifts made in contemplation of death under the gift tax rather than the estate tax, due to difficulty of proving "contemplation" of death.

(*b*) Taxation of transfers in trust which are not clearly of a testamentary character under the gift tax rather than the estate tax, due to doubtful constitutionality of the present method.

(*c*) Attempt to include the wife's portion of community property in the estate of husband on basis of the right to manage, control, and dispose of her share which she acquires on her husband's death.

(*d*) Define "general power of appointment" for purpose of the estate tax.

PART I

HISTORICAL FACTS

Part I. Historical Facts

A. HISTORY OF DESCENT AND DISTRIBUTION

1. IN ANCIENT TIMES

A knowledge of the laws of descent and distribution is necessary in order fully to comprehend the principles underlying the imposition of death duties. From the earliest times, the sovereign has had the right to regulate the disposition of property passing at the death of the owner. This right is based upon the doctrine that originally all title to property was in the king. The right to dispose of property at death, therefore, is not a natural right but a privilege, subject to such conditions as the sovereign may see fit to impose. The Egyptian Hindu, Hebrew, Mohammedan, Chinese, Roman, and Greek law all prescribe rules governing the descent of property.

The following quotation translated from "La Successione Testamentaria Secondo i Papiri Grecoegizii," by Vincenzo Arangio-Ruiz, shows the absolute title of the king in lands under Egyptian law:

> The king, according to documents of the earliest dynasties, was absolute owner of all lands. The priest had only the use of the lands destined for the Gods. In compensation for their services, the soldiers received only the right to cultivate definite amounts of land for their own profit as long as it pleased the seignoir, who was always ready to show his power by making the soldiers move from one place to another. In the most ancient epoch, the enjoyment of goods granted in subownership by the king or by seignoirs was strictly personal, but it was natural that the sons of priests and soldiers followed the path beaten by their fathers, so that it became customary to invest them with the goods left by them. The king sometimes gave absolute ownership of garden lands to especially deserving subjects. Under Rameses II it became common for the sons to succeed the father in his land. Passage from one caste to another was rare. Under the influence of the Greeks there was sanctioned a very liberal privilege in favor of the first-born.

The principles of the Hindu law of succession are set forth in the 'Sacred law of Aryes," as translated by George Buhler. The following quotation sets forth the most important of these laws:

> After the father's death let the sons divide his estate.
>
> Or, the whole estate may go to the first born; and he shall support the rest as a father.
>
> But in partition there is an increase of spiritual merit.
>
> The additional share of the eldest son consists of a twentieth part of the estate.
>
> The additional share of the youngest consists of the sheep, grain, the iron utensils, a house.
>
> All the remaining property shall be divided equally.
>
> A woman's separate property goes to her unmarried daughters.
>
> Srotriyas shall divide the estate of a childless Brahmana.
>
> The king shall take the property of men of other castes.

Thus the Hindu law recognized the doctrine of distributing property equally among the sons. There were two exceptions to this general rule. The eldest son was recognized as the head of the house and received on that account an additional share, and the youngest received an additional share under the supposition that he was the weakest. The right of a woman to hold property was recognized as was the right of the king to take property of men outside the Brahmanian castes. By an old Hindu custom, if a man had no son, he might adopt the eldest son of an appointed daughter.

In the case of the Hebrew law, Moses laid down the following rule:

If a man die, and have no son, then ye shall cause his inheritance to pass unto his daughters. And if he have no daughters, then ye shall give his inheritance unto his father's brethren. And if his father have no brethren, then ye shall give his inheritance unto his kinsman that is next to him of his family, and he shall possess it.

If the deceased had more than one son each took an equal share except the first-born, who was entitled to a double portion. The wife did not inherit from the husband as she was considered to be a part of his property. Obligation for her support, however, was imposed upon the principal heir. The Rabbis established the following order of descent and distributions:

(1) Sons and their descendants, (2) daughters and their descendants (3) the father, (4) brothers and their descendants, (5) sisters and their descendants, (6) the father's father, (7) the father's brothers and their descendants, (8) the father's sisters and their descendants, and (9) the father's father's father, etc.

The Mohammedan law doubtless contained the most scientific rules of succession found in any country. This law is difficult to describe because the various portions which are allotted to each heir are mathematically worked out and a different rule applied in a great number of cases. The general principle is stated by Shama Churun Sircar in his lectures on "The Muhammadan law," as follows:

The first in order are those persons who are entitled to shares; they are such as have specific shares allotted to them. 2. After them are the residuaries by consanguinity, who are all such as take what remains of the inheritance after the sharers have taken their shares; and, if there be only residuaries, they take the whole property. 3. Then the residuary for special cause, that is, the manumittor of a slave, and his (or her) male residuary heir. 4. In default of residuaries, the residue remaining after allotment of shares returns or reverts to the sharers by consanguinity according to their respective rights. 5. Then inherit the distant kindred. 6. Next, the successor by contract. 7. Next succeeds the person who was acknowledged as a kinsman through another, so as not to prove his consanquinity through such other, provided the deceased persisted in that acknowledgment till he died. 8. Then the person to whom more than one-third, even the whole of the property was left by will. 9. Then, or lastly, the Bayitul-mal, or public treasury.

There seems to have been no rule of primogeniture in the early Mohammedan law. Daughters inherited a portion, which was generally one-half that of a son. The rules of succession were complicated by the existence of polygamy. In case of brothers inheriting from each other, the one with the same father and mother as the deceased was preferred over the one with the same father only.

The rules of descent and distribution in China are set forth in the following statement, prepared by Dr. Arthur W. Hummel, of the Library of Congress:

Inheritance in China was from ancient times based on custom which was recognized by law unless otherwise prohibited. All property was held in common by the family, but was administered by the elders for the mutual benefit of the clan.

Upon decease of the head of the family, the property might be left intact or redistributed according to the wishes of the surviving members with the sanction of the mother. There was no will in the Western sense, but the deceased might leave a written or oral charge, which, being known to the group as a whole, must, as far as possible, be carried out by the decendants, but a will that presupposed the alienation of property beyond the clan was never recognized as valid. Alienation of property could take place only before the death of the testator and hence was always liable to be protested. The right to control the undivided property was by custom vested in the eldest son, who could not alienate property without the consent of the mother and younger brothers.

In case of redistribution of property, the mother received a definite share and the sons shared equally, the share of the daughters being equivalent to a dowery. In addition to his own share, the eldest son inherited the sacrificial property which he was obliged to leave intact to the oldest male descendent. If the wife of a deceased brother had sons of her own, she was ordinarily entitled to the property of her husband which she held in trust for her children.

In later periods of Chinese history, sons of concubines shared equally with legitimate sons, the same being true of illegitimate sons if proven to be descendants of the deceased.

The early Roman law is obscure in regard to succession in the case of intestacy, the right to dispose of property by will being recognized. In "Roman Law," by Hunter, the rules laid down by the one hundred and eighteenth novel of Justinian, in the early part of the Christian era, are as follows:

The children of the deceased, whether sons or daughters, take equal shares per capita.

Grandchildren take equally the portion that their parent would have taken if alive [per stirpes].

If there are no descendants, the ascendants exclude all collaterals, except brothers or sisters of the whole blood.

If there are several ascendants, the nearer exclude the more remote, whether male or female, on the father's side, or on the mother's.

It should be observed that under the Roman law no distinction is made in favor of the first-born or male heirs.

The early Greek law of the preclassical period contains certain interesting features. In Corinth, there was an old statute limiting the actual number of families in the State, which presumably had the same effect as the law limiting the number of estates in Thebes. The conservative spirit of Sparta long retained a restriction upon the subdivision of inheritances, and in Athens it was customary for the eldest son to keep the family house, the household goods, and the family name, in addition to his share of the property. This latter custom resembled to some extent the Hindu practice. Subsequently, in classical Greece, these privileges in favor of the first-born disappeared, and the property was divided equally among the heirs.

The rules of descent set forth in these ancient laws are not materially different from those which exist in the United States to-day, except in regard to the Hindu and Hebrew laws relating to the right of women to receive property. The rule of primogeniture is hinted at, but not well established. Whatever advantage the first born received was offset by certain obligations. The opinion has been expressed with respect to the Hindu and Hebrew law that the additional portion granted to the first born was given as a matter of policy to encourage him to make an honest distribution of the estate. While in some cases under the Hindu law the first-born is allowed to take all the property, when he does so he is bound to support the entire family.

What has been stated with respect to the laws of inheritance in ancient countries concerns only civilized nations. The rules followed in the case of primitive man can only be surmised from certain customs which existed in savage tribes and which have come under the observation of civilized man. While it is not feasible to undertake an analysis of this subject in a work of this kind, due to the mass of material involved, certain interesting features will be mentioned. In general, the community right in the real property occupied by the savage was superior to the right of the descendants. With respect to personal property, it was apparently common for the heirs of the decedent to succeed to the same. Where polygamy existed, inheritance often followed the female line instead of the male. In the case of early kings of the Scottish Picts, brothers succeeded brothers, but the general rule according to modern accounts of savage tribes appears to have been that sisters' sons succeeded to their maternal uncles, because kinship through males was unrecognized.

2. IN EUROPE

(*a*) *Great Britain.*—Among the early Britons, an ordinary inheritance was divided between all the sons equally. Among the Saxons and Danes, sons and daughters shared real and personal property in like proportion. With William the Conqueror's advent into England, the feudal system of dividing land into military tenures was introduced, and under that system descent was naturally to the eldest son, as he was the first of his generation able to perform the duties of military service. Furthermore, the system of entails grew up, and nothing could divest an eldest son of the estate that was entailed to him. Sir William Blackstone, in his Commentaries on the Law of England, published in 1762, describes the law of intestacy as follows:

> In personal estates, the father may succeed to his children; in land property, he never can be their immediate heir by any the remotest possibility: In general, only the eldest son, in some places only the youngest, in others all the sons together, have a right to succeed to the inheritance; in real estates males are preferred to females, the eldest male will usually exclude the rest; in the division of personal estate, the females of equal degree are admitted together with the males, and no right of primogeniture is allowed.

Under the existing law in England, the rule of primogeniture has been abolished, and both sons and daughters share equally in estates of both personal and real property. Estates tail may now be converted into fee simple estates by executing a deed to that effect and enrolling it in the court of chancery. However, a few old English estates, such as Blenheim and Trafalgar, are perpetually entailed, and there is no means of cutting them off by legislation. As a general rule, property can not be tied up for more than two generations, due to the rule against perpetuities. But, as there is absolute freedom of bequest in England, and as most property in England passes by will, there is still the tendency to continue real estate in families from generation to generation by means of marriage settlements and other dispositions of property allowed by law. The whole blood now have priority over the half blood. The husband no longer has a right of universal succession to the wife's property, but only a life interest. Moreover, where a child dies intestate without issue, leaving both parents, the father no longer succeeds to the exclusion of the mother, and the latter is given an equal share. Under an old statute of James II, an intestate's brothers and sisters had a right to share equally with the mother. Under the present law, the mother has been restored to her position as sole successor. The present order of descent in the case of intestacy for near relatives, for both real and personal property, is as follows: First, children and their descendants;

second, father and mother in equal shares or the survivor alone; third, brothers and sisters of the whole blood. For a complete description of the present rules in England, see Exhibit A in the appendix.

(*b*) *France.*—The early French law was based upon the Roman civil law, and provided for an equal division of personal and real property among the children of the deceased. In many parts of the country, however, these old laws were superseded by local customs and feudal traditions inspired by the ascendancy of military service. Many of these customs favored the rule of primogeniture, especially in Paris, Normandy, Picardy, and Orleans. In the South of France, the privilege of the eldest son had more difficulty in gaining a foothold than in the northern part, due to the strong Roman influence. Moreover, this rule was applied only in the case of nonnoble tenures, so that there were two systems of succession existing in France at the same time. There also grew up certain entails in perpetuity which applied only to estates of hereditary nobility. As a result of the French Revolution, the privilege of the eldest son was abolished, and under the Code Napoleon equal division of property among the children, without distinction as to age or sex, was provided. Entails in perpetuity, with few exceptions, were definitely abolished in 1849, the chief class that remained being tolerated until the families in question became extinct.

The present French law provides that certain definite minimum portions of the father's estate shall go to the children and no amount of individual or collective disobedience can deprive them of such shares. This is entirely different from the law in England and in the United States, where absolute freedom of bequest is permitted, with the exception of certain marital rights. Another distinguishing feature of the French rule in the case of intestacy is the separation of the property into two equal portions in the case of no issue. One of these portions goes to ascendants and the other to collaterals. While neither dower nor curtesy, as such, exist in France, the husband or wife always takes a life interest in a part of the property. The order of descent in the case of near relatives is: First, children and their descendants; second, brothers and sisters and their descendants, one-half; father and mother, one-half, but if only one survive, one-fourth to the parent and three-fourths to the brothers and sisters; third, ascendants of paternal and maternal line per capita. For a description of the French law of inheritance as it exists to-day, see Exhibit A in the appendix.

(*c*) *Germany.*—In the early Teutonic period, property was divisible among all the heirs of the deceased. As there was a tendency to keep the land of the tribe or family together, equal divisions among the children did not always take place. The rules and customs were different in many localities. Feudalism, with primogeniture in its wake, began to exercise an influence. In some cases, a representative member of the family was chosen as a general manager or guardian for the relations. By the end of the thirteenth century, the right to dispose of property to a single individual was recognized by law. There was also the custom of making family compacts which stipulated that land held by military service should descend to the eldest son. Eventually, a fixed rule was adopted that the eldest son or the eldest relation should inherit the property. Later the tendency was toward equal division of the property. As this tendency resulted in a splitting up of the landed estates and a weakening of the control by the nobles, there was later a sharp reaction toward the rule of primogeniture. When Napoleon conquered Germany, the law of the Code Napoleon was applied. Under this code there was no privilege of primogeniture, and the property was equally divided among the heirs. The two broad systems of division and nondivision have from very early times commingled throughout Germany, and while the mountainous south has mainly parceled out, the level north has rather maintained, the large estates which are inherited by a single heir. The latter plan, which follows the old German custom of keeping the farm together, appears to have predominated under the empire. Under the present law of Germany, equal division among the children is mandatory. This is one of the distinguishing characteristics between that law and the laws of England and the United States which permit entire freedom of bequest. The rights of a surviving spouse are absolute and do not consist of a life interest. The order of descent for near relatives is: First, children and their descendants; second, parents and descendants; third, grandparents and descendants. For a more complete description of the law of inheritance in Germany to-day, see Exhibit A in the appendix.

(*d*) *Italy.*—In northern Italy the property was at first divided equally among the sons. While the father was allowed to give a limited preference to a deserving son, yet if all the sons were good and obedient, equal partition was the rule. In southern Italy the privilege of the first son to inherit the property crept in as the result of the conquest of this country by the Normans and the introduction of the feudal system by them. After the conquest of Italy by Napoleon the rules of descent were governed by the Code Napoleon. The present rules of descent in Italy are such as would be expected in the country in which the civil law originated. Children and their descendants have the first claim on property, but brothers and sisters precede fathers and mothers in the order of inheritance. Husband and wife are entitled to a certain portion of the estate, and the owner can dispose by will of only one-half of his property if there are children and of only two-thirds if there are no children. For a description of the Italian law of inheritance as it exists to-day, see Exhibit A in the appendix.

(*e*) *Spain.*—Under the old Spanish common law the property of the deceased was divided equally among his sons and daughters alike. Later the feudal system brought about a change in the law, and descent was not limited to an eldest son, but on the contrary all the sons were required to divide the land equally. In Aragon, King James II (A. D. 1307), at the request of the barons, allowed them to leave an inheritance to a single heir among their children to avoid the splitting up of estates, and this privilege was extended in later years to freemen. The system of entails also flourished in Spain, but it was abolished in 1836 and has never been revived. The present law is based upon equal division among the children, although the parents may still reserve a portion in favor of the eldest or another, and the only obvious privilege still surviving exclusively to an eldest son appears to be the rather empty one of inheriting his father's title.

The most interesting feature of the Spanish rules of descent is the community property principle, which allows the surviving spouse one-half of the marriage partnership estate. The father and mother precede brothers and sisters in the order of descent in taking property which is left by an intestate. As in Italy, the owner can only dispose of a portion of his property by will, the balance going to "forced heirs." For a more complete description of the Spanish law of inheritance, as it exists to-day, see Exhibit A in the appendix.

3. IN THE UNITED STATES

In this country the power to regulate the descent and distribution of both real and personal property is (subject to constitutional and treaty limitations) entirely within the jurisdiction of the several States. Many differences exist under the various State constitutions and laws.

The rule of giving priority to the eldest son in the case of real property has never been applied in this country. Even during the colonial period, when land was granted by the King, the colonial charters provided that it should be held in free and common socage according to the customs at East Greenwich, in the county of Kent. Under this custom the land descended to all the sons equally. In many State constitutions feudal tenure has been abolished and all lands are declared to be allodial. Entails, for the most part, have been abolished, and even in the few States where they still exist they are considerably modified. In some States an estate tail is changed into a fee simple in the grantee or first taker. In others the first taker has an estate tail, but after his death the estate becomes one in fee simple in his issue. In the case of intestacy the general rule is that both real and personal property are distributed among the children in equal proportion, without distinction as to sex, subject to certain rights of the surviving spouse.

A few of the characteristic distinctions between the laws in the several States will now be considered. In Massachusetts, the order of descent in the case of intestacy is: First, children and their descendants; second, father and mother; and third, brothers and sisters and their descendants. Dower and curtesy are recognized, and follow the common law rule.

In New York, a new law was passed covering descent and distribution, effective September 1, 1930. Different rules apply to real and personal property. In the case of real property, the order of descent is the same as in England, the father and mother preceding the brothers and sisters. The wife has a dower interest of one-third in the land of which her husband was seised during marriage. Curtesy, as such, does not exist, but the husband is entitled to an estate for life in the lands of which the wife died seised. This life interest may be defeated by the wife, and her real property is subject to her debts. In the case of personal property, one-third goes to the widow if there is issue, but if none and there is a parent, then one-half goes to the widow and one-half to the parent. If the decedent leaves neither issue nor parent, then one-half goes to the widow and one-half to brothers, sisters, or their descendants.

In Pennsylvania, the order of descent to near relatives is similar to that in New York. However, a certain part of the estate is allotted to the husband or wife in lieu of dower or curtesy at common law.

In the District of Columbia, the civil law rule is followed in the case of real property, with brothers and sisters preceding father and mother, while the common law rule is followed in the case of personal property, with father and mother preceding brothers and sisters. Both dower and curtesy interests are provided for in the District.

In Georgia there are several distinctive features. If there is no issue the surviving spouse is the sole heir. In general, if there are children, the surviving spouse takes with the children, share and share alike. Brothers and sisters and father and mother take equally. This last rule is similar to the one in France. Dower rights exist in the State but not curtesy rights.

In Louisiana we find traces of the French system. In default of lineal heirs the estate is divided into two equal portions, one of which goes to the father and mother and the other to the brothers and sisters. The community property principle is recognized, and the community property includes acquisitions during marriage, but excludes acquisitions before marriage or with separate funds or by inheritance or donation. While dower and curtesy, as such, do not exist, the surviving spouse is reserved certain interests. The power to disinherit exists, and in this respect the law of Louisiana differs from that of France, where the beneficiary can not be deprived of his rightful inheritance or legitime.

In Illinois the rule of descent for near relatives is as follows: First, children and their descendants; second, father and mother; and third, brothers and sisters and their descendants. Both husband and wife are entitled to a life interest in one-third of the real estate of which the decedent was seized during marriage.

In Missouri the rule is similar to that in Louisiana, where parents and brothers and sisters share in equal parts in default of issue. The wife has dower rights, and while curtesy has been abolished, the husband is given rights equivalent to the dower rights of the wife.

In Utah children and their descendants are first in the order of descent, parents are second, and brothers and sisters and their descendants are third. While dower and curtesy do not exist, the widow is entitled to one-third of the real property possessed by the husband during marriage, to set apart as her property in fee simple.

Texas is a community property State, and one-half of the property acquired during marriage belongs absolutely to the surviving spouse. The order of descent is children, parents, and brothers and sisters.

For a complete description of the laws of descent and distribution in the several States, see Exhibit B in the appendix.

4. SUMMARY

From the foregoing résumé of the history of descent and distribution, the following conclusions may be drawn:

(*a*) The inherent right of the sovereign to regulate and control the descent and distribution of property passing at death has been recognized from the earliest times.

(*b*) The most important change which has taken place in the rules of inheritance and succession is with respect to the rights of a wife in the property of her husband. In ancient times the wife had no inheritance; later dower rights were granted; and finally the community property principle was developed which recognized the wife as being entitled to one-half of the earnings of her husband.

(*c*) The rule of primogeniture, giving preference to the eldest male heir, was not firmly established in ancient times, but flourished during the feudal period. It has, at the present time, become practically extinct.

(*d*) Subject to the rights of the surviving spouse, the present rule, followed by practically every country, is that children and their descendants are first in the order of succession. This is the only rule which appears to be followed uniformly by all nations.

(*e*) The father and mother are generally next in line after lineal descendants. This rule is not entirely uniform. For example, in Italy brothers and sisters precede the parents; in France, parents take one-half and brothers and sisters one-half of the estate; in Georgia and Missouri parents and brothers and sisters share equally; in the District of Columbia brothers and sisters precede parents in the case of real property and follow the parents in the case of personal property.

(*f*) There is no longer any distinction between male and female heirs, as was the case under rules adopted in former times.

(*g*) The power of a person to dispose of his property by will is generally recognized. An exception is made in the case of certain rights granted to the surviving spouse. Moreover, in certain countries in continental Europe, such as France and Spain, lineal descendants are entitled to a certain portion of the estate and can not be excluded therefrom by will.

(*h*) In some countries, and in a few States of the United States, the surviving spouse is entitled to one-half of the property acquired during marriage under the community property principle. Eight States in this country have community property laws, and this principle is also recognized in France and Spain.

B. HISTORY OF DEATH TAXES

1. IN ANCIENT TIMES

Inheritance taxes have existed from the earliest times. Egypt imposed a tax on the transfer of property by inheritance as early as 700 B. C., at a flat rate of 10 per cent. In 117 B. C., an inheritance tax was levied not only upon real but also upon personal property. A similar tax was imposed by the Grecian cities and the Byzantine Empire.

The Romans appear to have copied their first inheritance tax from the Egyptians. Gibbon, the historian, traces the origin of the tax to Emperor Augustus, who suggested it to the Senate as a means of supporting the Roman Army. The tax was called the "vicesima hereditatium," and was levied at a flat rate of 5 per cent on inheritances and bequests. Certain exemptions were allowed to direct descendants and near relatives, but these exemptions applied only when the decedent belonged to one of the old families of Rome. This law remained unchanged for a century or more. The Emperor Nirva (96–98 A. D.), exempted successions between mother and child. The Emperor Trajan made the exemption of the direct line and near relatives apply to all Roman citizens. Though these exemptions were abolished by Caracalla, they were restored by Macrinus. Pliny, the younger, made the first recorded argument against inheritance taxation, stating that in the direct line it was an unnatural tax, augmenting the grief and sorrow of the bereaved. Gibbon states that the tax was most fruitful as well as most comprehensive.

2. IN EUROPE

After the fall of the Roman Empire during the early Middle Ages there were no inheritance taxes. When the feudal system was established, however, two forms of inheritance tax, known as the "relief" and the "heriot," were developed. These taxes were not copied from the Roman tax, but were strictly feudal in their origin. The "relief" was an exaction made by the King in consideration of his permitting property to pass to indirect heirs rather than to the Crown. The "heriot" was a duty levied with respect to the peasants of a lord's estate. It was imposed at the death of a serf upon the transfer of his chattels to his heir. With the disappearance of serfdom and the manorial system, these dues were largely converted into monetary payments. The "relief" was the direct forerunner of the national inheritance taxes of France, Spain, and Portugal. Inheritance taxes were imposed in Germany and the Netherlands during the seventh century, and in Italy before the close of the fourteenth century. The development of inheritance taxes in the principal European countries will now be discussed.

(*a*) *Great Britain.*—It is possible that the Roman "vicesima hereditatium" was applied to the British Isles during the third century A. D., which was the period of Roman occupation, for the reason that this tax was extended to the outlying provinces. In the early Anglo-Saxon times, the personal property of a decedent was subject to an ecclesiastical duty, first called the "sawlsceat" and later the "mortuarium." These duties were paid to the church and were imposed on all classes. With the advent of the feudal system, following the Norman Conquest in the year 1066, both the "relief" and "heriot" were put into effect. Moreover, the English Crown, by the Statute of Marlborough (52 Hen. 3, ch. 17), levied a feudal relief on the direct heirs when they were not present on the estate by virtue of "prima seisina," on the theory that the Crown had to protect the estate against interlopers until the heirs' appearance. The exaction of the relief became so oppressive that it brought sharp protest from the nobles. It was first limited by a charter of Henry I, and in section 2 of the Magna Carta the amount exacted was regulated at 100 pounds for an earldom or barony, and 100 shillings for a knight's fee, with no additional fees in case of wardship.

By the end of the seventeenth century, the feudal exactions of "relief" and "prima seisina" had fallen into disuse. In lieu of these duties, England imposed, under the stamp tax act of 1694, a duty of 5 shillings on the probate of wills and letters of administration covering personal estates in excess of £20. This duty was copied from the Dutch. It was imposed for a period of four years, but when it expired in 1698 it was renewed with the rates doubled. This flat 10 shilling tax, which applied only to personal estates, lasted until Lord North's reform in 1779. The development of this duty shows the steady rise of the graduated-tax theory. Following the original act of 1694, acts imposing probate duties were enacted in 1698, 1779, 1783, 1795, 1798, 1801, 1804, 1815, 1880, and 1881. Under the basic act of 1694, the flat rate of 5 shillings was imposed regardless of the amount of the estate. It took many years to effect a uniform rate per pound. A still longer period elapsed before the rate per pound was increased with the size of the estate. In the case of an estate of £100, the probate duty under the 1694 act was 5 shillings;

under the 1698 act, 10 shillings; under the 1795 act, £2 10 s.; under the 1815 act, £3; and under the 1881 act, no tax. In the use of an estate of £100,000 the duties were as follows: Under the act of 1694, 5 shillings; under the act of 1698, 10 shillings; under the act of 1795, £40; under the act of 1815, £2,250; under the act of 1881, £3,000. This shows that there was a decrease in the tax on the smaller estates but an increase on the larger ones. For a more complete statement of these facts, see Exhibit C in the appendix.

In 1789, England levied another form of death duty by imposing a tax on legacies. This applied to personal property passing to the legatee, and was in addition to the probate duty. The rates were 2 shillings and sixpence on £20; 5 shillings on £20–£100; and 20 shillings on amounts over £100.

Other legacy duties were imposed by acts passed in 1783, 1789, 1796, 1804, 1805, 1806, 1808, and 1815.

Under an act passed in 1853, the British Government imposed a succession duty on the share of a beneficiary in the real property of a decedent. While the rates were set up at a certain fixed percentage, they varied according to the degree of consanguinity of the beneficiary. A legacy duty was also imposed by the 1853 act. Under this act, the rates for both legacy and succession duties were 1 per cent with respect to lineal issues and ancestors, and 10 per cent with respect to strangers in blood.

Thus at the time of the American Civil War there were three death duties imposed by England:

A probate duty, chargeable against the mass of the estate.

A legacy duty, chargeable against each legacy or distributive share.

A succession duty, chargeable against successions to real property.

The first true estate tax imposed by Great Britain was in 1894, although this tax appears to have had its origin in the probate duty already described. This duty superseded the probate duty, and taxed both personal and real property. The legacy and succession duties were retained. At the present time, Great Britain imposes the following duties: (1) The estate tax, (2) the legacy and succession duty, (3) the corporation duty.

This last duty is levied to compensate the Government for the other forms of death duties which corporations escape due to their perpetual character. Each of these duties will be discussed more fully under the subject of "Description of Present Status of Death Duties."

(*b*) *France.*—In France, the inheritance taxes grew out of feudal exactions, like the "relief" which the king claimed as feudal lord. A registration fee was provided for in 1539, and in 1553 Henry II extended it to include testamentary dispositions. Louis XIV, in 1703, applied the registration fee to all transfers of immovables to persons not in direct line. This fee applied whether the transfers were made during life or at death. In addition, a tax of 1 per cent called the "centième dernier," was imposed on the transfer of such immovables. Except for a few modifications, these transfer taxes remained unchanged until the last decade of the eighteenth century. Under the Registry Act of December, 1790, the following taxes were imposed on inheritances of movables and immovables: Direct line, one-fourth of 1 per cent; surviving spouse, 1 per cent; near relatives, 2 per cent on immovables, 1½ per cent on movables; distant collaterals, 3 per cent on immovables, 1½ per cent on movables; strangers, 4 per cent on immovables, 1½ per cent on movables.

The Registry Act of December, 1790, was superseded by the law of 22 Frimaire an VII. Under this act, the direct line paid one-fourth of 1 per cent on movables and 1 per cent on immovables, the surviving spouse paid five-eighths of 1 per cent on movables and 2½ per cent on immovables, and all others paid 1¼ per cent on movables and 5 per cent on immovables. While changes were made by the acts of April 28, 1816, and April 21, 1832, they affected only the collateral classifications and the rate, and were only amendments to the original act. In 1850, the distinction between movables and immovables was removed. Additional rates were added to those imposed in 1832, which made the tax range from 1¼ per cent in the case of direct heirs to 11¼ per cent in the case of strangers.

From 1850 to 1901, a few minor amendments were made, some slightly increasing the rates and others improving the administration of the tax. In 1901, the rates were made progressive, being graduated from a minimum of 1 to a maximum of 2½ per cent on net shares of over 1,000,000 francs in the case of direct line, and from a minimum of 15 to a maximum of 18½ per cent on net shares over 1,000,000 francs in case of strangers in blood. The fundamental features of the 1901 act were that the rates were progressive by brackets and that the tax applied to the net instead of the gross estate. The progressive feature of this act is distinguishable from that of the English estate duty of 1894. Under the latter, the increasing rates apply to the total property, whereas under the former the progressive rates applied only to the succeeding increments of the inheritance.

The 1901 act contained many provisions to check evasions. In 1907 England and France agreed to furnish each other with data on personal property of decedents of the other country. In 1910, the law was amended so that children of the decedent paid from 1 per cent on the first 2,000 francs of their inheritance to 6½ per cent on the excess over 50,000,000 francs, while the rates for brothers increased from 10 to 18¾ per cent and for strangers from 18 to 29 per cent.

Under the finance bill of December 31, 1917, there was, first, a progressive succession duty, with deductions allowed to heirs with large families; second, a special estate duty, progressive and graduated according to the number of children left by the decedent; and, third, a graduated gift tax. The rates were greatly increased by the finance act of June 25, 1921, but in order to prevent the entire confiscation of the estate, a provision was inserted that the total of the tax on any one share should not exceed 80 per cent. The rates of the succession duty and the special estate duty were increased one-fifth in 1924. The present French death duties will be discussed more fully under the subject of "Description of Present Status of Death Duties."

(c) *Germany.*—In Germany, a feudal due was exacted called the "erbkauf." It was different from the "relief" in that the heir did not purchase his title from the feudal lord. If the vassal desired his property to pass to certain relatives, he made a payment before death to the feudal lord. This was the erbkauf. As in most countries during the feudal period, servile dues were imposed upon peasants of the estate. These servile dues lasted until the reform of Stein, during the Napoleonic era.

The first inheritance tax, as such, appears to have been levied by the German State of Baden-Durlach, in 1622. Other German States levied inheritance taxes during the seventeenth and eighteenth centuries. None of these taxes applied to direct heirs, and the rates were moderate. In later years, different rates were introduced, based upon the degree of collateral relationship. The first law to introduce progressive rates was enacted by Schaumburg-Lippe in 1811. In 1822, Prussia allowed a special exemption in the case of bequests to servants and employees of a decedent. After 1880, direct descendants were taxed. Alsace-Lorraine, after its incorporation into the empire, kept the rates on the direct heirs of the French enregistrement duty; Hamburg, in 1894, taxed children of the decedent 1 per cent, grandchildren and parents, 3 per cent; stepchildren and step-parents, and children-in-law, 4 per cent; and adopted children, 6 per cent. Lubeck, two years later, adopted similar rates, but Bremen did not tax the direct line until 1904. The problem of multiple taxation became acute in Germany, and resulted in the enactment of the Imperial tax in 1906. The rates were 4 per cent on near relatives where there was less than 20,000 marks, and beyond that amount were progressive. On strangers in blood, the basic rate was 10 per cent. To prevent sudden jumps in tax in the transition from one schedule division to the next highest one, it was provided that the rate of the higher division would apply only so far as it could be paid out of half of the amount by which the inheritance exceeded the lower limit of the schedule division. To prevent evasion by gifts, a gift tax was enacted with the same rates as the inheritance tax, and it was provided that all separate gifts to any separate individual, made within a period of five years, should be treated as a single grant for tax purposes.

Under the law a certain portion of the inheritance tax collected was allotted to the States. Most of the States discarded their own inheritance taxes and accepted their allotted share of the revenue from the Imperial tax. In 1919 an estate duty was levied and the rates progressed from 1 per cent on the first 2,000 marks to 5 per cent on the excess over 2,000,000 marks. This duty was levied on the total estates of all German citizens, and in the case of foreign residents, real property and business assets outside of Germany were exempt. The inheritance tax law of 1919 also levied a tax on individual legacies and successions. The rates varied both with respect to the amount of property involved and the degree of relationship of the beneficiaries to the decedent. Both direct heirs and collaterals were taxed. The present system of taxation in Germany will be discussed under the subject of "Description of Present Status of Death Duties."

(*d*) *Italy.*—At the time of Frederick II, the feudal lord had authority to levy a tax called "gabella hereditaria" on property passing at death in the case of intestacy. At the end of the fourteenth century many Italian cities adopted inheritance taxes. Genoa, in 1395, taxed all inheritances irrespective of relationship. Florence followed with a similar tax in 1415, but charitable bequests were exempted. Venice and Mantua adopted collateral inheritance taxes in the latter part of the sixteenth century. During the occupation of the Italian States by Napoleon the French tax was applied.

When the unification of the Italian States took place a tax law was passed on April 21, 1862, which strongly resembled that of France. Increases in rates were made in 1866, 1868, 1870, 1888, and 1894. In 1902 a new law was enacted and the rates were made progressive by brackets. On the direct line the rates varied from 0.8 to 3.6 per cent, while on strangers the rates were graduated from 15 to 22 per cent. An additional mortmain tax, imposed under an act passed in 1874, was retained.

In 1914 the rates were increased and the progression changed from bracket to totality, which made the final tax paid by the beneficiaries somewhat higher. By a royal decree of November 24, 1919, the rates were again increased, so that direct heirs paid 12 per cent when they received more than 20,000,000 lire; brothers and sisters, 26 per cent; and strangers, 50 per cent. The rates for these heirs were 4 per cent, 12 per cent, and 26 per cent, respectively, even where the share was as low as 100,000 lire. Charitable bequests and bequests to churches for masses were taxed at flat rates of 5 per cent and 2 per cent, respectively. This act also imposed a further tax where the prior wealth of the heir exceeded 200,000 lire. The rates were 5 per cent where the prior wealth was between 200,000 and 400,000 lire; 8 per cent between 400,000 and 600,000 lire; and in excess of 600,000 lire, 10 per cent. By an amendment this additional tax could not exceed one-third of the heir's wealth minus 200,000 lire. The 1919 tax was enacted while the Socialists were in control of Italy.

When the Facisti secured control of the Italian Government the inheritance tax laws were revised by an act passed on August 20, 1923. Inheritance within the family circle, including transfers to uncles and nephews, were exempted altogether from inheritance tax. Progressive rates running from 12 per cent on the first 10,000 lire to 50 per cent on the excess over 10,000,000 lire, were established for bequests to distant relatives and strangers. The present Italian death duties will be discussed more fully under the subject of "Description of Present Status of Death Duties."

(*e*) *Spain.*—In Spain feudal exactions continued as royal taxes until 1792. In that year inheritances of real property were made subject to a transfer tax. In 1829 collateral descendants and strangers in blood were taxed at different rates. Transfers to direct heirs were exempted from the transfer tax in 1835. Inheritances of personal property were not subject to the transfer tax until 1864. In 1901 an inheritance tax was adopted with a schedule of proportional rates containing 11 collateral classifications. Children and grandchildren were taxed at 1.4 per cent, and strangers in blood were taxed as high as 12.6 per cent. The progressive rate principle was first applied in 1905, when strangers in blood were taxed at different rates according to the amount received. This same principle was extended to all beneficiaries in 1910, with the exception of widows and illegitimate children. Unlike the French law, the progression was based upon the total amount of the inheritance instead of by bracket. The rates under the 1910 act were from 1 to 2 per cent on legitimate children and from 17 to 20 per cent on strangers in blood. In 1910 Spain also imposed an annual mortmain tax on corporations. The law was again changed in 1920. While the corporation mortmain tax was retained, lineal descendants were taxed from 1 to 5 per cent and parents from 5½ to 6½ per cent. The tax on collaterals was increased, the highest rate being 25½ per cent. A flat rate of 20 per cent was imposed upon bequests to churches. The present Spanish death duties will be discussed more fully under the subject of "Description of Present Status of Death Duties."

3. IN THE UNITED STATES

(*a*) *Federal death taxes*—(*1*) *Post-revolutionary period.*—The first reference to inheritance taxes in the United States is in the report of a special committee on finance which, in 1794, recommended to the House of Representatives the imposition of graduated stamp duties upon inventories of the effects of deceased persons, receipts for legacies of personal property according to the value thereof, the issuance of letters of administration, and the probate of wills (State Papers, Finance Vol. I, p. 277). Three years later Congress, under the act of July 6, 1797 (ch. 11, 1 Stat. 527) levied, among others, the following taxes, to be collected by stamps:

Upon receipts for legacies and shares of personal property: Between \$50 and \$100, a tax of \$0.25; between \$100 and \$500, a tax of \$0.50; for each additional \$500, a tax of \$1; shares under \$50 were exempted as were those of widows, children, and grandchildren.

This tax was like the English legacy duty in that the mode of collection was by stamp duties levied on the receipts evidencing the payment of legacies or distributive shares of personal property, and in that the amount was charged upon the legacies and not upon the residue of the personal estate. It was continued in force for a period of four years, and was repealed in 1802 (act of June 30, 1802, ch. 17, 2 Stat. 148) along with other internal revenue taxes. During the War of 1812, no taxes upon inheritances were levied, although Secretary Dallas recommended a tax on inheritances and bequests in a report submitted to Congress on January 21, 1815 (American State Papers, Vol. VI, p. 887). The necessity for extra taxes at that time was due to the war with England, and as the Treaty of Ghent had already been signed, Congress did not act upon the suggestion of the Secretary.

(*2*) *Civil War period.*—During the Civil War period, the death duties imposed by Congress greatly resembled those existing in England, and this parallel was observed by the Supreme Court in Scholey *v.* Rew (23 Wallace 331, 349), and Knowlton *v.* Moore (178 U. S. 41, 50). There were three taxes imposed:

A legacy duty, chargeable against each legacy or distributive share.

A succession duty, chargeable against successions to real property by deed or will.

A probate duty, chargeable against the mass of the estate.

Secretary Chase first suggested a legacy tax in his annual report for 1861. Such a tax was adopted by Congress under the act of July 1, 1862, (ch. 119, sec. 111 and 112, 12 Stat. 432, 435–6). By this act, only personalty in excess of \$1,000, transferred by bequest or inheritance, was subject to tax, and the rate was graduated according to the degree of consanguinity of the beneficiary. This tax thus comprehended only legacies and distributive shares of personal property, and was payable by the executor. The rates as provided by this law were graduated as follows:

Lineal issue or ancestor, brother or sister, 0.75 per cent.

Descendant of a brother or sister, 1.5 per cent.

Uncle or aunt, or descendant of same, 3 per cent.

Great uncle or aunt or descendant of same, 4 per cent.

Other collateral relatives, strangers in blood, or corporations, 5 per cent.

The tax was applied only when the entire personal estate was in excess of \$1,000, but in such event the rates were applied to each legatee's share, regardless of whether such share was in excess of \$1,000 or not. No person, when receiving a legacy from an estate of \$1,000 or more, was exempt from tax, except a husband or wife of the deceased. The executor, administrator, or trustee was required to pay the tax before making distribution to the legatees, and the tax was made a lien upon the property until fully paid. This tax was not as productive as had been generally expected. It was estimated that it would produce $1,000,000 annually, but actually it produced only $56,592.61 in 1862 and $311,161.02 in 1863. (Ex. Doc., No. 4, 2d sess., 46th Cong., 1879–80, p. 171.) A new tax bill was framed in 1864, in which Congress increased the tax rates on legacies of personal property and imposed a tax on successions to real estate. While husband and wife were exempt from the legacy tax, there was no provision for their exemption from the succession tax, but an amendatory act (March 3, 1865, 13 Stat. 481), which was made retroactive, provided that the succession tax should not be imposed where the successor was a widow. The rates established were as follows:

	Rates on successions	Rates on legacies	Increase in legacy rates over 1862 law
	Per cent	*Per cent*	*Per cent*
Lineal issue or ancestor	1	1	0.25
Brother or sister	2	1	.25
Descendant of a brother or sister	2	2	.50
Uncle or aunt, or descendant of same	4	4	1.00
Great uncle or aunt, or descendant of same	5	5	1.00
Other collateral relatives, strangers in blood, or corporations	6	6	1.00

In the case of legacies, the administrator or executor was charged with the duty of making the return and paying the tax; but in the case of successions, the person liable for the tax was required to furnish full account of the succession. In order to prevent the giving away of property before death for the purpose of avoiding the succession tax, it was provided that deeds and gifts, made without valuable and adequate consideration, conveying any real estate to any person, whether they purported to vest the estate either immediately or in the future, should be considered as a succession and taxed as such. (13 Stat. 1, 289.) The commissioner decided that under the law the consideration must not only be valuable but also adequate, and when the consideration is inadequate, a succession tax must be paid on the entire estate conveyed. (3 Internal Revenue Record, p. 197.) The special revenue commission recommended that, since such a tax had little influence in checking the development of the country, it should be made productive of large revenue. It was estimated that the entire property of the country changed hands once in 32 years (the lifetime of a generation), and that assuming the legacy and succession duty at an average of 1 per cent, the receipts from this source should yield annually $5,000,000. The entire real and personal property in the United States in 1860 was estimated at $16,159,616,086. (Kennedy, Eighth Census, p. 195.) However, for the year 1865 only $543,000 was collected while a similar tax in Great Britain yielded $11,000,000. The law was further amended by the act of July 13, 1866 (14 Stat. 140). Under the previous laws, if the total personal property was in excess of $1,000, it was all subject to tax. By this law, the legacy to a minor child was taxed only on the amount in excess of $1,000. The tax on both legacies and successions was repealed by the act of July 14, 1870 (16 Stat. 257). The repeal was effective October 1, 1870, and the repealing act provided that any taxes levied upon bequests or devises of any real or personal property made to a literary, educational, or charitable institution which had not already been paid, were not to be collected. The reasons given in the Senate for the repeal of such taxes were:

It was proposed to repeal certain other taxes, and if this was done there would be no officers charged with the special collection of these taxes, and most of the taxes were paid by direct descendants. This was the most natural way for a father to dispose of his property. As so little tax was collected from collaterals it was not worth while retaining such a tax if the tax on direct heirs was repealed. (Cong. Globe, 2d sess., 41st Cong., 1869–70, p. 4708, column 3.)

The collections from 1865 down to the date of repeal steadily increased, doubtless due to a growing familiarity with the law on the part of the public and officials. In 1866 collections rose to $1,170,977. In the next four years they steadily increased, until in 1879 a total of $3,998,024 was returned. The following table shows the collections from 1863 to 1871:

Year	Legacies	Successions
1863	$56, 592. 61	
1864	311, 161. 02	
1865	506, 751. 85	$39, 951. 32
1866	924, 823. 97	246, 154. 88
1867	1, 228, 744. 96	636, 570. 19
1868	1, 518, 387. 64	1, 305, 023. 60
1869	$1, 244, 837. 01	$1, 189, 756. 22
1870	1, 672, 582. 93	1, 419, 242. 57
1871	1, 430, 087. 34	1, 074, 979. 79
Total	8, 893, 969. 33	5, 911, 678. 57

The statistics of these inheritance taxes show some interesting facts. The greater part of the taxes collected were at the minimum rates—over 67 per cent in the case of legacies and over 70 per cent in the case of successions. There were three Territories—Dakota, Idaho, and Wyoming—in which no taxes on either legacies or successions were collected. In Montana no legacy tax was collected, and in Colorado and Utah no succession tax was collected. About 55 per cent of these taxes were paid in New York, Massachusetts, and Pennsylvania. Every year these three States also led in the amount of legacy tax paid. Ohio, however, took third place in the amount of succession duties paid except in 1869. On the whole, these taxes were considered just and equitable. In Congress it was said:

The general idea is that if anything in the world should pay a tax it is legacies and successions, because they are supposed to be in the nature of a gift to the party receiving them without any consideration moving from him. (Cong. Globe, 2d sess., 41st Cong., 1869–70, p. 4708, column 3.)

In the Internal Revenue Record we find the following statement:

This tax is in principle one of the best, fairest, and most easily borne that political economists have yet discovered as applicable to modern society. (9 Internal Revenue Record, p. 113.)

By the act of July 1, 1862, the following stamp duties were imposed upon the probate of wills or letters of administration:

Where the estate does not exceed $2,500, a tax of $0.50.
Where the estate exceeds $2,500 but not $5,000, a tax of $1.
Where the estate exceeds $5,000 but not $20,000, a tax of $2.
Where the estate exceeds $20,000 but not $50,000, a tax of $5.
Where the estate exceeds $50,000 but not $100,000, a tax of $10.
Where the estate exceeds $100,000 but not $150,000, a tax of $20.

By the act of June 30, 1864, the above duties were increased to $1 on any estate below $2,000, while for every $1,000 or fraction thereof in excess of $2,000 an additional 50 cents was charged. In addition, all bonds, receipts, or other legal documents connected with the administration of an estate were also taxable. These taxes were repealed in 1872.

(3) *Income tax of 1894.*—The act of August 27, 1894 (Ch. 349, sec. 28, 28 Stat. 509, 533), included as income for the purpose of the income tax, property acquired by bequest or devise. This statute was declared unconstitutional by the Supreme Court on the theory that the income tax was a direct tax and must, therefore, be apportioned. (Pollock *v.* Farmers' Loan & Trust Co., 157 U. S. 429; 158 U. S. 601.)

(4) *Spanish-American war period.*—The next death duty imposed by the United States was enacted by the act of June 13, 1898 (Ch. 448, secs. 29 and 30, 30 Stat. 448, 464–466). Under this act, as construed by the Supreme Court in Knowlton *v.* Moore (178 U. S. 141), the tax was imposed upon legacies or distributive shares, and not upon the whole estate. The following rates were established under this act:

Legacies to—	Size of legacy				
	$10,000 to $25,000	$25,000 to $100,000	$100,000 to $500,000	$500,000 to $1,000,000	Over $1,000,000
	Per cent	*Per cent*	*Per cent*	*Per cent*	*Per cent*
Lineal issue or ancestor; brother or sister	¾	1⅛	1½	1⅛	2¼
Descendants of brother or sister	1½	2¼	3	3¾	4½
Uncle or aunt or descendants of same	3	4½	6	7½	9
Great uncle or aunt or descendants of same	4	6	8	10	12
Other collateral descendants or strangers in blood	5	7½	10	12½	15

This act was amended in 1901, and repealed on April 12, 1902. The tax was limited to personal property passing by will, by intestate laws, or by transfers intended to take effect in possession or enjoyment at death. No tax was imposed upon estates of less than $10,000. Husband and wife were wholly exempt from taxation, and contingent remainders were not taxable. By an amendment in 1901, charitable and similar bequests were exempt from tax. During the fiscal years 1899 to 1907, inclusive, a total of approximately $22,500,000 was collected from this source. The effective date of the repeal of the tax was July 1, 1902, but the repealing statute excepted from its operation taxes imposed prior to that date, and under the act of June 27, 1902, provision was made for the refund of any tax collected on an interest not vested in possession or enjoyment prior to the effective date of the repeal. In 1915, the Supreme Court, in the cases of United States *v.* Jones (236 U. S. 106) and McCoach *v.* Pratt (236 U. S. 562), held that where the period of administration had not expired prior to July 1, 1902, the beneficiaries were without legal right to demand distribution prior to the repeal, and such undistributed interests were not, therefore, subject to tax. As the period for filing claims had expired, Congress, by a special act passed March 20, 1928, authorized refunds where the tax was collected on interests which had not vested in the legatees and distributees prior to April 12, 1902. Refunds were made without regard to any statute of limitations, provided application was made within a certain time. Consequently, there are still a few cases pending in the Bureau of Internal Revenue involving a refund of these old legacy taxes.

(5) *Taxes of 1916 and subsequent years*—(*aa*) *Estate tax.*—No death duties were imposed by Congress during the period from 1902 to 1915, inclusive. When this character of tax was again considered by Congress in 1916, it was decided to abandon the former theory of taxing legacies and successions, as such, and to levy a tax measured by the entire net estate of the decedent transferred at death. England had imposed an estate duty in 1894, and while Congress had, in 1898, attempted to levy such a duty, the Supreme Court, in construing the 1898 act, held that the statute as written imposed a legacy duty and not an estate duty. The first Federal estate duty was levied by the revenue act of 1916, effective September 8, 1916. The tax was imposed upon the transfer of the net estate of every person dying after September 8, 1916, and was payable one year after death. Included in the net estate were: (1) Transfers or trusts in contemplation of death, and (2) transfers or trusts intended to take effect in possession or enjoyment at or after death. Gifts made within two years preceding death were presumed to have been made in contemplation of death. Recipients of property transferred in contemplation of death were made liable to the tax on such property. Resident decedents were allowed a deduction of $50,000 in computing the net estate, but no such deduction was allowed to nonresidents. The rates of tax on the net estate under the revenue act of 1916 were as follows:

	Per cent
First $50,000	1
Next $100,000	2
Next $100,000	3
Next $200,000	4
Next $550,000	5
Next $1,000,000	6
Next $1,000,000	7
Next $1,000,000	8
Next $1,000,000	9
Excess over $5,000,000	10

The above rates applied to all decedents dying during the period September 8, 1916, to March 3, 1917.

Under the act of March 3, 1917, effective as of that date, the rates under the 1916 act were increased as follows:

	Per cent
First $50,000	1½
Next $100,000	3
Next $100,000	4½
Next $200,000	6
Next $550,000	7½
Next $1,000,000	9
Next $1,000,000	10½
Next $1,000,000	12
Next $1,000,000	13½
Excess over $5,000,000	15

The rates under the act of March 3, 1917 were in lieu of those imposed by the revenue act of 1916, and applied to all decedents dying during the period March 3, 1917 to February 25, 1919. In addition to this tax, decedents dying after October 3, 1917, and before

February 25, 1919, were subject to a war estate tax imposed by the revenue act of 1917. The rates under this act were as follows:

	Per cent
First $50,000	½ of 1
Next $100,000	1
Next $100,000	1½
Next $200,000	2
Next $550,000	2½
Next $1,000,000	3
Next $1,000,000	3½
Next $1,000,000	4
Next $1,000,000	4½
Next $3.000,000	5
Next $2,000,000	7
Excess over $10,000,000	10

Thus the total estate tax rates applicable to decedents dying between October 3, 1917 and February 25, 1919, ranged from 2 per cent to 25 per cent. Estates of decedents dying in the service of the United States during the World War, or from injuries or diseases contracted during such service, if death occurred within one year after the termination of the war, were exempted from the payment of the war estate tax.

The end of the war brought a revision of the rates of the estate duty, with some reductions in the case of the smaller estates. The estate tax provisions of the revenue act of 1916, with the mandatory provisions of the act of March 3, 1917, and the revenue act of 1917, were repealed by the revenue act of 1918 (sec. 1400), effective February 24, 1919. In place of such duties, Congress levied an estate duty at the following rates:

	Per cent
First $50,000	1
Next $100,000	2
Next $100,000	3
Next $200,000	4
Next $300,000	6
Next $250,000	8
Next $500,000	10
Next $500,000	12
Next $1,000,000	14
Next $1,000,000	16
Next $1,000,000	18
Next $3,000,000	20
Next $2,000,000	22
Excess over $10,000,000	25

It will be seen from the above that the rates on all estates under $450,000 were halved and that the reduction was somewhat smaller for estates between $450,000 and $1,000,000, while for all estates above $1,000,000 the old rates were retained. The 1918 act broadened the scope of the tax in some directions and made some administrative changes. A provision was inserted specifically including in the gross estate the value of an estate in dower or curtesy, or an estate in lieu of dower or curtesy. Another provision required the inclusion in the gross estate of the value of property passing under a general power of appointment. As no such specific provision was contained in the revenue act of 1916, the Supreme Court, in United States *v.* Field (255 U. S. 257), held that property passing under a general power of appointment was not taxable under that act. A provision was inserted requiring the inclusion in the gross estate of (1) insurance receivable by an executor under policies taken out by the decedent upon his own life, and (2) insurance in excess of $40,000 receivable by all specific beneficiaries taken out by the decedent upon his own life. In Llewellyn *v.* Frick (268 U. S. 238), the Supreme Court held that the revenue act of 1918 did not apply to insurance policies taken out before its passage. The 1918 act also exempted from tax bequests to charities. To prevent the taxation of the same property unreasonably often, it was provided that property received by the decedent from the estate of a person who had predeceased the decedent by less than five years should be exempt from tax if a Federal estate tax had been paid on such property. The burden of the tax on estates of nonresidents was made somewhat heavier by a provision that the prorated deductions allowed nonresidents on property in the United States must not exceed 10 per cent of the value of that property. A study of its legislative history discloses that an attempt was made in 1918 to abandon the estate tax in favor of the legacy and succession tax. After the House passed an estate tax bill, the Senate changed it to an inheritance tax on the recommendation of the Committee on Finance. When the bill went to conference, the Senate amendment was abandoned, and the provision of the House bill providing for an estate tax was agreed to.

Under the 1921 act, which superseded the revenue act of 1918, an estate tax was imposed applicable to all decedents dying after November 23, 1921. The $50,000 exemption and the rates of tax remained the same as under the revenue act of 1918. The 1921 act, however, liberalized the law as it related to property held jointly or as tenants in the entirety by the decedent and any other person. It also removed certain restrictions on nonresident decedents and American missionaries dying in the foreign service. The exemption from tax in the case of decedents dying in the military or naval service of the United States, from injuries or diseases contracted during the World War, was broadened to cover estates of citizens of the United States serving in the military or naval forces of any country associated with the United States in the late war. The provision in the 1918 act to prevent double taxation in the case of property previously taxed under the revenue acts of 1917 and 1918 was extended to cover property taxed under any revenue act. This provision was also changed in order to make subject to tax any appreciation which took place in the property of a prior decedent between the date of his death and the date of the present decedent's death.

The estate-tax provisions of the 1921 revenue act were superseded by those of the revenue act of 1924. This last act, as originally enacted, increased the rates in the case of net estates in excess of $100,000, reaching a maximum at 40 per cent. The rates were as follows:

	Per cent
First $50,000	1
Next $50,000	2
Next $50,000	3
Next $100,000	4
Next $200,000	6
Next $300,000	9
Next $250,000	12
Next $500,000	15
Next $500,000	18
Next $1,000,000	21
Next $1,000,000	24
Next $1,000,000	27
Next $3,000,000	30
Next $2,000,000	35
Excess over $10,000,000	40

These rates never had any permanent operation, however, as they were retroactively reduced by the revenue act of 1926 to conform to the rates in effect under the 1918 and 1921 acts, which have already been shown and which reached a maximum at 25 per cent.

The revenue act of 1924 abolished the military exemption, but established a credit against the Federal estate tax for death duties paid to the States. This credit could not exceed 25 per cent of the Federal estate tax computed without the benefit of such credit. One purpose of the credit provision appears to have been to encourage uniformity in the estate-tax burden imposed by the different States. Another was to lessen the burden of double taxation. This provision was upheld as constitutional by the Supreme Court in Florida *v.* Mellon (273 U. S. 12).

A provision was inserted in the 1924 act that if the decedent had the power at the time of his death to change the enjoyment of a property interest which he had transferred, or with respect to which he had created a trust, such interest was to be included in the gross estate. Likewise, if the decedent relinquished such a power in contemplation of death, except by a sale for a fair consideration, the property interest over which he had such a power was to be included in the estate. The theory behind these provisions was that the decedent had retained substantial control over the disposition of the property through the power to change the enjoyment thereof. Another provision was inserted authorizing a deduction of claims, mortgages, and indebtedness of the estate only to the extent that they were incurred or contracted for a fair consideration. Bequests, legacies, and devises to fraternal beneficiary societies operating under the lodge system for use for specified benevolent purposes, were allowed as deductions. The legislative history of the 1924 act discloses that the Senate attempted to substitute an inheritance tax for an estate tax, but that the Senate amendment was again rejected by the conferees.

The estate tax provisions of the revenue act of 1924 were superseded as of February 24, 1926, by those of the revenue act of 1926. This latter act reduced the rates, increased the exemption from $50,000 to $100,000, and increased the credit on account of State inheritance taxes paid from 25 to 80 per cent. The rates under the 1926 act are as follows:

	Per cent
First $50,000	1
Next $50,000	2
Next $100,000	3
Next $200,000	4
Next $200,000	5
Next $200,000	6
Next $200,000	7
Next $500,000	8
Next $500,000	9
Next $500,000	10
Next $500,000	11
Next $500,000	12
Next $500,000	13
Next $1,000,000	14
Next $1,000,000	15
Next $1,000,000	16
Next $1,000,000	17
Next $1,000,000	18
Next $1,000,000	19
Excess over $10,000,000	20

The revenue acts from 1916 to 1924, inclusive, specified that there should be a prima facie presumption that transfers made within two years of death were made in contemplation of death, and hence subject to the estate tax. Under the revenue act of 1926, this presumption was made conclusive, due to the difficulty which the Government had experienced in securing proof to establish "contemplation of death." Subsequently, however in a decision rendered March 21, 1932, the Supreme Court declared this conclusive presumption to be unconstitutional. (Heiner *v.* Donnan, 52 S. Ct. 358; Handy *v.* Delaware Trust Co., Exr., 52 S. Ct. 371.)

The estate tax provisions of the revenue act of 1926 were not changed by the revenue act of 1928 except for a few minor administrative amendments.

Under decisions of the Supreme Court in Burnet *v.* Northern Trust Co., Morsman *v.* Burnet, and McCormick *v.* Burnet (51 S. Ct. 342, 343), it was held that where an owner of property had made a transfer in trust, reserving the income of the property, or the right to dispose of the income therefrom, to himself for life, with remainder to others after his death, the value of the property should not be included in the gross estate of the donor. To offset the effect of this decision, Congress, on March 3, 1931, passed House Joint Resolution 529, which amended the revenue act of 1926 to make it certain that transfers of such a character were subject to the estate tax.

Under the revenue act of 1932, several important changes were made in the estate tax provisions, both with respect to rates and administrative matters.

The most notable change was the imposition of a super tax, in addition to the estate tax imposed under the revenue act of 1926, upon the transfer of the net estate of decedents dying after June 6, 1932. The additional tax is computed by determining the excess of the tentative tax provided in section 501 of the 1932 act over the amount of the gross estate tax imposed under the revenue act of 1926. The difference thus obtained is the additional estate tax.

The total Federal tax under the 1932 act is the sum of this additional tax and the net tax imposed under the revenue act of 1926 after credit has been taken for death taxes paid to the States which is limited to 80 per cent of the Federal estate tax computed under the 1926 act.

The rates and the exemption under the 1926 act remain unchanged, but in the case of the additional tax imposed by the 1932 act, the exemption is $50,000 instead of $100,000. The 80 per cent credit provision allowed for State death taxes under the 1926 act is not allowed in respect of the additional tax.

Other changes made by the 1932 act include the amendment of several administrative sections of the estate tax provisions of the 1926 act. Some of these changes will be referred to briefly. They include:

(*a*) Allowance for gift taxes paid, where property is subject to both gift and estate taxes.

(*b*) Clarification of the provisions relating to the 80 per cent credit for death taxes paid to the States; extension of the time for filing claim for such taxes from three to four years.

(*c*) Strengthening the provisions relating to transfers in trust during life, where some interest or right therein is to pass or cease at the transferor's death, so as to reach transfers which might escape tax under the old law.

(*d*) The presumption that transfers made within two years of death were made in contemplation of death was made prima facie only, pursuant to the decision of the Supreme Court declaring the conclusive presumption unconstitutional.

(*e*) The exclusion, in determining consideration for a transfer inter vivos, of the value of the relinquishment of dower, curtesy, or other marital rights in the decedent's property.

(*f*) Clarification of the provisions relating to deductions.

(*g*) Limitation of the deduction for prior taxed property where two decedents die within five years and there is included in the second estate property of the first estate.

(*h*) Limitation of the deduction for charitable bequests, etc., to amounts in fact bequeathed.

(*i*) Extension of the time within which the estate tax may be paid to eight years; extension of the time for payment of deficiencies to four years.

(*j*) Restoration to Commissioner of Internal Revenue of authority to release lien on estate before assessment is made, where the tax liability has been discharged or provided for.

The estate tax imposed under the revenue act of 1926, as amended, and the additional estate tax levied by the revenue act of 1932, constitute the Federal death taxes now in force. Their scope and operation will be discussed in the chapter dealing with the "Present status of death duties."

(*bb*) *Gift tax.*—As previously stated, Congress, in the act of 1864 (13 Stat. 289), provided that deeds and gifts made without valuable and adequate consideration, conveying any real estate to any person, whether they purported to vest the estate either immediately or in the future, should be considered as a succession and liable to the succession duty imposed by that act. The Commissioner of Internal Revenue, in interpreting this provision of law, decided that the consideration must be not only valuable, but adequate, and that when the consideration was inadequate, the succession tax must be paid on the entire estate conveyed. (3 Internal Revenue Record 197). Under section 28 of the act of August 15, 1894 (c. 349, 28 Stat. 553), "money and the value of personal property acquired by gift" was required to be included in income for the purpose of the income tax. However, the income tax features of the 1894 act were held unconstitutional by the Supreme Court in Pollock *v.* Farmers' Loan & Trust Co. (157 U. S. 249; 158 U. S. 601.)

The first real attempt by Congress to levy a gift tax, as such, was in 1924. Under the revenue act of 1924, a gift tax was imposed on the donor, measured by the aggregate gifts made by him during the taxable year. The theory upon which it was levied was that it would tend to prevent gifts being made for the purpose of avoiding the estate tax. An exemption of $50,000 was allowed, and deductions were permitted in the case of gifts to the United States, to States and charitable organizations, and gifts to any one person the aggregate amount of which did not exceed $500. To avoid double taxation, gifts received by the donor within five years prior to the time of his making such gifts were exempt where a gift tax or estate tax had been paid on such property by the preceding donor. The rates, as first enacted, were as follows:

	Per cent
First $50,000	1
Next $50,000	2
Next $50,000	3
Next $100,000	4
Next $200,000	6
Next $300,000	9
Next $250,000	12
Next $300,000	15
Next $500,000	18
Next $1,000,000	21
Next $1,000,000	24
Next $1,000,000	27
Next $3,000,000	30
Next $2,000,000	35
Excess over $10,000,000	40

It should be observed that these rates were the same as the estate tax rates imposed by the 1924 act, which were graduated from 1 per cent to 40 per cent. In conformance with the reductions made in the estate tax rates, however, the revenue act of 1926 also retroactively reduced the gift tax rates imposed under the act of 1924. Thus the higher rates never had any permanent operation. As retroactively reduced, they were as follows:

	Per cent
First $50,000	1
Next $100,000	2
Next $100,000	3
Next $200,000	4
Next $300,000	6
Next $250,000	8
Next $500,000	10
Next $500,000	12
Next $1,000,000	14
Next $1,000,000	16
Next $1,000,000	18
Next $3,000,000	20
Next $2,000,000	22
Excess over $10,000,000	25

The amended gift tax rates were the same as the amended estate tax rates. The gift tax provisions of the revenue act of 1924 were only in effect during the period from June 2, 1924 to January 1, 1926, the tax being repealed by the revenue act of 1926, effective as of the last-named date.

The gift tax provisions were before the Supreme Court in three cases. The first case was Blodgett *v.* Holden (275 U. S. 142), which related to a gift made during January, 1924. The court held the act invalid insofar as it attempted to tax gifts made in January, 1924. The second case was that of Untermeyer *v.* Anderson (276 U. S. 440). This case involved a gift made while the revenue bill of 1924 was pending in Congress. The Supreme Court also held a tax on such gifts invalid. The effect of these two decisions was to make the gift tax law ineffective as to any gifts made prior to June 2, 1924, the date of the enactment of the revenue act of 1924. In the case of Bromley *v.* McCaughn (280 U. S. 124), the gift was made subsequent to the 1924 act. The constitutionality of the gift tax was, therefore, squarely before the court in this case. The court held that the gift tax was constitutional for the reason that it was not a direct tax but an excise on the exercise of one of the powers incident to the ownership of property, and that it did not deprive a person of his property without due process of law.

The total collections from the tax on gifts amounted to a little more than $10,000,000. One reason for the small collection was the fact that the tax could easily be evaded by making a series of gifts in different years, the tax, as pointed out before, being imposed upon an annual basis. The small tax collected was also due, to some extent, to the short period the tax was in effect, viz., from June 2, 1924, to January 1, 1926.

The gift tax was reimposed by the revenue act of 1932 as a result of the increase in the estate tax made by the same act. With a maximum estate tax rate of 45 per cent, the reenactment of the gift tax was necessary if wholesale avoidance of the estate tax by gifts inter vivos was to be prevented, particularly in view of the recent decision of the Supreme Court declaring unconstitutional the provision of the revenue act of 1926 which conclusively presumed gifts made within two years of death to have been made in contemplation of death, and hence subject to the estate tax.

The objectionable features of the 1924 gift tax have been corrected in the new statute, particularly as regards the evasion or partial avoidance of the former tax by making gifts over a period of years up to the limit of the exemption in each year. Under the 1932 act, the tax is imposed not upon the amount of gifts made within a particular calendar year, but on all taxable gifts made after the enactment of the act, upon a cumulative basis. Provision is made so that the tax will always be approximately the same whether the gifts occur at one time or in several different years. Yearly computations and collections are made, the tax for each calendar year being the amount by which a tax on the aggregate sum of the net gifts for such calendar year and for each of the preceding calendar years, computed according to the rate schedule, exceeds a tax computed on the aggregate sum of the net gifts made in the preceding calendar years.

The rates of tax are approximately 50 per cent greater than the estate tax rates of the revenue act of 1926, and about 25 per cent less than the aggregate estate tax rates under the 1926 and 1932 acts.

The gift tax imposed under the revenue act of 1932 is now in effect. Its scope and operation will be more fully discussed under the chapter dealing with the "Present status of death duties."

(*b*) *State Death Taxes*—(*1*) *Prior to 1892.*—During the colonial period, probate duties were imposed which, in many cases, were incorporated into the fiscal systems of the various States. The earliest probate duty apparently was imposed in Virginia in 1687, the fee being 200 pounds of tobacco and a cask.

Leaving probate duties out of account, Pennsylvania was the first State to enact a true inheritance tax. The Pennsylvania law became effective in 1826 and levied a tax on collaterals only at a flat rate of 2½ per cent. The exemption of estates of less than $250 was provided for, as well as the personal property of nonresidents.

Louisiana in 1828, by imposing a flat 10 per cent tax on estates passing to nonresident aliens, became the second State to tax inheritances, although the tax was of very limited scope. This law was repealed in 1830, but reenacted in 1842.

Virginia, in 1844, became the third State to adopt an inheritance tax. The tax applied to collaterals only and was assessed at the uniform rate of 2 per cent, with an exemption of $500.

The table which follows sets forth in tabular form the date when each State adopted its first inheritance tax. This tabulation shows only those States which enacted inheritance tax laws prior to 1892 but in these cases the form of tax and the rates are indicated:

State	Date of enactment	Form of tax
		Inheritance:
Pennsylvania	1826	Collaterals only, 2½ per cent.
Louisiana	1828	Nonresident aliens only, 10 per cent.
Virginia	1844	Collaterals only, 2 per cent.
Maryland	1845	Collaterals only, 2½ per cent.
North Carolina	1847	Collaterals only, 1 per cent.
Alabama	1848	Collaterals only, 2 per cent.
California	1853	Nonresidents, 10 per cent, all others, 2½ per cent.
Delaware	1869	Collaterals only, 3 per cent.
New Hampshire	1878	Collaterals only, 1 per cent (unconstitutional).
New York	1885	Collaterals only, 5 per cent.
West Virginia	1887	Collaterals only, 2½ per cent.
Connecticut	1889	Collaterals only, 5 per cent.
Massachusetts	1891	Do.
Tennessee	1891	Do.

The above tabulation discloses that 14 States had enacted inheritance tax legislation prior to 1892. In every instance, with the sole exception of California, the original tax was an inheritance tax levied on collaterals only. It may be assumed therefore that the prevailing sentiment in the United States during this early period was that direct heirs should be exempt from tax. Since estates were of relatively smaller size during this period than subsequently, arguments for checking the perpetuation of vast fortunes through death taxes had not yet been brought into prominence.

These early inheiritance tax statutes were, in general, imperfectly drawn and loosely administered, until the enactment of the New York law of 1885. This law was well drafted, and contained the necessary administrative provisions to make its operation effective. The New York statute of 1885, in fact, served as a model for legislation subsequently enacted by many other States.

Some amendments were made in these original laws prior to 1892, and a few States had abandoned the tax entirely by this date. North Carolina experimented with a tax on direct heirs in 1855, and in the same year became the first State to tax different classes of heirs at different rates according to blood relationship. These taxes were discontinued in 1874. Alabama retired from the inheritance tax field in 1868, Louisiana in 1877, and Virginia in 1884. The New Hampshire statute was held unconstitutional in 1882. Pennsylvania increased its rate of tax to 5 per cent in 1887.

At the close of 1891, only nine States had inheritance taxes. These States were as follows:

Maryland and West Virginia each had a collateral inheritance tax imposing a flat 2½ per cent rate.

Pennsylvania, New York, Connecticut, Massachusetts, and Tennessee each had a collateral inheritance tax imposing a flat 5 per cent rate.

Delaware had changed its law to apply to strangers in blood only at a rate of 5 per cent.

California had its original act still on the statute books, but apparently the tax had ceased to be enforced.

It appears, therefore, that in 1891, about one-fifth of the States had inheritance taxes. These taxes were imposed on collaterals only, with flat rates varying from 2½ to 5 per cent.

(*2*) *1892 to 1916.*—Economic conditions, the necessity for additional State revenue, and the concentration of wealth, undoubtedly resulted, beginning with 1892, in renewed activity in the death-tax field.

New York set the example, in 1892, by enacting an inheritance tax law imposing a tax on direct, as well as collateral, heirs. The rate on direct heirs was 1 per cent and was levied on personal property only until 1903 when the law was amended to embrace real property as well.

It has been shown that prior to 1892, 14 States enacted inheritance taxes. From 1892 to 1916, 30 additional States enacted death tax legislation. Florida, Mississippi, New Mexico, and South Carolina were the only States, in fact, which up to 1916 had not at one time or another enacted a death duty.

The 30 additional States referred to are listed below, together with data showing the form of tax and date of original enactment:—

State	Date of enactment	Form of tax
		Inheritance:
New Jersey	1892	Collateral only, 5 per cent.
Ohio	1893	Collateral only, 3½ per cent.
Maine	1893	Collateral only, 2½ per cent.
Michigan	1893	Direct and collateral (unconstitutional); direct, 1 per cent; collateral, 5 per cent.
Illinois	1895	Direct and collateral; direct line, 1 per cent; distant relatives, 3 to 6 per cent.
Missouri	1895	Collateral only, 5 to 7½ per cent (unconstitutional).
Vermont	1896	Collateral only, 5 per cent.
Iowa	1896	Do.
Montana	1897	Direct and collateral; direct line, 1 per cent; distant relatives, 5 per cent.
Minnesota	1897	Direct and collateral; direct line, 1 per cent; distant relatives, 5 per cent (unconstitutional).
Wisconsin	1899	Direct and collateral; personal properly only, direct, 1 per cent; distant relatives, 5 per cent (unconstitutional).
Washington	1901	Direct and collateral; direct, 1 per cent; to third degree, 3 to 6 per cent; distant relatives, 6 to 12 per cent. cent.
Nebraska	1901	Direct and collateral; direct, 1 per cent; distant relatives, 5 per cent.
Colorado	1901	Direct and collateral; direct, 2 per cent; distant relatives, 3 to 6 per cent.
Arkansas	1901	Collateral only, 5 per cent.
Utah	1901	Estate tax, 5 per cent.
		Inheritance:
North Dakota	1903	Collateral only, 2 per cent.
Oregon	1903	Direct and collateral; direct, 1 per cent; distant relatives, 3 to 6 per cent.
Wyoming	1903	Direct and collateral; direct, 2 per cent; distant relatives, 5 per cent.
South Dakota	1905	Direct and collateral; direct, 1 per cent; distant relatives, 4 to 10 per cent.
Kentucky	1906	Collateral only, 5 per cent.
Oklahoma	1907	Direct and collateral; direct, 1 per cent; graduated upward, distant relatives, 5 per cent, graduated upward.
Texas	1907	Collateral only; near relatives, 2 to 5 per cent; strangers, 4 to 12 per cent.
Idaho	1907	Direct and collateral; direct, 1 to 3 per cent; distant relatives, 5 to 15 per cent.
Kansas	1909	Direct and collateral; direct, 1 to 5 per cent; distant relatives, 5 to 15 per cent.
Arizona	1912	Direct and collateral; direct, 1 per cent; distant relatives, 3 to 6 per cent.
Georgia	1913	Direct and collateral; direct, 1 per cent; collaterals, 5 per cent.
Indiana	1913	Direct and collateral; direct, 1 to 3 per cent; strangers, 5 to 15 per cent.
Nevada	1913	Direct and collateral; direct, 1 to 5 per cent; distant relatives, 5 to 25 per cent.
Rhode Island	1916	Estate and inheritance, direct and collateral; estate duty, ½ per cent; inheritance, direct line, ½ to 3 per cent; distant relatives, 5 to 8 per cent.

From the above tabulation, the original legislation enacted during this period (1892–1916) may be summarized as follows:

Ten States—New Jersey, Ohio, Maine, Missouri, Vermont, Iowa, Arkansas, North Dakota, Kentucky, and Texas—enacted inheritance taxes on collaterals only. The minimum rate imposed in any case was 2 per cent and the maximum was 12 per cent. The prevailing rate was 5 per cent.

Nineteen States—Michigan, Illinois, Montana, Minnesota, Wisconsin, Washington, Nebraska, Colorado, Oregon, Wyoming, South Dakota, Oklahoma, Idaho, Kansas, Arizona, Georgia, Indiana, Nevada, and Rhode Island—enacted inheritance taxes on direct and collateral relatives. The minimum rate on direct heirs was one-half of 1 per cent and the maximum 5 per cent. On collaterals and strangers, the minimum rate was 3 per cent and the maximum 25 per cent.

One State, Utah, enacted an estate tax at a flat rate of 5 per cent.

It appears that until 1897 collateral inheritance taxes were the prevailing form, but that subsequently, the tendency was toward an inheritance tax on direct as well as collateral heirs.

It has been pointed out that by 1892 five of the States which had originally enacted some form of inheritance tax had retired from the field. During the period from 1892 to 1916, four of these States resumed the taxation of inheritances. Virginia enacted a collateral tax in 1896. North Carolina adopted a tax on both direct heirs and collaterals in 1897. Louisiana, in 1904, passed an inheritance tax which applied to both direct heirs and collaterals, after such action had been made possible by a constitutional amendment of 1898. New Hampshire, after a constitutional amendment in 1903, passed a collateral inheritance tax in 1905. Alabama did not return to the inheritance-tax field; in fact, in 1901, a constitutional amendment was passed forbidding a direct inheritance tax and limiting any collateral inheritance tax to 2½ per cent.

New principles governing the imposition of death taxes were developed by the States during the period 1892 to 1916. The first was the taxation of direct heirs as well as collaterals. New York initiated this principle in 1892. Its adoption also led to a departure from the flat-rate system, inasmuch as under the New York law direct heirs were taxed only 1 per cent while collaterals were taxed 5 per cent. The exemptions granted also were different, that to direct heirs being $10,000 and that to collaterals $500.

Gifts "in contemplation of death" were also brought within the scope of the inheritance tax for the first time in the New York statute in 1892. Tennessee, Illinois, Montana, and North Carolina followed this example within the next decade.

The most important principle developed in this period was that of progressive rates, increasing with the size of the inheritance. This went hand in hand with the classification of the heirs into groups according to their blood relationship to the decedent.

Ohio, in 1894, was the first State to enact an inheritance tax law with progressive rates, although the Legislatures of Nebraska, Pennsylvania, and Iowa already had considered such legislation. The Ohio law was declared unconstitutional, but it undoubtedly had a marked influence upon the action of other States. This law proposed a tax of 1 per cent on direct heirs when the net estate was between

$20,000 and $50,000, 2 per cent when the net estate was between $50,000 and $100,000, and so on until in the case of estates of over $1,000,000, the rate reached 5 per cent. The rate on collaterals was not graduated but fixed at 5 per cent in all cases.

The first progressive inheritance tax which stood the test of constitutionality was the Illinois statute of June 15, 1895. The act divided the beneficiaries into three classes: The first included the surviving spouse, parents, lineal descendants, and brothers and sisters; the second included collaterals, such as uncles and aunts and their lineal descendants; the third included distant relatives and strangers in blood. Class I beneficiaries were allowed an exemption of $20,000 each, and a flat rate of 1 per cent was imposed. Class II beneficiaries were allowed an exemption of $2,000 each, and a flat rate of 2 per cent was imposed. The progressive rate principle was applied only to Class III beneficiaries, as follows:—

	Per cent
If the entire net estate was $10,000 or less	3
If the entire net estate was more than $10,000, but not more than $20,000	4
If the entire net estate was more than $20,000, but not more than $50,000	5
If the entire net estate was more than $50,000	6

This Illinois statute contained another innovation which, after adoption by other States, has resulted in multiple taxation. The statute provided that stock in Illinois corporations held by a nonresident decedent should be subject to tax.

North Carolina enacted an inheritance tax at progressive rates in 1901. It was imposed on personal property only, and resembled the Federal law of 1898.

Wisconsin adopted a progressive inheritance tax in 1903, and since this law seems to be the forerunner of modern inheritance tax statutes, it is worthy of description. The principles of classification of heirs according to consanguinity, of progressive rates for each class, of varied exemptions for each class, and of the application of rates by bracket instead of by total amount are all exemplified in this act. These facts are shown in the following table:—

Rates of tax and classification, Wisconsin inheritance tax of 1903

Classification	Exemption	First $25,000	$25,000 to $50,000	$50,000 to $100,000	$100,000 to $500,000	Over $500,000
		Per cent	*Per cent*	*Per cent*	*Per cent*	*Per cent*
Widow	$10,000	1	1½	2	2½	3
Husband and lineal descendants and lineal ancestors	2,000	1	1½	2	2½	3
Brothers and sisters and descendants, son-in-law, daughter-in-law	500	1½	2¼	3	3¾	4½
Uncles and aunts and descendants	250	3	4½	6	7½	9
Granduncles and grandaunts and descendants	150	4	6	8	10	12
All others, including corporations	100	5	7½	10	12½	15

The Wisconsin statute was imposed on transfers of all property, real, personal, or mixed, taking place as a result of the death of the owner, and also on transfers made "in contemplation of death" or "intended to take effect in possession or enjoyment" at or after death.

The principle of taxing the entire estate instead of taxing the share of each beneficiary was first brought into use by the Utah estate tax law of 1901. The tax was imposed at a flat rate of 5 per cent. Later, in 1915, the progressive principle was applied. Net estates between $10,000 and $25,000 were taxed at 3 per cent, and those over $25,000 at 5 per cent.

Rhode Island enacted its first inheritance tax law in 1916. This law imposed a tax on both direct heirs and collaterals at progressive rates which ranged from one-half of 1 per cent to 3 per cent in the case of lineals, and from 5 to 8 per cent in the case of strangers in blood. In addition, Rhode Island combined with its inheritance tax an estate duty levied on the entire net estate before distribution. The rate of this duty, however, was very low (one-half of 1 per cent) and this feature of the Rhode Island law can hardly be interpreted as showing that this State has a preference for this form of death tax.

It has already been stated that on September 8, 1916, the Federal Government entered the death-tax field with an estate tax which, although subjected to various changes, has remained in force continuously from that date to the present time. It is important to set forth the status of the State death taxes on this date (September 8, 1916), as this will show the forms of death duties preferred by the States prior to the influence exerted thereon by Federal legislation.

As a basis for a statement on this subject, a table has been prepared showing State death taxes in force as of September 8, 1916. This table will be found in Exhibit D of the appendix, showing the form of tax in force and the rates on the principal classes of heirs. The following facts may be stated from a study of this table:

First. Forty-three States had a death duty of some kind and only 5 States had no such duty.

Second. Thirty-one States had an inheritance tax on both direct and collateral heirs, 11 States had an inheritance tax on collaterals only, and 1 State had an estate tax only.

Third. The principle of taxing inheritance by the imposition of rates which increase with the size of the inheritance was recognized to at least some extent in 28 out of the 43 States having death duties.

Fourth. The principle of consanguinity was, of course, recognized in all of the 42 inheritance tax statutes, either by differences in rate or by the exemption of direct heirs. Utah, with its estate tax, was the only State disregarding this principle.

Fifth. The prevailing form of death duty on September 8, 1916 was the inheritance tax levied at progressive rates on both direct and collateral heirs. The average rates on direct heirs were from 1 to 3 per cent, in round figures, while the average rates on distant relatives and strangers were approximately from 5 to 11 per cent.

In concluding this survey of State death taxes during the period from 1892 to 1916, it may be stated that during these years the majority of the States entered this field of taxation, and that the form which these taxes took furnishes ample evidence that the States preferred an inheritance duty with progressive rates and with due regard to consanguinity.

(3) *1916 and subsequent years.*—War and postwar conditions and the enactment of the Federal estate tax had a profound effect upon State death tax legislation subsequent to 1916. The necessity for added revenue brought increases in rates, and the provisions of the Federal law in 1924 allowing a credit for State taxes paid resulted in the enactment of additional estate taxes by many of the States.

It has already been shown that while on September 8, 1916, only 5 States had no death duty in any form, all of these States enacted death duties in subsequent years, as follows:

State	Date of enactment	Form of tax
		Inheritance:
Mississippi	1918	Direct and collateral; additional estate tax.
New Mexico	1919	Direct and collateral.
South Carolina	1922	Do.
Florida	1931	Estate.
Alabama	1931	Do.

In 1925, Nevada repealed its inheritance tax law. Thus, at the present time there is only one State in the Union which has no death duties, namely, Nevada. It may be mentioned, also, that the District of Columbia has no estate or inheritance tax.

It will be unnecessary to trace at length the developments in the State death tax field during the period subsequent to 1916, for such developments will be self-evident from the description which will be given of the present death duties in force in the various States.

The nature of the developments other than mere increases in rates should, nevertheless, be mentioned, as follows:

First, many changes were made in the administrative provisions of the laws to make the collection of the tax more practicable.

Second, additional provisions were inserted to prevent tax evasion. The most important of these was the provision including with the decedent's taxable property gifts made in contemplation of death.

Third, the injustice of double, or even multiple, taxation in case of death taxes levied on nonresidents was recognized by the enactment of reciprocity provisions by many of the States.

Fourth, additional estate taxes were imposed by many of the States to take advantage of the tax-credit clause of the Federal law.

The important points to note in this recent period, therefore, are the general increase in the death tax burden, the improvement of the statutes, and the tendency toward estate tax enactments, inevitably resulting from the credit clause of the Federal law.

PART II

PRESENT STATUS OF DEATH TAXES

Part II. Present Status of Death Taxes

A. IN FOREIGN COUNTRIES

1. GREAT BRITAIN

Great Britain at the present time has two forms of death duties. These are: (1) The estate duty, and (2) the legacy and succession duties. The estate duty is more important, since it produces by far the larger amount of revenue. It is levied upon the net principal value of all property located in Great Britain (whether immovable or movable), which passes upon the death of any individual. The tax is levied on the whole estate at graduated rates, without regard to the number of beneficiaries or their relationship to the deceased. The property subject to tax includes the following:

(1) Property of which the decedent was competent of disposing at death.

(2) Gifts causa mortis.

(3) Gifts made beyond recall within three years preceding death.

(4) Gifts inter vivos where immediate possession was not acquired by the donee to the irrevocable exclusion of the donor.

(5) Property which the deceased voluntarily transferred to the joint ownership of himself and some other person. This includes tenancies by the entirety.

(6) Proceeds of life insurance taken out by the decedent upon his own life and kept up by him wholly or partially for the benefit of a donee.

(7) Annuities provided by the decedent, either alone or with some other person, to the extent of the beneficial interest of the survivor.

(8) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit arises by the termination of that interest.

(9) Property transferred under an instrument executed by the decedent (not taking effect as a will) under which he reserved an interest, or any right to resume his interest in the property.

The principal value of the property is defined as the price which, in the opinion of the commissioners of inland revenue, the property would fetch if sold in the open market at the time of the death of the deceased. The value of stocks and shares is based on the price of the official daily list of the London Stock Exchange where such securities are officially quoted. In the case of real property, the value is determined to be the price which would be obtained if the property were sold in the most advantageous manner. In arriving at the net principal value of the estate, the following deductions from gross value are allowed:—

(1) Funeral expenses.

(2) Bona fide debts incurred for full consideration to the decedent's own benefit.

(3) Foreign taxes payable on property including additional expenses of administration up to 15 per cent in cases where the com-

missioners are satisfied that such expense was incurred by reason of the property being situated outside Great Britain.

(4) Debts due from the decedent to nonresidents of Great Britain to the extent that the decedent's personal estate outside of Great Britain is insufficient to pay the same.

Among the exemptions allowed from the estate duty are:

(1) Gifts in consideration or in contemplation of marriage.

(2) Gifts to charities made within one year prior to death.

(3) Gifts which do not exceed to any one donee the aggregate value of 100 pounds.

(4) Gifts out of income which, in the opinion of the commissioners, are reasonable and normal expenditures.

(5) Estates not exceeding 100 pounds in value.

(6) Pensions and annuities.

(7) Works of art given for national purposes.

(8) Property held by a decedent as trustee.

The rates which apply to the net principal value of the estate are graduated from 1 to 50 per cent according to the size of the estate. The 1 per cent rate applies to estates between£100 and £500, and the 50 per cent rate applies to estates in excess of £2,000,000. A complete table of rates now applicable under the finance act of 1930 will be found in Exhibit E, Schedule 1, of the appendix. A comparison of these rates with former rates shows that no change in rates on estates of £5,000 or less has been made since the enactment of the finance act of 1894. On the other hand, in case of estates in excess of £2,000,000 the rate since 1894 has increased from 8 to 50 per cent, representing an increase of more than 600 per cent.

The legacy duty imposed by Great Britain is applied to the share of the beneficiary in the personal property of the decedent. The succession duty is similar to the legacy duty except that it applies to real property instead of personal property. Certain types of movable property, which are not liable to the legacy duty, are made liable to the succession duty. Immovable property located outside of Great Britain is not liable to succession duty under any circumstances.

The rates of tax vary according to the relationship of the beneficiary, and are not graduated according to the amount of the share. Husband or wife, child or lineal descendant of child, father or mother, or any lineal ancestor are taxed at 1 per cent. Brother and sister and lineal descendants of brother or sister are taxed at 5 per cent, and all other persons at 10 per cent. Supplemental rates to a maximum of 1½ per cent are chargeable in certain cases, except as between spouses.

Certain exemptions are provided in the case of both legacy and succession duties. No legacy duty is chargeable where the gross value of the personal estate is under £100. No succession duty is collected where the principal value of all successions derived from the same predecessor is under £100. Where the net value of the property passing does not exceed £1,000, and an estate duty is payable thereon, neither the legacy duty nor the succession duty is imposed. Individuals subject to the 1 per cent rate are, in certain cases, exempt, the exemption depending upon the size of the beneficiary's share. Both duties are payable when the beneficiary becomes entitled to the enjoyment of the benefit.

In connection with these death duties, it should be noted that the British committee on national debt and taxation suggested an inheritance tax to replace the present scheme of death duties. Under this tentative plan, the tax would be charged upon any benefit received (whether under a will, intestacy, or settlement) by any person consequent upon the death of another person, the rate of duty being graduated by reference to—

(*a*) The amount of the benefit received, or alternatively, to

(*b*) The amount of the total wealth of the recipient at the time when the benefit accrued to him.

Certain features of the British death duties should be mentioned as illustrating the British method of treating problems which have caused difficulties in connection with our Federal law.

Under the British law, a man can not avoid payment of death duties by transferring property to trustees and reserving the income to himself during his life, as he could under our own Federal law in years past. Such a disposition is not exempt for the reason that the beneficiary does not assume the possession and enjoyment of the property immediately upon creation of the trust. Moreover, the property is not exempt where the beneficiary actually receives the income and pays it over to the grantor, for the reason that the possession and enjoyment of the property is not retained to the entire exclusion of the deceased or of any benefit to him by contract, or otherwise. In order to prevent attempted evasions of the succession duty, the law provides that dispositions (not being bona fide payments, and not conferring an interest expectant on death on the person in whose favor the same shall be made) accompanied by the reservation of any benefit to the grantor, or any other person, for life or any period ascertainable only by reference to death, shall be deemed to confer a succession.

Another point of some importance is in connection with property previously taxed at the death of a prior decedent. The Federal law exempts such property from tax where the prior decedent died within five years and was subject to the estate tax. The British estate tax law contains a rather unique provision in connection with this matter. Where an estate duty was paid on property consisting of land, a business carried on by a company, or any interest in such land or business, and within five years another estate duty becomes payable, the amount of the duty payable because of the second death is reduced as follows:

Where the second death occurs within—	Per cent
1 year of the first death	50
2 years of the first death	40
3 years of the first death	30
4 years of the first death	20
5 years of the first death	10

If the value of the property on which the duty is payable on the second death exceeds the value of the property at the time of the first death, the latter value is substituted for the former in calculating this reduction.

A very substantial revenue is obtained from the British death taxes, amounting, for the fiscal year ending March 31, 1931, to £82,610,000. In other words, the British revenue from death taxes is about

$413,000,000, in comparison with a revenue of about $246,000,000 (in 1930) to our Federal and State Governments.

The receipts from British death duties, for fiscal years since 1916–17, are shown in Exhibit E, Schedule 2, of the Appendix.

In concluding this description of present British death duties, attention is drawn to the following important points:

First. The estate duty is more important, producing about 90 per cent of the revenue obtained from all death taxes. However, both estate duties and inheritance duties are levied, as is generally the case in this country.

Second. The estate-duty rates are much higher than our rates, the British maximum being 50 per cent against our maximum rate of 45 per cent.

Third. The British law is carefully drafted to prevent tax avoidance.

2. FRANCE

The French death duties consist of an estate duty (taxe successorale) and an inheritance duty (droît de mutation). There are also other duties which while not technically death duties, bear some relation thereto. These are a tax on gifts inter vivos, à mortmain tax, a tax on accretions, taxes on registration of testaments and release of legacies by heirs, taxes on partitions of property, and stamp taxes on legal documents.

The estate tax is imposed on the net estate of every decedent who leaves fewer than two children surviving or represented by issue. No exemptions from the tax are granted, but a deduction is allowed for debts of the decedent susceptible of proof in a court of law. The rates are graduated from 1.2 to 46.8 per cent, according to the value of the net estate and according to whether the decedent has one child or no children. The rate of 1.2 per cent applies in the case of a net estate of from 1,000 to 2,000 francs in value where the decedent leaves one child surviving or represented by issue. The rate of 46.8 per cent applies to that portion of a net estate in excess of 500,000,000 francs where no children are left. A complete table of rates will be found in Exhibit F, Schedule 1, of the appendix.

The inheritance tax is levied on the part of the estate accruing to each beneficiary after deduction of the succession duty. The rates range from 3 to 56.4 per cent according to the size of the beneficiary's share and the degree of relationship between the decedent and the beneficiary, except that in the case of lineal descendants of the first and second degrees, where the value of the whole estate does not exceed 500,000 francs, the rates on shares up to 500,000 francs are somewhat lower, beginning at 1.2 per cent instead of 3 per cent. The 3 per cent rate applies in the case of a lineal descendant of the first degree of consanguinity where the value of the estate is in excess of 500,000 francs and where the share is of a value of between 1,000 and 10,000 francs. The rate of 56.4 per cent applies to that portion of a share in excess of 50,000,000 francs transmitted to a relative beyond the fourth degree of consanguinity. A complete table of rates will be found in Exhibit F, Schedule 2, of the appendix. There are two exemptions from this tax, namely, alms and donations of art and historical objects for exhibition in public collections. Various abatements also are allowed depending upon certain contingencies. The most important of these are as follows:

(1) Where the decedent leaves more than four children, living or represented, there is deducted from the net total amount of the estate for the settlement of the inheritance tax, 10 per cent for each child after the fourth, provided this deduction does not exceed 15,000 francs per share.

(2) Succession from grandparent to grandchild as a result of the grandchild's parents being killed by the enemy or dying a victim of the war is subject to the rate of a lineal descendant of the first degree.

(3) Where an heir, donee, or legatee has four or more children living at the time he becomes entitled to the inheritance, the tax to be collected in the two preceding cases is reduced by 10 per cent for each child after the third, not to exceed 2,000 francs for each child nor 50 per cent of the aggregate.

(4) A limitation of the inheritance tax rate to 10.8 per cent is fixed in the case of certain legacies to disabled war veterans and in the case of certain gifts and legacies to governmental units, and public institutions.

All property, both real and personal, is subject to the estate and inheritance duties. In order to prevent the confiscation of estates, the law provides that the total of the inheritance and the estate duties on any one share may not exceed the following percentages of such share:

(1) In direct line, or between husband and wife, 25 per cent.

(2) In collateral relationship, 35 per cent.

(3) Between relatives of more than the fourth degree or strangers in blood, 40 per cent.

The gift tax imposed by France (mutations entre vifs a titre gratuit) applies to both real and personal property. It is levied on gifts inter vivos. The rates are graduated according to the degree of relationship. They are also varied according to whether made under sections 1075 and 1076 of the Civil Code by ascendants to the direct descending line or under a marriage contract under the Civil Code. In case of gifts to children, the graduation depends upon whether one child, two children, or more than two are living or represented. Alms and gifts of objects for exhibition in public collections are exempt from the tax, as in the case of the inheritance levy. Certain abatements from this tax which are allowed are also similar to those granted in the case of the inheritance tax. A complete table of rates will be found in Exhibit F, Schedule 3, of the Appendix.

A mortmain tax is imposed by France upon real estate owned by corporations, charitable organizations, etc. This tax is levied to compensate the government for the loss of revenue resulting from its inability to impose death and transfer duties on such real estate, due to the perpetual character of a corporation. The rate is 15.552 per cent and is computed on the income assessed for the lands and buildings taxes.

The tax levied on accretions is an annual tax measured by the gross value of the property, real and personal, possessed by religious congregations, communities, etc., which do not distribute their profits to their members. An exemption is allowed in the case of property used for relief or charitable purposes. The rate is fixed at 26 centimes per 100 francs of the gross value of the property, and is increased to 48 centimes in the case of property not subject to the mortmain tax. The registration tax on testaments in a flat levy of 18 francs. The tax on release of legacies by heirs is at the rate of 1.25 per cent of the legacy as to which the release is signed. The tax on partitions of property between co-legatees and co-heirs is at the rate of 0.6 per cent of the property partitioned. A stamp tax is imposed on instruments and documents connected with transfers of property as a result of death. The tax varies according to the number of documents employed. It is a separate and independent tax from the stamp tax imposed on registration of such documents.

The revenue derived from the various death taxes imposed by France is shown in Exhibit F, Schedule 4, of the Appendix. The total revenue from this source for 1931 was 2,355,345,371 francs, or approximately $94,213,814, which is less than one-half as much as was collected by both Federal and State authorities in the United States during 1930.

3. GERMANY

In the discussion of the history of German death duties, it was shown that in 1919 Germany levied an estate tax, an inheritance tax, and a gift tax. The system was considerably changed by the act of July 20, 1922, and the estate tax abolished. Property left to a husband or wife was exempted from the inheritance tax, except where the difference in their ages was more than 20 years and they had been married for less than 5 years. One of the most novel features of the 1922 law was a surtax graduated according to the amount of the property which the beneficiary possessed at the time he came into the inheritance. In 1923, the law was again changed. The surtax was repealed, changes were made in the classification of the beneficiaries, and the rates were reduced and the exemptions increased. The total inheritance tax could not exceed more than 70 per cent of the inheritance, instead of 80 per cent, the limitation under the 1922 law.

The present German death duties (or the last of which we have knowledge) were enacted on September 4, 1925, (Reichsgesetzbladd I, No. 43). An inheritance tax is imposed which applies both to real and personal property passing by descent or will, including gifts causa mortis. The inheritance tax also applies to gifts inter vivos and donations restricted by special conditions. Property obtained by a beneficiary at various times within 10 years from one and the same person is taxed as a cumulative legacy, the tax previously paid being allowed as a credit against the tax subsequently due. In no case may the tax on donations exceed 60 per cent of the value of the property donated. The heirs are grouped into five classes as follows:

Class I

(*a*) Husband and wife.
(*b*) Children.
(*c*) Persons entitled to the legal status of legitimate children.
(*d*) Children of different mothers entitled to legal status of legitimate children.
(*e*) Adopted persons.
(*f*) Stepchildren.
(*g*) Illegitimate children recognized by the father.

Class II

Descendants of legitimate children and adopted children where the adoption extends to their descendants.

Class III

(a) Parents and stepparents.
(b) Brothers and sisters of the whole and half blood.

Class IV

(a) Grandparents and more distant ancestors.
(b) Descendants of brothers and sisters of the first degree.
(c) Parents-in-law.
(d) Children-in-law.

Class V

All other persons, and donations granted for specific purposes.

Husband and wife are exempt, if, at the time the property is inherited, they have children living or represented by issue. This exemption also applies in the case of adopted children living or represented by issue. In the case of persons listed in Classes I and II an exemption of 5,000 reichsmarks is allowed. Those listed in Classes III and IV are entitled to an exemption of 2,000 reichsmarks, and those under Class V are granted an exemption of 500 reichsmarks. In addition, certain deductions are permitted for household articles, jewelry, luxuries not belonging to the testator's household equipment, paintings and art collections, family valuables of an historic, scientific, or artistic nature, and debts owed by the beneficiary to the decedent. If the taxpayer is incapable of self-support, a deduction is also allowed in the case of property acquired by persons in Classes I and II, and by parents, step-parents, or grandparents, if the value of such property plus the taxpayer's other property does not exceed 10,000 reichsmarks. Gifts inter vivos for education or subsistence, annuities in recognition of former services, contributions to private pension or relief funds, property left to the national government, states, or domestic communities, or for an exclusively public purpose, property left to churches, charitable organizations, and political unions, and burial and administration expenses, are also allowed as deductions.

In order to prevent double taxation, the German law provides that if persons coming within Classes I and II acquire property which, during the last five years preceding its acquisition was obtained by a person in the same category, and a tax paid, the present tax to be applied to the property shall be reduced by 50 per cent. In case such property was taxed by reason of death occurring between 5 and 10 years prior to its acquisition by the present beneficiary, the tax payable by the beneficiary is reduced by one-fourth.

The rates of tax are based upon the degree of relationship and the amount of the beneficiary's share. On 10,000 reichsmarks they range from 2 per cent in the case of persons falling within Class I, to 14 per cent in the case of persons falling within Class V. They run as high as 60 per cent on legacies over 10,000,000 reichsmarks. For a complete table of rates see Schedule 1, Exhibit G, in the appendix. The rates shown are applied by totality and not by brackets. In order that an amount slightly exceeding a given bracket may not be subject to the full rate of tax applicable to the next higher bracket, certain limitations are provided. For statistics showing the amount collected from German death duties, see Schedule 2, Exhibit G, in the appendix.

4. ITALY

Italy imposes an inheritance and gift tax, a mortmain tax, and several stamp taxes on the registration of testaments, the release of legacies and instruments partitioning property. The most important of these taxes is the inheritance and gift tax (tasse sulle successioni e donationi) which is levied upon each heir's, legatee's, or donee's share of the property, both real and personal, situated in Italy and passing to him. The inheritance tax also applies to the property already received by the heir or legatee as a gift from the decedent during his lifetime, as well as the property received upon the decedent's death; but any gift tax previously paid by such heir or legatee is allowed as a credit in computing the inheritance tax. The present law (or the last of which we have knowledge) became effective April 30, 1930, and is broader in scope than the preceding law which exempted from tax all relatives of the fourth or nearer degrees.

The rates of tax vary with the amount of the share and with the degree of consanguinity of the heir or legatee or donee, and there is complete exemption from tax in the case of transfers to two or more children and their descendants, transfers between husband and wife with two or more children, and transfers of 3,000 lire or less to those of the direct line or between husband and wife. Transfers of art objects are generally exempt if they are not to be put up for sale. The rates on lineal ascendants and descendants (when taxable) are graduated from 1 to 10 per cent. On distant relatives the rates are graduated from 12 to 50 per cent. A complete table of rates is shown in Exhibit H, Schedule 1, of the appendix. The usual deductions for debts, liabilities and funeral expenses are allowed in valuing the net estate to be divided among the heirs and legatees.

The mortmain tax is an annual tax imposed on the real and personal property of organizations which are perpetual in their character, and is in lieu of the death tax since it produces a tax on property which never passes and therefore could not be reached by an inheritance or estate tax. The rate of this tax is 7.2 per cent on the net value, except in case of charitable organizations where the rate is 0.9 per cent on the gross value. The three stamp taxes which exist have already been mentioned.

Revenue receipts from these death taxes under the 1923 law declined from 1925 to 1929 as shown in Exhibit H, Schedule 2, of the appendix. However, under the 1930 law the revenues have greatly increased.

5. SPAIN

Spain imposes, by its act of February 28, 1927, transfer taxes which apply to inheritances, gifts, and estates. The title of the act is "Ley de los Impuestos de Derechos Reales y Sobre Transmisiones de Bienes." The act is divided into two parts, one dealing with the tax on inheritances and gifts, and the other with the tax on estates. What changes, if any, that have taken place in this tax since the fall of the Spanish monarchy have not been checked.

The inheritance tax is applied to property of all kinds which belonged to the decedent up to a maximum period of one month prior to death. The gift tax reaches property transferred prior to the one-month period. If it so happens that the gift tax has been paid on property subject to the inheritance tax, the gift tax is allowed as a credit in computing the inheritance tax. The rates are the same for both inheritance and gift taxes and the beneficiary is primarily liable for the payment of the tax in both cases. The rates are graduated according to the degree of relationship and the amount of the share. On 1,000 pesetas they range from 1 per cent in the case of children to 24 per cent in the case of strangers in blood. On amounts exceeding 5,000,000 pesetas, the rates range from 15 per cent in the case of children to 30.75 per cent in the case of strangers in blood. The usual deductions are allowed for debts, funeral expenses, etc. Bequests for masses and other services performed for the repose of the soul of the deceased are subject to tax at a flat rate of 20 per cent. A complete table of the inheritance and gift tax rates is shown in Schedule 1, Exhibit I, of the appendix.

In addition to the inheritance and gift tax imposed by part 1 of the act of February 28, 1927, part 2 of this act imposes an estate tax which is collected simultaneously with the inheritance tax and is payable by certain of the heirs. Parents and direct descendants are not liable for the estate tax and the shares going to such persons are deductible from the gross value of the estate in arriving at the net estate subject to tax. An arbitrary deduction of 2,000 pesetas is also allowed from the gross estate as well as the usual deductions for debts, funeral expenses, etc. The rates apply to the net estate and are graduated from 1 per cent to 10 per cent. A table of the rates will be found in Schedule 2, Exhibit I, of the appendix.

A mortmain tax is also imposed by Spain. This is an annual tax levied on the net value of the property of organizations which are perpetual in their character. It is representative of a death tax in that it places a tax on property which could not be reached by such a tax. The rate is 0.25 per cent of the net value of the property.

Complete statistics as to the revenue secured by Spain through these taxes are not available. The receipts from the inheritance tax only for the four years 1923 to 1926, inclusive, are given in Schedule 3, Exhibit I of the appendix.

6. OTHER COUNTRIES

As a general rule, the British dominions have inheritance or estate taxes, or both. The Australian states, and New Zealand, have such taxes, and in the case of West and South Australia, gift taxes are also in force. The Canadian Provinces all have inheritance or estate duties, or both.

Of the countries of continental Europe not already mentioned, Belgium, Switzerland, Rumania, and the Scandinavian countries have inheritance taxes. Yugoslavia has an estate duty. In Russia, according to the latest information available, all of a decedent's property over a certain amount escheats to the state.

Japan levies an inheritance tax which also applies to gifts inter vivos. The rates are graduated according to the degree of relationship and the amount of the legacy or gift, varying from a minimum of 0.5 per cent to a maximum of 21 per cent.

B. IN THE UNITED STATES

1. FEDERAL ESTATE TAX

The Federal Government imposes only one form of death duty. This is an estate tax, levied upon the decedent's net estate, and is to be distinguished from an inheritance tax, which is levied upon the share of each beneficiary. The rates of the Federal tax are graduated according to the amount of the estate, and are imposed by brackets and not by totality. The bracket system applies a given rate to that portion of the net estate falling within the bracket. On the other hand, the totality system applies a maximum rate, determined by the size of the estate, to the whole of the net estate.

There is no recognition of consanguinity, either by exemptions or otherwise. Thus, the tax is the same upon net estates of equal size whether the property descends to 1 child or 10 children, or even to strangers in blood.

The tax due is determined by a computation involving two schedules with different rates. One schedule consists of the rates imposed by the revenue act of 1926, and the other of the additional tax imposed by the revenue act of 1932.

The value of the net estate under the revenue act of 1932 is determined as provided in the revenue act of 1926, as amended, except that in lieu of the exemption of $100,000 under that act the exemption in the case of the additional tax is only $50,000. This results in the taxation of certain estates under the 1932 act which are not reached under the act of 1926. Moreover, the provision of the 1926 act allowing a credit against the tax, up to 80 per cent thereof, for death taxes paid to any State or Territory, does not apply in respect of the additional tax.

In computing the Federal tax, it is first necessary to determine the amount of the decedent's gross estate. The following property or interest therein is included:

(*a*) The decedent's interest in any property at the time of his death.

(*b*) Dower, curtesy, or similar interests of the surviving spouse.

(*c*) Transfers by the decedent in contemplation of death, or intended to take effect in possession or enjoyment at or after his death.

(*d*) Transfers, by trust or otherwise, under which the decedent has retained for his life or for any period not ascertainable without reference to his death, or for any period which does not in fact end before his death, the possession or enjoyment of, or the right to the income from, the property, or the right to designate, either alone or with another, the persons who shall possess or enjoy the property or the income therefrom.

(*e*) Transfers, by trust or otherwise, where the enjoyment of the property was, at the date of the decedent's death, subject to any change through the exercise of a power to alter, amend, or revoke, or where the decedent relinquished such a power in contemplation of death.

(*f*) Joint interests held by the decedent with another person, including tenancies by the entirety and joint bank accounts.

(*g*) Property passing under a general power of appointment exercised by the decedent by will, or by deed executed in contemplation of death, or by deed intended to take effect in possession or enjoyment at or after death, or under which the decedent has retained for his life or any period not ascertainable without reference to his death, or any period which does not in fact end before his death, the possession or enjoyment of, or income from, the property, or the right to designate, alone or with another, the persons who shall enjoy the property or the income therefrom.

(*h*) Proceeds of life insurance payable to the estate of the decedent, and the proceeds of life insurance in excess of $40,000 payable to beneficiaries.

The above enumerated property is included in the gross estate at its value at the date of the decedent's death. The regulations of the Commissioner of Internal Revenue give the following general rule in regard to valuations of property comprising the gross estate:

> The value of all property includable in the gross estate is the fair market value thereof at the time of the decedent's death. The fair market value is the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell. When property is sold within a reasonable period after decedent's death, and it is shown that the selling price reflects the fair market value thereof as of the date of decedent's death, the selling price will be accepted. Neither depreciation nor appreciation in value subsequent to the date of decedent's death will be considered. All relevant facts and elements of value should be considered in every case.

After the value of the "gross" estate has been determined, certain deductions are allowed in arriving at the "net" estate subject to tax. These allowable deductions may be briefly stated as follows:

(*a*) In the case of a resident—

(1) An arbitrary exemption of $100,000 in the case of the tax under the 1926 act, and $50,000 in the case of the additional tax under the act of 1932.

(2) Funeral and administration expenses, claims against the estate, unpaid mortgages, expenses for support of the decedent's dependents during settlement, and losses from fires, storms, theft, etc.

(3) Property included within decedent's gross estate which was previously taxed in the estate of a prior decedent who died within five years, or property transferred to the decedent by gift within five years prior to his death upon which a gift tax was paid by the donor.

(4) Public, religious, charitable, scientific, literary, or educational bequests, in the amount actually received by such beneficiaries.

(*b*) In the case of a nonresident—

(1) That proportion of the deductions specified in paragraph (2), above, which the value of the nonresident's gross estate in the United States bears to the value of his entire gross estate, wherever situated.

(2) Property specified in paragraph (3), above.

(3) Property specified in paragraph (4), above.

The "net" estate under each act having been computed by subtracting from the "gross" estate the deductions above set forth, the Federal tax may now be determined. The tax imposed by the revenue act of 1926, as amended, is computed by applying the following rates to the net estate as determined thereunder:

BASIC SCHEDULE OF PRESENT FEDERAL ESTATE TAX RATES

(Act of Feb. 26, 1926, ch. 27, sec. 301 (a), 44 Stat. L. 69)

1 per centum of the amount of the net estate not in excess of $50,000;
2 per centum of the amount by which the net estate exceeds $50,000 and does not exceed $100,000;
3 per centum of the amount by which the net estate exceeds $100,000 and does not exceed $200,000;
4 per centum of the amount by which the net estate exceeds $200,000 and does not exceed $400,000;
5 per centum of the amount by which the net estate exceeds $400,000 and does not exceed $600,000;
6 per centum of the amount by which the net estate exceeds $600,000 and does not exceed $800,000;
7 per centum of the amount by which the net estate exceeds $800,000 and does not exceed $1,000,000;
8 per centum of the amount by which the net estate exceeds $1,000,000 and does not exceed $1,500,000;
9 per centum of the amount by which the net estate exceeds $1,500,000 and does not exceed $2,000,000;
10 per centum of the amount by which the net estate exceeds $2,000,000 and does not exceed $2,500,000;
11 per centum of the amount by which the net estate exceeds $2,500,000 and does not exceed $3,000,000;
12 per centum of the amount by which the net estate exceeds $3,000,000 and does not exceed $3,500,000;
13 per centum of the amount by which the net estate exceeds $3,500,000 and does not exceed $4,000,000;
14 per centum of the amount by which the net estate exceeds $4,000,000 and does not exceed $5,000,000;
15 per centum of the amount by which the net estate exceeds $5,000,000 and does not exceed $6,000,000;
16 per centum of the amount by which the net estate exceeds $6,000,000 and does not exceed $7,000,000;
17 per centum of the amount by which the net estate exceeds $7,000,000 and does not exceed $8,000,000;
18 per centum of the amount by which the net estate exceeds $8,000,000 and does not exceed $9,000,000;
19 per centum of the amount by which the net estate exceeds $9,000,000 and does not exceed $10,000,000;
20 per centum of the amount by which the net estate exceeds $10,000,000.

From the tax thus computed, there may be deducted the amount of any gift taxes paid on any property included within the gross estate. In addition, there may be deducted the amount of any death taxes paid to any State or Territory in respect of the estate, for which credit must be claimed within four years after the filing of the return. This credit, however, may not exceed 80 per cent of the tax found to be due before the credit is taken.

To the tax thus determined, there is added the additional tax imposed by the revenue act of 1932. This tax is arrived at by first computing a tentative tax at the following rates on the net estate as determined under that act:

ADDITIONAL SCHEDULE OF PRESENT FEDERAL ESTATE TAX RATES

(Act of June 1932, sec. 401)

Upon net estates not in excess of $10,000, 1 per centum.
$100 upon net estates of $10,000; and upon net estates in excess of $10,000 and not in excess of $20,000, 2 per centum in addition of such excess.
$300 upon net estates of $20,000; and upon net estates in excess of $20,000 and not in excess of $30,000, 3 per centum in addition of such excess.

$600 upon net estates of $30,000; and upon net estates in excess of $30,000 and not in excess of $40,000, 4 per centum in addition of such excess.

$1,000 upon net estates of $40,000; and upon net estates in excess of $40,000 and not in excess of $50,000, 5 per centum in addition of such excess.

$1,500 upon net estates of $50,000; and upon net estates in excess of $50,000 and not in excess of $100,000, 7 per centum in addition of such excess.

$5,000 upon net estates of $100,000; and upon net estates in excess of $100,000 and not in excess of $200,000, 9 per centum in addition of such excess.

$14,000 upon net estates of $200,000; and upon net estates in excess of $200,000 and not in excess of $400,000, 11 per centum in addition of such excess.

$36,000 upon net estates of $400,000; and upon net estates in excess of $400,000 and not in excess of $600,000, 13 per centum in addition of such excess.

$62,000 upon net estates of $600,000; and upon net estates in excess of $600,000 and not in excess of $800,000, 15 per centum in addition of such excess.

$92,000 upon net estates of $800,000; and upon net estates in excess of $800,000 and not in excess of $1,000,000, 17 per centum in addition of such excess.

$126,000 upon net estates of $1,000,000; and upon net estates in excess of $1,000,000 and not in excess of $1,500,000, 19 per centum in addition of such excess.

$221,000 upon net estates of $1,500,000; and upon net estates in excess of $1,500,000 and not in excess of $2,000,000, 21 per centum in addition of such excess.

$326,000 upon net estates of $2,000,000; and upon net estates in excess of $2,000,000 and not in excess of $2,500,000, 23 per centum in addition of such excess.

$441,000 upon net estates of $2,500,000; and upon net estates in excess of $2,500,000 and not in excess of $3,000,000, 25 per centum in addition of such excess.

$566,000 upon net estates of $3,000,000; and upon net estates in excess of $3,000,000 and not in excess of $3,500,000, 27 per centum in addition of such excess.

$701,000 upon net estates of $3,500,000; and upon net estates in excess of $3,500,000 and not in excess of $4,000,000, 29 per centum in addition of such excess.

$846,000 upon net estates of $4,000,000; and upon net estates in excess of $4,000,000 and not in excess of $4,500,000, 31 per centum in addition of such excess.

$1,001,000 upon net estates of $4,500,000; and upon net estates in excess of $4,500,000 and not in excess of $5,000,000, 33 per centum in addition of such excess.

$1,166,000 upon net estates of $5,000,000; and upon net estates in excess of $5,000,000, and not in excess of $6,000,000, 35 per centum in addition of such excess.

$1,516,000 upon net estates of $6,000,000; and upon net estates in excess of $6,000,000 and not in excess of $7,000,000, 37 per centum in addition of such excess.

$1,886,000 upon net estates of $7,000,000; and upon net estates in excess of $7,000,000 and not in excess of $8,000,000, 39 per centum in addition of such excess.

$2,276,000 upon net estates of $8,000,000; and upon net estates in excess of $8,000,000 and not in excess of $9,000,000, 41 per centum in addition of such excess.

$2,686,000 upon net estates of $9,000,000; and upon net estates in excess of $9,000,000 and not in excess of $10,000,000, 43 per centum in addition of such excess.

$3,116,000 upon net estates of $10,000,000; and upon net estates in excess of $10,000,000, 45 per centum in addition of such excess.

From this tentative tax, there is deducted the amount of the gross estate tax levied under the revenue act of 1926 before credit is taken for death taxes paid to the States. The resulting excess is the amount due under the 1932 act as an additional tax. This additional tax, plus the net tax imposed by the act of 1926, constitute the total Federal tax on the estate of a decedent.

The following table shows the total tax at Federal rates on net estates of various sizes:

Federal estate tax on certain net estates under existing laws in force July 1, 1932

Net estate before exemption	Taxable estate		Tax under 1926 act		Tax under 1932 act (4)		1926 and 1932 acts, total tax (2)+(4)
	1926 act	1932 act	Before credit [1] (1)	After credit [2] (2)	Tentative (3)	Additional (3)−(1)	
$50,000	0	0	0	0	0	0	0
$100,000	0	$50,000	0	0	$1,500	$1,500	$1,500
$150,000	$50,000	100,000	$500	$100	5,000	4,500	4,600
$200,000	100,000	150,000	1,500	300	9,500	8,000	8,300
$300,000	200,000	250,000	4,500	900	19,500	15,000	15,900
$400,000	300,000	350,000	8,500	1,700	30,500	22,000	23,700
$500,000	400,000	450,000	12,500	2,500	42,500	30,000	32,500
$600,000	500,000	550,000	17,500	3,500	55,500	38,000	41,500
$800,000	700,000	750,000	28,500	5,700	84,500	56,000	61,700
$1,000,000	900,000	950,000	41,500	8,300	117,500	76,000	84,300
$2,000,000	1,900,000	1,950,000	124,500	24,900	315,500	191,000	215,900
$3,000,000	2,900,000	2,950,000	227,500	45,500	553,500	326,000	371,500
$4,000,000	3,900,000	3,950,000	350,500	70,100	831,500	481,000	551,100
$5,000,000	4,900,000	4,950,000	489,500	97,900	1,149,500	660,000	757,900
$6,000,000	5,900,000	5,950,000	638,500	127,700	1,498,500	860,000	987,700
$8,000,000	7,900,000	7,950,000	966,500	193,300	2,256,500	1,290,000	1,483,300
$10,000,000	9,900,000	9,950,000	1,334,500	266,900	3,094,500	1,760,000	2,026,900
$20,000,000	19,900,000	19,950,000	3,333,500	666,700	7,593,500	4,260,000	4,926,700
$50,000,000	49,900,000	49,950,000	9,333,500	1,866,700	21,093,500	11,760,000	13,626,700
$100,000,000	99,900,000	99,950,000	19,333,500	3,866,700	43,593,500	24,260,000	28,126,700

[1] Credit for death taxes paid to States. May not exceed 80 per cent of Federal tax under act of 1926. No credit allowed against additional tax under 1932 act for State death taxes.
[2] It is assumed in each case that the State tax absorbs the full 80 per cent credit.

The taxes shown in the foregoing table are the minimum amounts which the Federal Government may expect to collect in the form of death taxes from estates of decedents. Where the inheritance and estate taxes levied by the States are not sufficiently high to absorb the full 80 per cent credit which is allowed against the tax imposed under the revenue act of 1926, the amount collected by the Federal Government will be proportionately greater. In Nevada, where no State death duties are imposed, the whole amount of the tax goes to the Federal Government. The same is true in the District of Columbia. In the case of decedents dying after the effective date of the 1926 act and prior to the effective date of the 1932 act, there was no double taxation except where the State tax exceeded 80 per cent of the Federal tax. This was a rare occurrence. With the imposition of the additional tax under the 1932 act, the double taxation situation is not changed. The higher rates of the estate tax merely represent the total burden the Congress now believes these estates may properly bear.

The tax is collected pursuant to notices and returns filed by the executor or administrator. The first step is the filing of a preliminary notice of the decedent's death with the collector of internal revenue for the district in which the decedent was last domiciled. This notice advises the Government of the existence of a taxable estate, and should be made in all cases where the gross estate is in excess of $50,000 in value. It should be filed within two months after the decedent's death. The estate tax return, however, may generally be filed within one year after the death of the decedent, but the Commissioner of Internal Revenue may require its filing before that time where it appears that the interests of the Government would be jeopardized by any delay. On the other hand, additional time may be granted, not exceeding six months, where the facts warrant such an extension.

Upon receipt of the return, the commissioner examines the same and determines the amount of the tax. Payment of the tax is due one year after the decedent's death. Where undue hardship would result from early payment of the tax, the commissioner may extend the time not to exceed eight years from the due date. Interest runs at 6 per cent per annum from six months after such date until the tax is paid. In the case of a deficiency in the tax, the commissioner may extend the time for payment thereof for a period not to exceed four years. Interest at 6 per cent also runs against the amount of the deficiency. In either case, a bond may be required by the commissioner in an amount not exceeding double the amount of tax in respect of which the extension is granted.

The tax constitutes a lien upon the gross estate of the decedent, which may extend over a period of years if payment is not made before that time. This lien may be released in whole or in part, however, in the discretion of the commissioner with the approval of the Secretary of the Treasury. In case of disagreement as to the correctness of the tax determined by the commissioner, the law provides for the filing of appeals to the Board of Tax Appeals where a deficiency tax is assessed, and for suits in the Federal district courts where there has been an overpayment of the tax.

The good and bad features of the present Federal estate tax will be dealt with in a later portion of this report. It will be sufficient to close this preliminary description with the receipts from this tax since its first enactment in 1916 to the present time:

Federal estate tax receipts

Fiscal year ending—	Tax collected
June 30, 1917	$6, 077, 000
June 30, 1918	47, 453, 000
June 30, 1919	82, 030, 000
June 30, 1920	103, 636, 000
June 30, 1921	154, 043, 000
June 30, 1922	139, 419, 000
June 30, 1923	126, 705, 000
June 30, 1924	102, 967, 000
June 30, 1925	101, 422, 000
June 30, 1926	116, 041, 000
June 30, 1927	100, 340, 000
June 30, 1928	60, 087, 000
June 30, 1929	61, 897, 000
June 30, 1930	64, 770, 000
June 30, 1931	48, 078, 000
June 30, 1932	47, 422, 000

2. FEDERAL GIFT TAX

As a supplement to the estate tax, the Federal Government now imposes a tax upon gifts inter vivos. The tax is applicable both to resident and nonresident individuals, and measurably approaches the estate tax that would have been payable at the donor's death if the gift had not been made in his lifetime and the property instead had constituted a part of his estate. For this reason, the rate of tax is measured by all gifts made after the enactment of the act, although it is computed and payable yearly. A scheme of computation is provided which results in approximately the same tax on a gift of a given amount whether such gift was made in one year or spread over a period of years.

As has been stated before, the rates of the gift tax are approximately one-fourth less than those of the Federal estate tax. The reason for this difference in rates appears to be that the Congress wishes thereby to encourage the making of gifts and the distribution of property in the lifetime of the owner, which, of course, is a worthy purpose. The Government, moreover, can well afford to make this concession, because the tax accrues much sooner than if it were only imposed at the death of the donor.

The tax applies to transfers of property by gift, whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. It does not apply, however, to transfers in trust where the donor has the power to revest title in himself, either alone or in conjunction with another person. On the other hand, the relinquishment or termination of such a power constitutes a taxable transfer.

Where property is transferred for less than an adequate and full consideration, the amount by which the value of the property exceeds the value of the consideration is considered a taxable gift. If the gift is made in property, the value thereof at the date of the gift constitutes the amount of the gift for purposes of taxation.

In arriving at the taxable net gifts, certain deductions are allowed. In each calendar year, the first $5,000 of gifts to each person is exempt, except where the gift is of a future interest in property. This exemption is made to obviate the necessity of keeping account of numerous small gifts, and at the same time fix the amount sufficiently large to cover wedding and Christmas gifts, and occasional gifts of small amounts. Other exemptions, in the case of resident individuals, may be summarized as follows:

(*a*) A specific exemption of $50,000, less the aggregate of the amount claimed and allowed as a specific exemption for preceding years. The exemption may be taken all in one year or spread over a period of years, at the option of the taxpayer, but when it is used no further exemption is allowed.

(*b*) Public, religious, charitable, scientific, literary, or educational gifts.

(*c*) Gifts to lodges for puposes specified in paragraph (*b*).

(*d*) Gifts to posts or organizations of war veterans.

(*e*) Gifts to the fund for vocational rehabilitation authorized by the World War veterans' act of 1924.

The exemptions in the case of nonresident aliens are the same as for residents and citizens, except that the $50,000 specific exemption does not apply. Also, the deduction for charitable and other such gifts applies only when such gifts by the nonresident donor are to be used in the United States exclusively.

The rates of the gift tax under the revenue act of June 6, 1932, section 502, are as follows:

PRESENT GIFT TAX RATES

Upon net gifts not in excess of $10,000, three-fourths of 1 per cent.

$75 upon net gifts of $10,000; and upon net gifts in excess of $10,000 and not in excess of $20,000, 1½ per cent in addition of such excess.

$225 upon net gifts of $20,000; and upon net gifts in excess of $20,000 and not in excess of $30,000, 2¼ per cent in addition of such excess.

$450 upon net gifts of $30,000; and upon net gifts in excess of $30,000 and not in excess of $40,000, 3 per cent in addition of such excess.

$750 upon net gifts of $40,000; and upon net gifts in excess of $40,000 and not in excess of $50,000, 3¾ per cent in addition of such excess.

$1,125 upon net gifts of $50,000; and upon net gifts in excess of $50,000 and not in excess of $100,000, 5 per cent in addition of such excess.

$3,625 upon net gifts of $100,000; and upon net gifts in excess of $100,000 and not in excess of $200,000, 6½ per cent in addition of such excess.

$10,125 upon net gifts of $200,000; and upon net gifts in excess of $200,000 and not in excess of $400,000, 8 per cent in addition of such excess.

$26,125 upon net gifts of $400,000; and upon net gifts in excess of $400,000 and not in excess of $600,000, 9½ per cent in addition of such excess.

$45,125 upon net gifts of $600,000; and upon net gifts in excess of $600,000 and not in excess of $800,000, 11 per cent in addition of such excess.

$67,125 upon net gifts of $800,000; and upon net gifts in excess of $800,000 and not in excess of $1,000,000, 12½ per cent in addition of such excess.

$92,125 upon net gifts of $1,000,000; and upon net gifts in excess of $1,000,000 and not in excess of $1,500,000, 14 per cent in addition of such excess.

$162,125 upon net gifts of $1,500,000; and upon net gifts in excess of $1,500,000 and not in excess of $2,000,000; 15½ per cent in addition of such excess.

$239,625 upon net gifts of $2,000,000; and upon net gifts in excess of $2,000,000 and not in excess of $2,500,000, 17 per cent in addition of such excess.

$324,625 upon net gifts of $2,500,000; and upon net gifts in excess of $2,500,000 and not in excess of $3,000,000. 18½ per cent in addition of such excess.

$417,125 upon net gifts of $3,000,000; and upon net gifts in excess of $3,000,000 and not in excess of $3,500,000, 20 per cent in addition of such excess.

$517,125 upon net gifts of $3,500,000; and upon net gifts in excess of $3,500,000 and not in excess of $4,000,000, 21½ per cent in addition of such excess.

$624,625 upon net gifts of $4,000,000; and upon net gifts in excess of $4,000,000 and not in excess of $4,500,000, 23 per cent in addition of such excess.

$739,625 upon net gifts of $4,500,000; and upon net gifts in excess of $4,500,000 and not in excess of $5,000,000, 24½ per cent in addition of such excess.

$862,125 upon net gifts of $5,000,000; and upon net gifts in excess of $5,000,000 and not in excess of $6,000,000, 26 per cent in addition of such excess.

$1,122,125 upon net gifts of $6,000,000; and upon net gifts in excess of $6,000,000 and not in excess of $7,000,000, 27½ per cent in addition of such excess.

$1,397,125 upon net gifts of $7,000,000; and upon net gifts in excess of $7,000,000 and not in excess of $8,000,000, 29 per cent in addition of such excess.

$1,687,125 upon net gifts of $8,000,000; and upon net gifts in ecxess of $8,000,000 and not in excess of $9,000,000, 30½ per cent in addition of such excess.

$1,992,125 upon net gifts of $9,000,000; and upon net gifts in excess of $9,000,000 and not in excess of $10,000,000, 32 per cent in addition of such excess.

$2,312,125 upon net gifts of $10,000,000; and upon net gifts in excess of $10,000,000, 33½ per cent in addition of such excess.

The computation of the tax involves three separate steps, as follows:

(*a*) A tax is first computed, at the above rates, on the aggregate sum of the net gifts made after the enactment of the Revenue Act of 1932, including the net gifts during the current calendar year.

(*b*) A tax is then computed, at the above rates, on the aggregate sum of the net gifts made after the enactment of the 1932 act but prior to the current year.

(*c*) The tax computed under paragraph (*b*) is then subtracted from that computed under paragraph (*a*), and the excess is the amount due for the current year.

The foregoing method of computing the tax results in taxing in each calendar year, upon a cumulative basis, all gifts made since the enactment of the revenue act of 1932, with credit for all gift taxes paid in the years prior to the current year.

The determination of the tax may perhaps be more clearly illustrated by the following examples:

Gift tax, 1932

Gifts:	
To wife, $50,000 (less $5,000 exempt)	$45, 000. 00
To son, $50,000 (less $5,000 exempt)	45, 000. 00
To daughter, $10,000 (less $5,000 exempt)	5, 000. 00
To nephew, $5,000 (less $5,000 exempt)	0
Total	95, 000. 00
Deductions: Specific exemption	50, 000. 00
Taxable net gifts	45, 000. 00
Gift tax for 1932:	
Tax upon net gifts of $40,000	750. 00
Tax on excess ($5,000×3¾ per cent)	187. 50
Total tax for 1932	937. 50

Gift tax, 1933

Gifts:	
To charity	$100, 000. 00
To daughter, $30,000 (less $5,000 exempt)	25, 000. 00
To niece, $30,000 (less $5,000 exempt)	25, 000. 00
Total gifts	150, 000. 00
Deductions:	
Specific exemption [1]	0
Charitable gifts	100, 000. 00
Total	100, 000. 00
Net taxable gifts:	
In 1933	50, 000. 00
In 1932	45, 000. 00
Aggregate, 1933 and preceding years	95, 000. 00
Gift tax on aggregate gifts:	
Tax upon net gifts of $50,000	1, 125. 00
Tax upon excess ($35,000×5 per cent)	1, 750. 00
Total	2, 875. 00
Less tax on aggregate gifts of preceding years	937. 50
Tax payable for calendar year 1933	1, 937. 50

A return of all gifts in excess of $5,000 made by any individual during the calendar year must be filed by March 15 thereafter with the collector of internal revenue for the district in which the donor has his legal residence. The tax is payable on or before the due date of the return, although the Commissioner of Internal Revenue may extend the time of payment for a period of not to exceed six months.

The tax constitutes a lien against the gifts made during the calendar year for 10 years from the date of the gift. If the tax is not paid by the donor, the lien is attached to as much of the gift in the hands of the donee as has not been sold to a bona fide purchaser for an ade-

[1] Specific exemption exhausted in 1932.

quate and full consideration, or to other property of the donee, subject only to being divested by sale to a bona fide purchaser for an adequate and full consideration. Within the discretion of the commissioner, this lien may be released before payment of the tax.

After examination of the return, the commissioner may make a correct determination of the tax due, and in the case of a deficiency may proceed to its assessment and collection under administrative provisions corresponding to those of the estate and income tax laws. Provision is made for an appeal to the Board of Tax Appeals in the case of deficiencies. Claims for refund of overpayments may be filed within three years from the time the tax was paid.

Rules and regulations for the enforcement of the gift tax law are prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.

3. STATE DEATH TAXES

As of July 1, 1932, 47 States had some form of death duty in force, leaving only the State of Nevada and the District of Columbia without such a tax. No two States have precisely the same statute, and it will therefore be necessary to discuss, first, the general situation in regard to State death duties, and second, to describe in detail the death taxes of certain States which seem most typical or most worthy of note.

As certain readers may be interested in particular States, there has been included in Exhibit J of the appendix a Résumé of State Death Taxes, showing for each State the essential details of such taxes. There is also included, in Exhibit K of the appendix, a table showing the Present Status of State Death Duties, as of July 1, 1932, for purposes of comparison.

The forms of death taxes employed in the respective States are as follows:

Inheritance tax only:

Arizona.	Louisiana.[1]	South Dakota.
Arkasas.	New Jersey.	Texas.
Idaho.	New Mexico.	West Virginia.
Illinois.	Oklahoma.	Wyoming.
Kentucky.	South Carolina.	Total, 14.

Inheritance and estate taxes:

California.	Massachusetts.	Pennsylvania.
Colorado.	Michigan.	Rhode Island.
Connecticut.	Minnesota.	Tennessee.
Delaware.	Missouri.	Vermont.
Georgia.	Montana.	Virginia.
Indiana.	Nebraska.	Washington.
Iowa.	New Hampshire.	Wisconsin.
Kansas.	North Carolina.	Total, 27.
Maine.	Ohio.	
Maryland.	Oregon.	

Estate tax only:

Alabama.	New York.	Utah.
Florida.	North Dakota.	Total, 6.
Mississippi.		

[1] Effective July 27, 1932, Louisiana imposed an additional estate tax.

The application of the inheritance tax, in the 41 States which levy this form of death duty, is as follows:

Inheritance taxes

	States
On both direct and collateral heirs	37
On collaterals only	[1] 3
On nonresidents only	[2] 1

Of the 41 States levying an inheritance tax, 27 also impose additional estate taxes which, except in the case of Oregon, are prima facie based upon the Federal estate tax law of 1926, and are enacted for the purpose of absorbing the 80 per cent credit allowed by that statute for State death taxes paid. Even in the case of the six States which impose only an estate tax, the rates of four of these States are clearly based upon the Federal law. In view of these facts, it is fair to assume that if it were not for the Federal law, not over two or three States would have estate taxes to-day. It can not be doubted, therefore, that the form of death duty which is preferred by our State legislatures is the inheritance tax. It is also clear that the favored form of inheritance tax in the 41 States which levy this form of death duty, is that which is imposed on both direct and collateral heirs, inasmuch as 37 of the States have such a tax.

The composite hypothetical tax of these 37 States has been mathematically constructed with the purpose of giving a general picture of the form of death duty obviously preferred by the States. It is as follows:

COMPOSITE OF INHERITANCE TAX ON DIRECT AND COLLATERAL HEIRS IMPOSED BY 37 STATES

First as to the rates of tax and exemptions, the average of the 37 States shows the following rates and exemptions on the different classes of heirs:

Class	Composite rates	Composite exemption
Widow	1¼ per cent graduated to 6½ per cent	$16,310
Widower	1¼ per cent graduated to 7 per cent	10,600
Child	1¼ per cent graduated to 6¾ per cent	8,120
Brother or sister	3¼ per cent graduated to 10¾ per cent	2,850
Uncle or aunt	4¾ per cent graduated to 13½ per cent	510
Stranger	6 per cent graduated to 16¼ per cent	290

It can be observed from the above data that consanguinity is recognized in two ways, namely, by graduation of rates and by exemptions. The widow is plainly preferred over the husband and issue by a larger exemption, although the rates average about the same. The widow's exemption of $16,310 is approximately 50 per cent greater than that allowed to the husband and 100 per cent greater than that allowed to the child. It should also be observed that the rates on brothers and sisters, uncles and aunts, and more remote relatives, are substantially in excess of the rates on the surviving spouse and direct descendants. The exemptions to the collateral relatives are much less, which further increases the tax on their shares.

[1] Maryland, New Hampshire, and Oregon. [2] Georgia.

Ordinarily the property of both resident and nonresident decedents is subjected to tax. In the case of residents, all property, both tangible and intangible, within the jurisdiction of the State, is taxed. In the case of nonresidents, the real property and the tangible personal property located within the State, are taxed. A number of States have attempted to tax the intangible personal property of nonresidents in certain cases. Most of this latter property, however, now escapes double taxation either by reason of court decisions or reciprocity provisions. This phase of the subject will be treated later in this report under the caption of multiple taxation.

The tax falls on the transfer of property whether by will or by intestate laws. Nearly all the States include in the taxable estate transfers made in contemplation of death or intended to take effect in possession and enjoyment at or after death. Most of the States also provide an arbitrary period of from 1 to 6 years during which transfers inter vivos are presumed to be made in contemplation of death. This presumption, however, is usually rebuttable. Transfers of property by right of dower or curtesy, or rights in lieu thereof, are taxable in the majority of cases. Joint estates and estates by the entirety are generally reached to the extent of the decedent's interest therein.

The estate is usually valued as of the date of the decedent's death, although in two or three cases the valuation is as of the date of distribution. The value sought is the fair market value or clear market value. The standard deductions allowable appear to be funeral and administration expenses, debts, and legal claims against the estate. Transfers to the State or to religious, charitable, or educational organizations are usually exempt from tax.

In regard to the administration of the inheritance tax, it is generally provided that the legal representatives of the estate shall deduct the tax and make return thereof before making distribution to the beneficiaries. Refunds are generally allowed where the tax can be shown to have been overpaid. The due date of the tax is one year after death in the majority of cases.

It has already been pointed out that 27 of the 41 States having an inheritance tax also impose an additional estate tax. In the majority of cases, this additional estate tax takes this simple form:

> In addition to the inheritance taxes imposed by the laws of this State, there is hereby levied and imposed an estate or excise tax upon the transfer at death of the estate of every resident decedent, the amount of which shall be the amount by which 80 per cent of the estate tax payable to the United States Government under the provisions of the Federal revenue act of 1926 and amendments thereto shall exceed the aggregate amount of all estate, inheritance, legacy, and succession taxes actually paid to the several States of the United States and subdivisions thereof in respect to any property owned by such decedent or subject to such taxes as a part of or in connection with his estate.

Usually, these additional estate taxes would become void or ineffective with the repeal of the Federal estate tax law of 1926 or the 80 per cent credit clause thereof.

It must not be assumed from the foregoing that there is any uniformity in the rates or other features of the State inheritance tax laws, for the reverse is true. Some of the more important differences in these taxes will be set forth briefly under appropriate headings.

Rates of tax.—Considering only the 37 States which have inheritance taxes on both direct and collateral heirs applying to residents as well as nonresidents, the following statement will bring out the variations in rates on widows and direct descendants:

18 States have maximum rates of 5 per cent or less.
8 States have maximum rates of more than 5 per cent, but not more than 8 per cent.
7 States have maximum rates of more than 8 per cent, but not more than 10 per cent.
4 States have maximum rates of more than 10 per cent, but not more than 16 per cent.

In these same States, in the case of shares passing to strangers in blood and remote relatives, the following statement gives an idea as to the variation in rates on this class:

2 States have maximum rates of 5 per cent or less.
5 States have maximum rates of more than 5 per cent, but not more than 8 per cent.
5 States have maximum rates of more than 8 per cent, but not more than 10 per cent.
13 States have maximum rates of more than 10 per cent, but not more than 16 per cent.
8 States have maximum rates of more than 16 per cent, but not more than 25 per cent.
4 States have maximum rates of more than 25 per cent, but not more than 40 per cent.

It is obvious from the two statements above, that the majority of the States tax the widow and children very lightly, while in the case of strangers a fairly heavy tax is usually imposed. In view of the fact that at least 75 per cent of the property of the decedents passes to the widow and children, it can be seen that the low rate imposed on this class materially lowers the revenue derived from these inheritance taxes.

Exemptions.—The variations in the exemptions may be sufficiently shown by the following table:

Beneficiary	Maximum exemption	Minimum exemption
Widow	$75,000	$5,000
Adult child	25,000	2,000
Brother or sister	25,000	0
Uncle or aunt	2,000	0
Stranger in blood	1,000	0

LIMIT OF GRADUATION

The States having inheritance taxes on both direct and collateral heirs in 34 cases out of 37 graduate the rates according to the size of the share. The upper limit, beyond which graduation of rates ceases, is shown below:

2 States graduate to $50,000 or less.
4 States graduate to more than $50,000, but not more than $100,000.
5 States graduate to more than $100,000, but not more than $250,000.
12 States graduate to more than $250,000, but not more than $500,000.
6 States graduate to more than $500,000, but not more than $1,000,000.
3 States graduate to more than $1,000,000, but not more than $5,000,000.
2 States graduate to more than $5,000,000, but not more than $10,000,000.

DATE OF VALUATION

As a general rule, the estate or the net share therein of any beneficiary is valued as of the date of the decedent's death. However, in Arizona and Indiana, it is valued at time of transfer. New Mexico values at the date of appraisal as specified by law. Vermont values one year after death or at the date of distribution.

PROPERTY INCLUDED IN ESTATE

The greatest variation in regard to property included in the taxable estate occurs in the case of community-property States. The general rule in these States, which are eight in number, is that only one-half of the community property is taxable. Most States, but not all, include property received under dower and curtesy rights in the taxable estate, and also property held by the entirety to the extent of the decedent's interest therein.

It would be interesting to describe in detail the death-tax system of each State, but space does not permit of such a description. It is important, however, to gain a more concrete idea of State death taxes than has been given and, therefore, the death-tax system of several States will be described. In view of the many changes that have taken place in these systems, it can hardly be said that any particular State is typical. The States whose death taxes will be set forth are selected more for the purpose of showing the marked variations in type rather than for the fact that they are typical of other States.

MASSACHUSETTS

The basic death tax of Massachusetts is an inheritance tax levied on both direct and collateral heirs. An additional estate tax is also imposed in order to take advantage of the 80 per cent credit clause of the Federal law.

The Massachusetts inheritance tax exemplifies the progressive principle of taxation as well as the principle of increasing the rates as the degree of relationship to the decedent becomes more remote.

The rate chart of the Massachusetts law, showing the classification of the beneficiaries, is shown below:

Relationship of beneficiary to deceased	Rate per cent of tax on value of property or interest							
	On value not over $10,000	On excess above $10,000, not over $25,000	On excess above $25,000, not over $50,000	On excess above $50,000, not over $250,000	On excess above $250,000, not over $500,000	On excess above $500,000, not over $750,000	On excess above $750,000, not over $1,000,000	On excess above $1,000,000
Class A								
Husband, wife, father, mother, child, adopted child, adoptive parent, grandchild	*Per cent* 1	*Per cent* 1	*Per cent* 2	*Per cent* 4	*Per cent* 5	*Per cent* 5½	*Per cent* 6	*Per cent* 7
Class B								
Lineal ancestor except father or mother, lineal descendant except child or grandchild, lineal descendant of adopted child, lineal ancestor of adoptive parent, wife or widow of a son, husband of a daughter	1	2	4	5	6	7	8	9
Class C								
Brother, sister, half brother, half sister, nephew, niece, stepchild, or step-parent	3	5	7	8	9	10	11	12
Class D								
All others	5	6	7	8	9	10	11	12

The inheritance tax is not imposed on property or interests therein passing to the class A beneficiaries named in the table unless the value thereof exceeds $10,000. There is one exception to this rule, namely, that a grandchild of the deceased is taxable when the value of his share exceeds $1,000. Beneficiaries of class B, C, and D are not taxable unless the value of their shares exceeds $1,000. These amounts of $10,000 and $1,000 are not exemptions in the usual sense, because where the share exceeds them the tax is computed on the entire amount and not on the excess above the exemption.

For instance, a widow receiving $11,000 from her husband's estate would pay 1 per cent on $11,000, or $110 tax; not 1 per cent of $1,000, or $10 tax, as would be the case in many States. It is provided, however, that "no tax shall be exacted upon any property or interest so passing or accruing which shall reduce the value of such property or interest below said amounts" (amounts of exemption). That is, if the widow, named above, received $10,100, there would be no tax levied, for 1 per cent on $10,100 would result in a tax of $101 which would reduce the value of her share below $10,000.

Property, or interests therein, passing from the decedent to charitable, educational or religious organizations is exempt from inheritance tax if the property of such organizations is exempt from taxation under the laws of the Commonwealth, or if the property passing is for charitable purposes to be carried on within the Commonwealth.

All property of resident decedents, corporeal and incorporeal, is subject to tax. In the case of nonresident decedents, real estate and tangible personal property located within the State is subject to tax. The tax falls on transfers whether by will or by intestate laws, and also on gifts inter vivos if made in contemplation of death, as per the following rule:

> Any deed, grant, or gift completed inter vivos, except in cases of bona fide purchase for full consideration in money or money's worth, made not more than six months prior to the death of the grantor or donor, shall, prima facie, be deemed to have been made in contemplation of the death of the grantor or donor. Notwithstanding any provisions of section 1, no tax shall be payable thereunder on account of any deed, grant, or gift in contemplation of death made more than two years prior to the death of the grantor or donor, unless made or intended to take effect in possession or enjoyment after such death.

The tax is assessed upon the value of the property at the time of the death of the decedent. In the case of life estates, and future expectancies in such estates after the termination of a life interest, the respective values are determined by the use of the American Experience Tables of Mortality at 4 per cent compound interest.

Taxes are due one year from the date of the giving of bond by the executors, administrators, or trustees first appointed. Interest at 6 per cent becomes chargeable from the due date.

It appears that real estate owned by a husband and wife as tenants by the entirety is not subject to tax, but that in cases of joint tenancy the tax will be imposed if the deceased contributed to the acquisition of the property. It also appears that dower and curtesy interests are not subject to tax.

The Massachusetts inheritance statute contains no provision exempting property previously taxed, but it does provide for the nontaxability of intangible personal property of nonresidents.

Massachusetts imposes an additional estate tax in order to take advantage of the 80 per cent credit provision of the Federal law of 1926.

The important features of this tax may be seen from the following quotation from the law (act 1927, ch. 178, as amended):

SEC. 1. *Estate tax upon transfer of resident estates.*—A tax is hereby imposed upon the transfer of the estate of every person dying after February twenty-sixth, nineteen hundred and twenty-six, who at the time of death was a resident of this Commonwealth, the amount of which shall be the amount by which eighty per cent of the estate tax payable to the United States under the provisions of the Federal revenue act of nineteen hundred and twenty-six shall exceed the aggregate amount of all estate, inheritance, legacy, and succession taxes actually paid to the several States of the United States in respect to any property owned by such decedent or subject to such taxes as a part of or in connection with his estate.

A tax is hereby imposed upon the transfer of real property or tangible personal property in the Commonwealth of every person who at the time of death was not a resident of the Commonwealth, the amount of which shall be a sum equal to such proportion of the amount by which the credit allowable under the applicable Federal revenue act for estate, inheritance, legacy, and succession taxes actually paid to the several States exceeds the amount actually so paid for such taxes, exclusive of estate taxes based upon the difference between such credit and other estate taxes and inheritance, legacy, and succession taxes, as the value of the property taxable in the Commonwealth bears to the value of the entire estate.

The second paragraph of the section was added in 1932, effective as of June 6.

The Massachusetts statute specifically provides that the additional estate tax shall become void and of no effect upon the repeal of the Federal estate tax law of 1926 or the 80 per cent credit provision thereof.

The following revenue has been derived from death taxes by the State of Massachusetts:

1924	\$6, 489, 173
1925	5, 920, 307
1926	6, 511, 302
1927	10, 751, 882
1928	10, 336, 738
1929	12, 082, 312
1930	14, 337, 188

NEW JERSEY

The State of New Jersey imposes an inheritance tax on both direct and collateral heirs. It has enacted no additional estate tax, but the rates of the inheritance tax are sufficiently high to absorb the full 80 per cent credit allowed by the Federal law of 1926 in practically all cases.

The New Jersey statute gives effect to consanguinity, both by rates and exemptions. The rates are also progressive in proportion to the size of the share.

The rates provided for the different classes of beneficiaries are shown by the following table:

Relationship of beneficiary to deceased	Rate per cent of tax on net share															
	On first $50,000 less exemption	In excess of $50,000 up to $100,000	In excess of $100,000 up to $150,000	In excess of $150,000 up to $200,000	In excess of $200,000 up to $300,000	In excess of $300,000 up to $500,000	In excess of $500,000 up to $700,000	In excess of $700,000 up to $900,000	In excess of $900,000 up to $1,100,000	In excess of $1,100,000 up to $1,400,000	In excess of $1,400,000 up to $1,700,000	In excess of $1,700,000 up to $2,200,000	In excess of $2,200,000 up to $2,700,000	In excess of $2,700,000 up to $3,200,000	In excess of $3,200,000 up to $3,700,000	In excess of $3,700,000
CLASS A																
Surviving spouse, parent, child, adopted child, or issue of a child or adopted child	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
CLASS B																
Brother, sister, son-in-law, daughter-in-law	5	5	5	5	5	6	6	7	9	11	13	14	16	16	16	16
CLASS C																
Churches, hospitals and orphan asylums, public libraries, Bible and tract societies, religious, benevolent, and charitable institutions	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5
CLASS D																
All others	8	8	8	8	8	8	8	8	10	12	14	16	16	16	16	16

Property passing to the State of New Jersey or to municipal corporations within the State, or to other political subdivisions thereof for exclusively public purposes, is exempt from tax. In the case of beneficiaries of Classes A and B, an exemption of $5,000 is allowed, which is deductible from the first bracket only. Transfers of less than $500 are tax exempt.

The method of computing the tax may be exemplified by the following example:

Net share of widow	$400, 000
Net share of brother	100, 000
Tax on widow:	
First $50,000 less $5,000 exemption at 1 per cent	450
Next $50,000 2 per cent	1, 000
Next $50,000 3 per cent	1, 500
Next $50,000 4 per cent	2, 000
Next $100,000 5 per cent	5, 000
Next $100,000 6 per cent	6, 000
Total tax on widow	15, 950
Tax on brother: First $100,000 (no exemptions) at 5 per cent	5, 000
Total tax on widow and brother	20, 950

The tax is imposed upon the transfer of all property of resident decedents, real and personal, tangible and intangible. In the case of nonresident decedents, the tax is on the transfer of real property within the State, and goods, wares, and merchandise within the State. The tax falls on transfers whether by will or by operation of the intestate laws. Transfers made in contemplation of death, or to take effect in possession or enjoyment after death, are taxable. Transfers made within two years prior to death are deemed to be in contemplation of death in absence of proof to the contrary. Dower and curtesy rights are exempt from tax as well as tenancies by the entirety. Joint estates, however, are taxable, except as to the portion of such estates as may be proved to have originally belonged to the survivor. The statute provides for the taxation of trusts where the grantor retains an estate or interest for life therein.

The tax is assessed upon the clear market value of the property and is due within one year from the date of the decedent's death. Interest at 10 per cent is charged after the expiration of the 1-year period.

New Jersey has no provision for exempting property previously taxed in the estate of a prior decedent. This State may be considered in the reciprocal group, since it does not tax the intangible property of nonresidents.

No additional estate tax has as yet been enacted by New Jersey.

The following revenue has been derived from the New Jersey inheritance tax:

Fiscal year ending June 30—	
1925	$6, 519, 716
1926	7, 199, 549
1927	11, 407, 663
1928	11, 394, 556
1929	7, 617, 868
1930	15, 766, 175

CALIFORNIA

The State of California imposes an inheritance tax on both direct and collateral heirs, supplemented by an additional estate tax to take advantage of the 80 per cent credit clause of the Federal law of 1926. The inheritance tax rates are progressive, and increase with the amount of the share and also as the degree of relationship becomes more remote. Exemptions are allowed which give further relief to direct heirs over more distant relatives.

The rate chart shown below gives the rates applicable to each class of beneficiaries:

Relationship of beneficiary to deceased	Rate per cent of tax on net share						
	Up to $25,000	In excess of $25,000 up to $50,000	In excess of $50,000 up to $100,000	In excess of $100,000 up to $200,000	In excess of $200,000 up to $300,000	In excess of $300,000 up to $500,000	In excess of $500,000
CLASS A	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*
Wife	----------	----------	4	6	7	8	8
Husband, lineal ancestor, lineal issue, adopted or mutually acknowledged child or issue thereof	1	2	4	7	9	9	10
CLASS B							
Brother, sister, or descendant of either; son-in-law; daughter-in-law	3	6	9	12	12	12	12
CLASS C							
Uncle, aunt, or descendant of either	4	8	10	12	12	12	12
CLASS D							
All others	5	10	12	12	12	12	12

The following exemptions are allowed, which are deductible from the first brackets in the case of all beneficiaries except the wife, in which case the exemption eliminates the first two brackets:

Widow	$50,000
Minor child	24,000
All other in class A	10,000
Class B beneficiaries	5,000
Class C beneficiaries	1,000
Class D beneficiaries	500

Transfers for charitable, benevolent, educational, or public purposes, either to a domestic corporation or for use within the State, are exempt; also to such institutions without the State which are exempt from a death tax of any character.

The rates applicable to the various brackets are based upon the net estate before the allowance of the exemption. An estate of $51,000 left to the wife is taxable at 4 per cent on $1,000, or $40. In the case, however, of a minor child receiving a like sum the tax would be 1 per cent of the remainder of $25,000 − $24,000, plus 2 per cent of $25,000, plus 4 per cent of $1,000, or a total tax of $550.

California, being a community-property State, exempts from tax one-half the community property. Personal property, wherever situated, even if acquired while the husband and wife were domiciled elsewhere, is considered community property if, when the property was acquired, it would not have been considered separate property if they had been domiciled in the State of California. In the case of the transfer of community property from one spouse to another, one-half of the community property so transferred is not taxable. In 1927 a new section was added to the civil code whereby it is provided that the interests of husband and wife in community property are present, existing, and equal.

Transfers of property within the State are taxable when made in contemplation of death or intended to take effect in possession or enjoyment at or after the death of the transferor. The words "contemplation of death" are taken to include that expectancy of death which actuates the mind of a person on the execution of his will. The statute also provides that all transfers made more than four years prior to death shall be presumed not to have been made in contemplation of death.

The tax is imposed upon the transfer of all the property of a resident decedent, real, personal, or mixed, or any interest therein or income therefrom, in trust or otherwise, except real property and tangible personal property having its actual situs outside of the State.

Effective as of July 29, 1927, a reciprocal provision was adopted which provided that the State will not tax the intangible personal property of decedents who were residents of States which impose no death taxes on intangible personality of California's decedents, or the laws of which contain similar provisions for reciprocal exemption. Effective as of August 14, 1929, this provision was amended to include any foreign state or country, and was limited in all cases to jurisdictions which impose a legacy, succession, or death tax on residents.

The estate tax imposed is based upon the Federal estate tax and is determined in each case by subtracting from 80 per cent of the tax imposed by the Federal estate tax of 1926 the amount of inheritance tax imposed by the inheritance-tax provision. Since the inheritance tax upon estates of less than $1,000,000 is greater than the Federal estate tax under the 1926 law, the additional revenue derived from the imposition of this tax is from estates in excess of $1,000,000. It appears that the California estate tax would cease to operate on the repeal of the Federal estate tax law of 1926.

The following revenue has been derived from death taxes by the State of California:

Fiscal year ending June 30:	Amount
1925	$6, 423, 141
1926	7, 420, 166
1927	8, 460, 953
1928	10, 967, 704
1929	13, 180, 226
1930	11, 647, 011

NEW YORK

New York, after having had a transfer or inheritance tax for many years, abandoned this tax as of September 1, 1930, and imposed an estate tax at rates sufficient to absorb the full 80 per cent credit allowed by the Federal law of 1926. The tax, however, reaches all estates of over $5,000, whereas the Federal tax under the 1926 act is only imposed on estates in excess of $100,000. New York is one of the few States that exemplifies the use of an estate tax only.

The rates imposed on the net estate by the New York statute are as follows:

Four-fifths of 1 per cent up to $150,000.
1⅗ per cent on excess above $150,000, but not above $200,000.
2⅖ per cent on excess above $200,000, but not above $300,000.
3⅕ per cent on excess above $300,000, but not above $500,000.
4 per cent on excess above $500,000, but not above $700,000.
4⅘ per cent on excess above $700,000, but not above $900,000.
5⅗ per cent on excess above $900,000, but not above $1,100,000.
6⅖ per cent on excess above $1,100,000, but not above $1,600,000.
7⅕ per cent on excess above $1,600,000, but not above $2,100,000.
8 per cent on excess above $2,100,000, but not above $2,600,000.
8⅘ per cent on excess above $2,600,000, but not above $3,100,000.
9⅗ per cent on excess above $3,100,000, but not above $3,600,000.
10⅖ per cent on excess above $3,600,000, but not above $4,100,000.
11⅕ per cent on excess above $4,100,000, but not above $5,100,000.
12 per cent on excess above $5,100,000, but not above $6,100,000.
12⅘ per cent on excess above $6,100,000, but not above $7,100,000.
13⅗ per cent on excess above $7,100,000, but not above $8,100,000.
14⅖ per cent on excess above $8,100,000, but not above $9,100,000.
15⅕ per cent on excess above $9,100,000, but not above $10,100,000.
16 per cent on the excess above $10,100,000.

It will be observed that the above rates are 80 per cent of the Federal rates. The following exemptions are allowed against the first bracket of $150,000, only:

(1) The amount of the net estate not exceeding $20,000 transferred to a husband or wife of the decedent.

(2) The amount of the net estate not exceeding $5,000 in each instance, transferred to a lineal ancestor or descendent, adopted child, stepchild, or lineal descendent of an adopted child or stepchild, or to a brother or sister, or to the wife or widow of a son, or to the husband or a widower of a daughter, or to any child acknowledged as such by the decedent not less than 10 years prior to the transfer.

(3) Life insurance to named beneficiaries up to $100,000 less the exemptions allowed in (1) and (2), above.

The deductions allowable against the gross estate include expenses and legal claims against the estate of the decedent. Value of property previously taxed in the estate of a prior decedent who died within 5 years and which has been subject to the Federal estate tax, is deductible. Also the value of property transferred to the United States or any political subdivision thereof for exclusively public purposes, and the value of property transferred to any institution organized and operated for exclusively religious, charitable, scientific, literary, patriotic, historical, bar association, or educational purposes, is deductible from the gross estate.

The following example illustrates the method of computing the New York estate tax:

Value of gross estate		$600,000
Deductions:		
Expenses, debts	$40,000	
Charitable bequests	20,000	
Property previously taxed	10,000	
		70,000
Net estate subject to tax		530,000
First $150,000 taxable at ⅘ of 1 per cent:		
Deduct $20,000 exemption to widow		20,000
Deduct $5,000 each to 2 sons		10,000
Next $120,000, taxable at ⅘ of 1 per cent		960
Next $50,000, taxable at 1⅗ per cent		800
Next $100,000, taxable at 2⅖ per cent		2,400
Next $200,000, taxable at 3⅕ per cent		6,400
Next $30,000, taxable at 4 per cent		1,200
Total estate tax		11,760

In the above case, under the 1926 act, the tax at Federal rates would be $14,000, and the 80 per cent credit allowed the estate for State taxes would be $11,200. Thus the New York State tax exceeds the 80 per cent credit in such a case by $560.

All property of resident decedents is subject to tax whether passing by will or by intestate laws, except real property situated, and tangible personal property having an actual situs, outside the State. Nonresidents are taxed in conformance with the above rule; that is, on real property located within the State, and on tangible personal property having an actual situs within the State.

The details of the New York estate tax follow the Federal law very closely, so that in most cases the net estate will evidently be the same for both State and Federal purposes. Joint estates, tenancies by the entirety, dower and curtesy, and property passing under a general power of appointment are all subject to tax under the New York statute, as is the case under the Federal law. Transfers made in contemplation of death are taxable, and there is a rebuttable presumption that transfers made within two years of death are made in contemplation of death.

The tax is assessed on the fair market value of the decedent's property as of the date of his death. It is not required to be paid until 18 months after decedent's death, and interest at 6 per cent attaches after that date if permission for the delay is granted; otherwise the rate is 10 per cent. New York gives a discount of 5 per cent for prompt payment within six months from date of death.

The New York estate tax would remain in force regardless of the repeal of the Federal law or the 80 per cent credit provision thereof.

The revenue derived from the New York inheritance tax and additional estate tax in force before the enactment of the present law may be seen from the following figures:

Fiscal year ending June 30, 1925	$23, 584, 767
Fiscal year ending June 30, 1926	22, 222, 748
Fiscal year ending June 30, 1927	24, 478, 953
Fiscal year ending June 30, 1928	35, 565, 273
Fiscal year ending June 30, 1929	47, 164, 582
Fiscal year ending June 30, 1930	50, 487, 214

Space will not permit of a further description of the death tax systems of the various States. A table will be found in Exhibit L of the appendix which shows various features of the death taxes of all the States. A comparative study of this table is interesting, as it indicates the lack of uniformity in these taxes.

The death tax receipts for each State will be found in Exhibit M of the appendix. The receipts have shown a steady increase in the last five years for which figures are available, the totals being as follows:

1924	$83, 697, 091	1928	$132, 599, 274
1925	91, 171, 041	1929	148, 591, 827
1926	96, 052, 403	1930	180, 794, 241
1927	112, 190, 562		

C. GENERAL FACTS ON DEATH TAXES

1. THE TOTAL DEATH-TAX BURDEN

From a practical standpoint, the incidence of both the inheritance and estate tax is upon the beneficiaries of the estate. Hence, they are not so much interested in whether the Federal Government or the State collects the death tax as they are in how much the total burden will be. It will be interesting, therefore, to consider the amount of tax levied in the various States and by the Federal Government on estates of different sizes. For the sake of brevity, only estates of $50,000, $200,000, $1,000,000, and $10,000,000 will be used, and in each case the tax will be computed for the following three classes of beneficiaries: (1) Widow and four children; (2) widow; and (3) stranger in blood.

In Exhibit N of the appendix are four tables showing the amount of State, Federal, and total death taxes on the four sizes of estates mentioned above where the distribution is to the three classes of beneficiaries referred to. The important points which may be noted from a study of these tables will be briefly summarized.

First, in regard to the $50,000 estate:

(1) *Federal tax.*—There is no Federal tax on estates of this size.
(2) *State tax.*—The average tax in the 48 States is as follows:

Division of property	Average	Variation
Widow and 4 children	$190	0 to $1, 700
All to widow	446	0 to $1, 700
All to stranger in blood	3, 259	0 to $8, 625

(3) *Total tax.*—Same as for State.

Second, in regard to the $200,000 estate:

(1) *Federal tax.*—The minimum Federal tax is $8,300, except in the States having the community property system where it is $1,500.

(2) *State tax.*—The average tax in the 48 States is as follows:

Division of property	Average	Variation
Widow and 4 children	$2,386	0 to $9,200
All to widow	4,341	0 to $12,200
All to stranger	18,320	0 to $50,050

(3) *Total tax.*—The average total tax, Federal and State, is as follows:

Division of property:	Average
Widow and four children	$9,564
All to widow	11,507
All to stranger	26,645

Third, in regard to the $1,000,000 estate:

(1) *Federal tax.*—The minimum Federal tax is $84,300, except in the community property States where it is $32,500.

(2) *State tax.*—The average tax in the 48 States is as follows:

Division of property	Average	Variation
Widow and 4 children	$31,746	0 to $62,040
All to widow	40,891	0 to $102,038
All to stranger	118,001	0 to $360,600

(3) *Total tax.*—The average total tax, Federal and State, is as follows:

Division of property:	Average
Widow and 4 children	$107,097
All to widow	117,441
All to stranger	202,993

Fourth, in regard to the $10,000,000 estate:

(1) *Federal tax.*—The minimum Federal tax is $2,026,900, except in the community property States where it is $757,900.

(2) *State tax.*—The average tax in the 48 States is as follows:

Division of property	Average	Variation
Widow and 4 children	$817,980	0 to $1,178,634
All to widow	846,026	0 to $1,410,950
All to stranger	1,457,821	0 to $3,920,600

(3) Total tax.—The average total tax, Federal and State, is as follows:

Division of property:	Average
Widow and 4 children	$2,782,299
All to widow	2,784,985
All to stranger	3,553,456

Examination of the tables in Exhibit N will further disclose that an individual with an estate of $50,000, which he desires to leave to his wife, may escape the death tax entirely if he makes his domicile in Alabama, California, Florida, Georgia, Kansas, Maryland, Mississippi, Nevada, New Hampshire, or Texas. On the other hand, a man who desires to leave his entire estate of $10,000,000 to his widow can not escape the death tax no matter where he makes his domicile. In the latter case the minimum total tax of $1,149,500 will be imposed if the decedent resides in any of the community property States—Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington.

It will be observed that there is little uniformity among the States in the taxation of estates of $50,000, and that as the size of the estate increases, the State taxes become more nearly the same. This is due to the influence of the provision of the Federal estate tax act of 1926, which permits a credit against the Federal tax, up to 80 per cent of the amount imposed thereby, for death taxes paid to the States. The State statutes, in most cases, have been so amended as to absorb the full amount of the Federal credit, thus bringing about a fairly uniform burden on the larger estates, at which the Federal tax is particularly aimed.

During the study of death duties four charts were prepared which gave a graphic picture of the variations in the tax burden at that time. Although these charts are not entirely up to date, being based on the status of death taxes as of July 1, 1930, they are included in Exhibit O of the appendix for comparative purposes.

Leaving the subject of the total tax burden on individual estates, the aggregate burden on all estates will be considered. In Exhibit P of the appendix will be found a summary of revenue receipts from all taxes, which serves as a basis for a further table showing the relation between death taxes and total taxes, Federal, State, and aggregate in the United States. This second table will be found in Exhibit Q of the appendix. The important facts shown therein may be summarized as follows:

(1) In 1931 only 1.7 per cent of the Federal tax revenue was derived from the estate tax. In 1923, before the enactment of the credit clause, the estate tax accounted for 4.8 per cent of the Federal taxes.

(2) Since 1915 the State death duties have accounted for between 8 and 10 per cent of the total State taxes. The increase in the duties has kept pace with the increase in the total revenue obtained from all sources.

(3) It is estimated that the total taxes collected by Federal, State, county, town, and municipal Governments amounted to $8,810,395,000 in 1927. Of this amount, $212,531,000, or 2.4 per cent, came from death taxes. In 1915 this percentage was only 1.2 per cent, so it may be said that death duties have not only kept pace with the increase in other taxes, but they were in 1927 relatively twice as important as in 1915.

To show that the aggregate death-tax burden in the United States has been fairly moderate, there is included in Exhibit R of the appendix a comparison of taxes in the United States and Great Britain. The exhibit discloses that the total Federal and State death duties in 1930 comprised about 4.5 per cent of the total Federal and State tax revenues. In Great Britain, however, the death duties, in the same year, accounted for 19.6 per cent of all tax revenues. It would appear, therefore, that the British tax imposed a much more severe burden on the estates of decedents than did the combined Federal and State death taxes in this country in 1930. Just what the net revenue to the Federal Government will be under the additional estate tax imposed in 1932 is uncertain, but it seems probable that the Federal Government will receive about seven times the tax it would have received under the former law, due partly to the increased rates and partly to the fact that no credit is allowed against the additional estate tax.

2. THE CORPUS OF THE ESTATE

It is necessary to obtain not only an idea of the rates imposed and the taxes collected, but also as to the kind of property which we may expect to find in the corpus of taxable estates.

The best source of information for this purpose is the tabulation covering estate tax returns published by the Bureau of Internal Revenue. A summary of this data has been made for the years 1916 to 1928, which will be found in Exhibit S of the appendix. Since these figures are rather voluminous, they have been further summarized for the 7-year period from 1922 to 1928, inclusive. See Exhibit T in the appendix.

If the latter exhibit for this recent 7-year period is examined, the following statements may be subtantiated:

(1) The average number of taxable returns filed annually for net estates of more than $100,000 is 8,951. The average total tax per return is $11,496.

(2) Net estates of from 0 to $1,000,000, after exemption, have accounted for 24 per cent of the total taxes collected; net estates of from $1,000,000 to $10,000,000, for 48 per cent, and net estates of over $10,000,000 for 24 per cent.

(3) Out of total gross estates aggregating $18,925,930,969 which have been reached by the Federal estate tax in the last 7 years, $12,850,796,534, or 68 per cent, has been in stocks, bonds, mortgages, notes, and cash; $3,732,574,331 or 20 per cent has been in real estate, and $2,342,560,104, or 12 per cent, has been in miscellaneous property, real and personal. The great bulk of the large estates is, therefore, comprised of personal property.

(4) The proportion of stocks, bonds, mortgages, notes and cash in the larger gross estates is greater than in the smaller estates. For instance:

Net estates of over $10,000,000 are composed to the extent of 81 per cent of such property.

Net estates of from $1,000,000 to $10,000,000 to the extent of 76 per cent.

Net estates of less than $1,000,000 to the extent of 63 per cent.

It seems important to keep in mind that the large estates are composed of personal property, mostly intangible, to the extent of at least two-thirds thereof. The value of real property in such estates is relatively small. This fact constitutes an argument in favor of the taxation of the larger estates, especially when consideration is given to the heavy taxes on real property and the notorious ineffectiveness of taxes on personal property such as stocks and bonds.

Part III

PRINCIPLES UPON WHICH DEATH TAXES ARE BASED

Part III. Principles upon Which Death Taxes are Based

A. LEGAL CONCEPTS

One legal theory advanced to justify the imposition of death duties comes down to us from feudal times, and rests upon the old feudal doctrine that the sovereign has exclusive right to the property of his subjects after their death. Under this theory, property passes by will or inheritance only by the grace of the sovereign, and death duties are regarded as exactions made in return for the privilege of succession and inheritance granted by him. Blackstone was a staunch advocate of such a theory, and we find in his commentaries a statement that "wills * * * and testaments, rights of inheritance and succession, are all of them creatures of the civil or municipal laws, and accordingly are in all respects regulated by them." Jefferson probably was the first American exponent of this doctrine, for in a letter to Madison, dated September 6, 1779, we find the statement: "The earth belongs in usufruct to the living; the dead have neither power nor rights over it. The portion occupied by an individual ceases to be his when he himself ceases to be and reverts to society."

The first judicial recognition of the feudal theory in this country is contained in the much quoted Virginia case of Eyre *v.* Jacob (14 Gratton 422), in which the court stated: "The right to take property by devise or descent is the creature of the law and secured and protected by its authority." In England and the continental countries, this theory has seldom been resorted to in order to sustain the legality of death duties. In fact, it has been abandoned in most countries with the spread of democratic ideas. In the various States in this country, it has been largely superseded by the theory that the power of the States to levy death duties rests upon their exclusive authority to regulate the transfer of property at death. Due to constitutional limitations on the taxing power of the States, this theory is most often urged to support State death duties. Under such theory, limitations which apply to other taxes are inapplicable to death duties because of this exclusive power of State regulation.

The Supreme Court, in upholding State death duties in Magoun *v.* Illinois Trust & Savings Bank (170 U. S. 288) and United States *v.* Perkins (163 U. S. 625), considered the same theory. But while this theory has become one of the mainstays of State inheritance tax laws, it can not be relied upon by the Federal Government, because the power to regulate the passing of property at death is reserved exclusively to the States. To justify the Federal Government's right to impose death duties we must look to a third theory, namely, that death duties are taxes and may be levied pursuant to the power of the sovereign to levy and collect taxes. This theory is relied upon by practically all countries to support their death duties. Under our Constitution, the Federal Government is granted express authority to levy taxes, and this power is held to be sufficient to authorize the collection of Federal death duties. In justifying such a duty, the

Supreme Court has emphasized the fact that the occasion for the tax is the transition or receipt of the property by death and not the right to regulate. In this connection, the following is quoted from Knowlton *v.* Moore (178 U. S. 41):

> Although different modes of assessing such duties prevail, and although they have different accidental names, such as probate duties, stamp duties, taxes on the transaction, or the act of passing of an estate or succession, legacy taxes, estate taxes, or privilege taxes, nevertheless tax laws of this nature in all countries rest in their essence upon the principle that death is the generating source from which the particular taxing power takes its being and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested.

Having considered that death duties are taxes, there remains the question of their fiscal classification. Considerable controversy has arisen as to whether they are direct or indirect taxes. While proper classification of such taxes may not be important in the case of state and foreign death duties, it becomes important in the case of Federal death duties because of the constitutional provision requiring that direct taxes be apportioned according to population. Fortunately, this controversy has been definitely settled by the Supreme Court, both inheritance taxes and estate taxes being held to be in the nature of excises and, therefore, indirect taxes. (See Scholey *v.* Rew, 23 Wall. 331; Knowlton *v.* Moore, 178 U. S. 41; New York Trust Co. *v.* Eisner, 256 U. S. 345.)

B. ECONOMIC CONCEPTS

There are many economic theories relating to the imposition of death duties, the following being the most important:

1. THE PRIVILEGE THEORY

Closely allied with the legal theory of the right of the State to the property of the decedent is the conception that the right of bequest involves a social privilege for which some compensation is rightfully demanded. Under this theory, the State permits the decedent to dispose of his property at death. As stated by Sir William Harcourt, father of the British estate tax law:

> Nature gives a man no power over his earthly goods beyond the term of his life. What power he possesses to prolong his will after his death—the right of a dead hand to dispose of property—is a pure creation of the law, and the State has the right to prescribe the conditions and limitations under which that power shall be exercised.

Applying this theory to inheritance taxes, Sir William Gladstone made the following statement:

> The carrying property in perfect security over the great barrier which death places between man and man is perhaps the very highest achievement, the most signal proof of power of civilized institutions; * * * and an instance so capital of the great benefit conferred by law and civil institutions upon mankind, and of the immense enlargement that comes to natural liberty through the medium of the law, that I conceive nothing more rational than that if taxes are to be raised at all, the State shall be at liberty to step in and take from him who is thenceforward to enjoy the whole in security, that portion which may be bona fide necessary for the public purpose.

Under the privilege theory, the claim upon the estate of collaterals and strangers in blood is less than that of kindred in the direct line, and therefore the privilege of participating in its distribution granted to them by the State may be said to be greater. This theory has found support among Dutch and French economists, as well as some economists in this country. If the privilege is made the measure for determining the tax, it appears that it will be very difficult to arrive at a uniform standard which would apply equitably to all cases.

2. THE COPARTNERSHIP THEORY

Under the copartnership theory, the State is regarded as a silent partner in the enterprise which accumulated the wealth of the decedent. As the State rendered him aid and protection in amassing such wealth, upon dissolution of the partnership by death it is contended that the State is entitled to a share of the capital. This theory was strongly advocated in this country by Andrew Carnegie, who made the following statement:

> Now who made that growth? The growth of the American public—that is where that wealth came from, and that is the partner in every enterprise where money is made honorably; it is the people of the United States * * * I say the community fails in its duties and legislators fail in their duties if they do not exact a tremendous share, a progressive share.

3. THE DIFFUSION-OF-WEALTH THEORY

Under the diffusion-of-wealth theory, death duties are justified as preventing a check upon the perpetuation of large fortunes. It is felt that it is injurious, both for the individual and the State, that fortunes of great magnitude should be left to individuals, as it encourages the growth of an unproductive class to spend their time and money in dissipation and in the maintenance of a crowd of parasites to administer only to their selfish wants. It was Lord Bacon who made the statement in one of his essays that—

> Ever a State flourisheth when wealth is more evenly spread.

In this country, this theory has been criticized on the ground that taxes are levied to raise revenue and not for the purpose of introducing social reforms. If social reforms are desired, it is said that they should be accomplished by means other than taxation.

4. FEE OR COST OF SERVICE THEORY

Under this theory, death duties are regarded as payments made to cover expenses of the State in effecting and enforcing transfers at death. This theory would not support the imposition of heavy death duties for the reason that it would naturally limit the amount of such duties to the expenses actually incurred in performing this function.

5. THE VALUE OF SERVICE THEORY

Under this theory, the taxes are based upon the value of the services performed to the heir or beneficiary rather than the expense of the service to the Government. Graduation according to relationship is justified under such a theory on the ground that a greater service is rendered when property is transmitted to distant relatives than when handed down to direct descendants. Here we have the difficult question of valuation; that is, of determining a measure for the service afforded by the State.

6. THE BACK-TAX THEORY

Under the back-tax theory, death duties are imposed to compensate the State for taxes which were unpaid or avoided during the life of the decedent. This argument is often advanced in connection with taxes on personal property which, it is well known, are generally avoided. This theory has its defects, due to the difficulty of showing the relation between the inheritance tax and the taxes evaded during life.

7. DIFFERENTIATION OF INCOME THEORY

Under this theory, it is contended that the income from capital should pay a higher rate than income from labor. Instead of distinguishing between the two types of income during the life of the decedent, the income derived from capital may effectively be taxed at a higher rate by the imposition of death duties.

8. THE FACULTY THEORY

This theory is applicable primarily to inheritance taxes as distinguished from estate taxes. It is founded on the assumption that the tax should be influenced to a large extent by the degree of relationship existing between the beneficiary and the benefactor. Those who enjoy direct succession are educated and trained to a mode of life formed with relation to the property they look forward to enjoying. It would be a hardship upon them for the State to step in and take any material part of the property. On the other hand, strangers and collaterals of lesser degree get such property accidentally and are, therefore, not trained to expect it. This theory is considerably supported among French, Italian, and German economists, primarily because of the absence of absolute freedom of bequest in those countries. In other words, in many of the countries of continental Europe, the child is entitled to a fixed portion of the parent's estate and can not be deprived of it by any act on the part of the parent.

9. THE SEQUENCE OF INHERITANCE THEORY

Under this theory, the relationship between death taxes and the laws of inheritance is recognized and the tax levied accordingly. Thus the principle of escheat is applied where the relationship is very remote. The abolition of intestate inheritances as to all but the nearest relatives has been advocated by writers with such diverse views as Bentham, Enfantin, and Bluntschli. In modern times, the family consciousness does not extend much further than first cousins. The difficulty is to determine when it ceases altogether. For this reason, it is doubtless more equitable to take away from relatives only a part of the inheritance, graduated according to relationship, and rising to a high percentage in the case of distant relatives.

10. THE LUMP SUM THEORY

This theory regards death duties as being in lieu of taxes which theretofore have not been imposed. In other words, they are considered to be in the nature of a deferred or capitalized income tax, paid after the death of the taxpayer or by the heir in advance of receipt of the income. This concept applies whether or not the property has been, or will be, subject to the income tax. By this means, the burden on income from property is made heavier than the burden on income from personal exertion.

11. THE ACCIDENTAL OR FORTUITOUS INCOME THEORY

This theory is most often urged to justify inheritance taxes. There is a sudden acquisition of property, without effort on the part of the beneficiary, which increases his ability to pay taxes. This inheritance has been characterized as an "irregular, a spasmodic, a chance return." It is more likely to increase the tax paying ability of strangers and more remote relatives than of near relatives, for in the former case the receipt is unexpected and amounts to a windfall. It is, therefore, a logical argument for graduation of the tax according to relationship. In fact, such a return appears to be just as much income from an economic point of view as the gain derived from speculation or the sale of any capital asset.

12. DISTINCTION BETWEEN HEREDITARY AND ACQUIRED PROPERTY THEORY

The theory of distinguishing between hereditary and acquired property was established in archaic law on the authority of Sir Henry Maine. Professor Eugenio Rigano, the Italian socialist, recently advocated that all property acquired during the lifetime of the property owner by his own efforts be moderately taxed while the property he inherited be subjected to a heavy graduated tax at the rate of 50 per cent of the whole, and that the same inherited property in the hands of his heirs be further taxed at the rate of 100 per cent when they came to die. Thus, no great fortune would pass beyond two generations

Whatever economic theory we may adopt to support death duties, it seems reasonable for a large fortune to pay a greater percentage in death duties than a smaller one. The immense fortunes created in this country arise, not from individual effort confined to one locality, but from the combined efforts of many persons, scattered all over the country. The great results achieved could not have been attained without the active assistance of both the States and the Federal Government. This assistance and protection is far more necessary toward the development of large fortunes than of small fortunes.

C. ESTATE TAX VERSUS INHERITANCE TAX

While the original form of death duty in this country was the probate duty, the forms which are now in use are the estate tax and the inheritance tax. The estate tax is levied on the total net estate left by a decedent, while the inheritance tax is imposed on the net share of the estate passing to each beneficiary. The former is a tax on the right to transfer property, the latter a tax on the right to receive it. Although these two taxes are similar, in respect to the fact that the incidence of both is on the beneficiaries, there are important differences in the two forms which will be discussed.

The estate tax naturally rests principally on either the privilege theory or the copartnership theory, which have already been mentioned. Under the privilege theory, the sovereign has a superior title to the heirs or beneficiaries and may properly take his share ahead of them. Under the copartnership theory, which assumes the sovereign to be a partner in the enterprise of the decedent, it is reasonable for the sovereign to take his share regardless of the number or the degree of relationship of the heirs.

On the other hand, the accidental or fortuitous income theory probably accords best with the characteristics of an inheritance tax. In the case of most beneficiaries, with the exception of the widow, it is urged that an inheritance is a windfall in favor of those who have had little or nothing to do with the accumulation of the property.

Regardless of theory, however, the important facts in regard to these two forms of death duties are their comparative practical advantages and defects.

In the first place, the inheritance tax has the advantage of being adaptable to tax the beneficiary consistently with the benefit received. This is not true of the estate tax, under the generally accepted plan of progressive rates. For instance, under the 1926 estate tax law, a beneficiary who is entitled to a share of $100,000 from a decedent having a net estate of $200,000 will bear a tax of $750, while a beneficiary who is entitled to the same sum ($100,000) from a decedent having a net estate of $10,000,000 will bear a tax of $13,345. This difference in tax between $750 and $13,345 on inheritance of like amounts seems unjustifiable if one is inclined to the theory of taxing according to the benefits received or according to ability to pay. Including the additional tax under the 1932 act, these amounts would be $4,750 and $30,945, respectively. Moreover, if the theory of diffusion of wealth is deemed most important, it seems hardly fair to levy the same tax on $1,000,000 distributed equally to 10 sons as is levied in the case where the same amount passes all to 1 son.

In the second place, the estate tax does not permit of a logical differential in the tax according to the degree of consanguinity of the heirs, although some effect to this principle may be given by means of exemptions. On the other hand, the inheritance tax is easily adjusted so as to impose whatever tax seems proper on each class of beneficiaries. It has already been pointed out that up to the time of the passage of the Federal estate tax of 1916, only one State had an estate tax, while 42 States had inheritance taxes. Thus the almost universal preference in this country for the inheritance tax prior to 1916 was shown by the enactments of the State legislatures.

In the third place, unless the decedent's will is most carefully drawn, the estate tax may bring about serious inequities which would not result from the imposition of an inheritance tax. For instance, suppose a man has a net estate of $10,000,000 and has willed $100,000 to each of 10 second cousins by specific bequests, the residue of the estate of $9,000,000 being left to be equally divided between a widow and one son. Suppose further that the value of the estate decreases to $4,200,000 at date of distribution. The estate tax will be $3,094,500 at present Federal rates, and, unless otherwise provided by the decedent in his will, it will be payable out of the residuary estate. Each of the 10 second cousins will be entitled to receive $100,000 or a total of $1,000,000. This leaves a balance of $105,500, to be equally distributed between the widow and son, a result obviously unfair and far removed from the result desired by the testator. Such serious inequities will not result from a properly designed inheritance tax, for the tax on each share will at least be consistent.

However, in spite of the above equitable arguments in favor of the inheritance tax, the estate tax is considered by many to be vastly superior. It is urged that the tax is more easily and quickly ascertained, and that revenue officials can determine the tax very shortly after the decedent's death, and are not obliged to wait for the various shares of the beneficiaries to be determined. Thus it is much easier to administer. In addition, the schedule of rates is much simpler, because the tax is graduated only according to the size of the estate and not according to relationship. It is not necessary to take into account the relationship or the particular shares of the individual beneficiaries, or to determine the tax on life estates and remainders. This eliminates the necessity for considering the many complicated problems which arise in connection with the construction of wills and trusts, the application of probate laws, and the determination of the rights of the particular legatees. These problems would be especially difficult in the case of the Federal Government, as the regulatory control over the passing of property at death is reserved to the States and there is a great divergence in the various State laws.

The estate tax produces more revenue than the inheritance tax at similar rates. This is primarily due to the fact the tax fastens itself upon the whole estate instead of upon the shares of the beneficiaries. Where the rates are progressive, the difference in tax is considerable. Moreover, graduation according to relationship, which is a fundamental part of the inheritance tax system, decreases the revenue for the reason that most property passing at death is received by direct heirs and the rate of tax on such heirs is universally less than the rate on collateral heirs.

Measured according to ability to pay, the inheritance or share tax is perhaps the fairest type. After all, a dead man can not be taxed. Death duties fall not on the dead but on the living. Therefore, the actual burden is on the beneficiary or distributee, regardless of whether an estate tax or an inheritance tax is imposed. Professor Seligman and other economists are inclined to the view that in a well-rounded system of death duties, we need both the estate tax and the inheritance tax. In fact, both taxes are imposed by England and France. Germany formerly had both, but in 1922 abandoned the estate tax entirely in favor of the inheritance tax. In this country, if we consider our National and State Governments together, we have both kinds of death duties in most jurisdictions. The difficulty in the United States is that the taxes do not operate uniformly because of the diversities in the various laws. Moreover, a few States have abandoned the inheritance tax for the estate tax.

The factors of simplicity and ease of administration, instead of equitable considerations, were largely instrumental in influencing the National Chamber of Commerce and the National Tax Association in recommending the estate tax for the several States in place of inheritance taxes. It is urged by the National Tax Association that the principle of graduation according to relationship may be recognized by a series of exemptions from the net estate. However, it is doubted that this system would result in as logical and consistent graduation as can be secured by use of the inheritance tax.

Some of the Canadian Provinces and New Zealand have incorporated the degree of relationship principle into their estate tax systems, but the result has been complexity and confusion. New York recently passed an estate tax law which provides exemptions based upon relationship. These exemptions are applied only to the first bracket of the net estate, which embraces net estates up to $150,000.

It is interesting to note some of the principles that have been given weight in the enactment of certain estate and inheritance taxes. The French estate tax was enacted to encourage large families. Under the French law, an estate tax is imposed upon the net estate of every decedent only in case he leaves less than two children surviving or represented by issue. Some countries have attempted to measure inheritance taxes according to the financial status of the beneficiary at the time he received it. In other words, if two persons received legacies of the same amount from a decedent, the one who was in a better financial condition than the other at the time the legacies were received would have to pay a higher inheritance tax.

The Federal Government has had to recognize that the income from State and municipal obligations could not be taxed, due to constitutional limitations. However, such obligations can be reached by our death duties, which are excise taxes. For this reason, Congress seriously considered, at the time of the revenue act of 1924, the taxing of such securities at a higher rate than the balance of the decedent's estate. This proposal, however, was not adopted. Many other interesting developments of these taxes could be considered, which show a tendency to base death duties upon the social aspect as well as the revenue aspect.

In conclusion, it is believed that the estate tax is simpler and more easily administered than the inheritance tax, but that the latter tax is the more equitable.

D. THE PRINCIPLE OF GRADUATED RATES

Death duties are graduated either (1) according to the degree of relationship to the decedent, or (2) according to the size of the estate or the share of the beneficiary.

Graduation based upon relationship may be defended under the theory that the privilege granted by the sovereign to succeed to the property is greater as the relationship becomes more remote, or where there is no relationship at all. It may also be defended under the faculty theory, which recognizes that the habits and mode of life of the heir are governed by the property he looks forward to enjoying, and that the expectation of acquiring such property decreases as the degree of relationship becomes more remote. Lastly, this form of graduation is justified because it recognizes relationship between death duties and the laws of descent and distribution.

Graduation according to relationship may be accomplished either through a series of exemptions or by graduated rates. In general, three classes of relationship are recognized: (1) Direct heirs, (2) collaterals, and (3) strangers in blood. Many death tax laws, however, have greatly enlarged and subdivided these classes. In fact, the scale of consanguinity under the English legacy tax became so complicated at one time that Sir William Gladstone remarked that no simple form of death duties could be accomplished until such scale was abolished.

In this country, the Federal Government does not recognize consanguinity in its estate tax law, but the contrary rule applies under the State laws. Practically every State has adopted this form of graduation, and their laws provide for graduation by exemptions as well as by rates. In almost every case, the starting point is the widow or child of the deceased, who is invariably taxed at the lowest rate and granted the highest exemption.

Graduation according to the size of the estate or share of the beneficiary is applied in the majority of countries levying death duties. This form of graduation may be defended either under the principle of ability to pay or under the principle that individuals with large fortunes have greater obligations to the State than individuals with small fortunes. The whole estate, or the net share of each beneficiary, may be taxed under three methods:

1. The rate of the tax may be made to decrease as the taxable amount increases. An example of this method is the probate duty which was levied by the American Colonies prior to the Revolution. This consisted of a flat charge for probating wills and other documents, regardless of the value of the property involved. Therefore, the rate of tax per dollar decreased as the estate became larger.

2. The amount of the tax may be made to increase proportionately as the size of the estate or the share of the beneficiary increases. This is illustrated by the flat collateral inheritance tax imposed by most of the States in this country prior to 1891. It results in each dollar of all estates paying the same tax.

3. The rates of tax may be made to increase as the size of the estate or the share increases. This is the progressive method of taxation. It has spread rapidly through all democratic countries. In the United States, it was first applied to a tax on inheritances by Ohio, in 1894. While the Ohio tax was declared unconstitutional, a similar tax adopted by Illinois in 1895 was upheld by the Supreme Court of the United States. The Federal Government, in 1898, imposed a progressive tax on legacies and distributive shares, and that tax was also held to be valid by the high court. After the Supreme Court upheld the validity of the progressive principle, it spread very rapidly throughout the country, and to-day is found in the Federal estate tax law as well as in most of the State death tax laws. Under this principle, the rates of tax may apply to the entire estate or share, or they may apply only to that portion of the estate or share falling within the bracket to which the rate relates. One system is known as the totality method and the other as the bracket method. In this country, we have adopted progression by brackets for both Federal and State death duties.

There are many different methods adopted for applying the exemptions granted under the death tax laws. One of the most common methods applied to inheritance taxes is to segregate the shares of each beneficiary in the rate bracket and apply the exemption to the first bracket. This method is not altogether satisfactory for the reason that only the portion of the lowest bracket above the exemption gets the benefit of the lowest rate. Another method consists in deducting the exemption from the entire share of the beneficiary before the rate is applied. While this method has great advantages from the standpoint of the beneficiary, it tends considerably to decrease the revenue. In some cases, the exemption is granted to an entire class and the tax is placed on the shares passing to such class and prorated among the members. In Australia, they have a method known as the vanishing exemption. An explanation of this method is quoted from the Fifth Report of the Australian Royal Commission on Taxation, page 234.

That is, a specified amount, say $500, which, if it constitutes the whole of the net value of the share, remains untaxed; but if the net value exceeds $500, the exemption diminishes in accord with a prescribed scale, until it reaches the vanishing point—for example, if the exemption diminishes $1 for every $1 by which the value exceeds $500, then if the total value were $750, the exemption would be $250 and the taxable amount $500; but if the value were $1,000 (which in that case would be the vanishing point) the whole amount would be taxable.

Some of the States in this country deduct the exemptions from the beneficiaries' share and let the remainder determine the rate. This rate is then applied to the entire share. In a few States, the tax is computed on the entire share without allowance for the exemptions, with the limitation that the tax may not reduce the share below the exemption.

Part IV

DIFFICULTIES OF SUBJECT MATTER

Part IV. Difficulties of Subject Matter

A. CONTEMPLATION OF DEATH

One of the principal difficulties in the enforcement of death taxes has been the inability effectively to reach by legislation so-called transfers in contemplation of death. A widely known and long-practiced means of avoiding death duties has been the making of gifts by the decedent during his lifetime. These gifts are, in numerous instances, mere substitutes for testamentary dispositions, the testator doubtless having death clearly in mind when he makes them, although such a state of mind is most difficult to prove in the courts.

The Federal Government and most of the States, as well as many of the foreign countries, have attempted to restrict this avoidance of death taxes by providing in their statutes that gifts made in contemplation of death shall be included as a part of the taxable estate of the decedent. These provisions, however, have been largely ineffective, since procurement of evidence of sufficient weight to establish "contemplation" of death presents almost insurmountable difficulties.

In this country the New York statute of 1891 was the first law to contain such a provision. California, after New York's example, adopted a similar provision in 1893, and Illinois followed in 1895. Other States soon enacted like provisions, so that to-day there are 44 States which tax transfers made in contemplation of death. Of the remaining four States, Maine, Maryland, and Texas do not tax such transfers, and Nevada imposes no death tax at all.

Some States specifically define "contemplation of death" in their statutes, while others set forth time limits within which transfers are presumed (either prima facie or conclusively) to have been made in contemplation of death. The time limits, when used, vary from 90 days to 6 years prior to the date of the donor's death. The following table shows the time limit in each State and whether the presumption is prima facie or conclusive:

Presumption of contemplation of death

State	Time limit	Prima facie or conclusive
Alabama	2 years	Prima facie.
Arizona	6 years	Conclusive.
Arkansas	No limit	
California	do	
Colorado	2 years	Prima facie.
Connecticut	1 year	Do.
Delaware	2 years	Do.
Florida	do	Conclusive.
Georgia	do	Prima facie.
Idaho	No limit	
Illinois	do	
Indiana	2 years	Do.
Iowa	No limit	
Kansas	90 days	Do.
Kentucky	3 years	Do.
Louisiana	1 year	Do.
Maine	No provision	
Maryland	do	
Massachusetts	6 months	Do.
Michigan	2 years	Do.
Minnesota	No limit	

Presumption of contemplation of death—Continued

State	Time limit	Prima facie or conclusive
Mississippi	2 years	Conclusive.
Missouri	do	Do.
Montana	do	Prima facie.
Nebraska	No limit	
Nevada	No death tax	
New Hampshire	No limit	
New Jersey	2 years	Do.
New Mexico	1 year	Do.
New York	2 years	Do.
North Carolina:		
Estate tax	do	Do.
Inheritance tax	3 years	Do.
North Dakota	2 years	Do.
Ohio	do	Do.
Oklahoma	No limit	
Oregon	do	
Pennsylvania	1 year	Prima facie.
Rhode Island	2 years	Do.
South Carolina (blood relatives and relatives by marriage)	5 years	Do.
South Dakota	No limit	
Tennessee	2 years	Conclusive.
Texas	No provision	
Utah	3 years	Prima facie.
Vermont	No limit	
Virginia	1 year	Do.
Washington	2 years	Conclusive.
West Virginia	3 years	Prima facie.
Wisconsin	2 years	Do.
Wyoming	6 months	Do.

It will be observed from the foregoing table that 32 States have time limit provisions, and that 12 States, while taxing transfers in contemplation of death, do not provide for any presumptive period. In Arizona, Florida, Mississippi, Missouri, Tennessee, and Washington transfers made within the time limit are conclusively presumed to have been made in contemplation of death, and no evidence to the contrary may be shown. There is some doubt as to whether the presumption under the Kentucky statute is prima facie or conclusive. While the language of the statute indicates that it is conclusive, the legislative history of the provision appears to indicate an intention to make it prima facie only. A conclusive presumption provision in the Wisconsin statute was held unconstitutional by the United States Supreme Court (Schlesinger *v.* Wisconsin, 270 U. S. 230). The Wisconsin provision created a conclusive presumption where the transfer was made within six years prior to the death of the decedent. In view of this decision and the decision in the case of Heiner *v.* Donnan (hereafter referred to) conclusive presumption provisions of all State statutes are undoubtedly void.

The California statute is unique, in one sense, in that it goes so far as to provide that transfers made more than five years prior to death shall be presumed not to have been made in contemplation of death. The South Carolina statute creates a presumption where a conveyance is delivered out of escrow, is presently delivered, or is recorded, upon or after death. Vermont subjects transfers in contemplation of death to tax only when possession and enjoyment of the property pass at death.

The Federal Government first adopted a contemplation of death clause in the estate tax provisions of the revenue act of 1916. At that time (September 8, 1916), 29 States imposed taxes on transfers in contemplation of death. The provision of the Federal statute was coupled with a clause creating a statutory prima facie presumption in the case of gifts made within two years before death. The same provision was carried in the revenue acts of 1918, 1921, and 1924.

In the revenue act of 1926, the prima facie presumption of the Federal statute was changed to a conclusive one. This new provision became law just two days before the Supreme Court held the Wisconsin provision invalid. On March 21, 1932, the conclusive presumption of the Federal law was also held unconstitutional by the Supreme Court (Heiner *v.* Donnan, 52 S. Ct. 358; Handy *v.* Delaware Trust Co., 52 S. Ct. 371). The decision was based upon the principle laid down in the Schlesinger case that to levy a tax upon an assumption of fact which the taxpayer was forbidden to controvert was arbitrary and unreasonable. The result of these decisions, in effect, is to permit only a prima facie presumption of contemplation of death where the gift is made within a certain period prior to death.

It is evident from the foregoing that both the States and the Federal Government have made persistent efforts to stem the avoidance of death taxes through gifts inter vivos. When the contemplation of death provisions were first enacted, they were viewed by the courts with considerable suspicion. The early decisions confined the application of the provision to gifts causa mortis, or death-bed gifts, which are revocable upon recovery. This interpretation had the effect of nullifying the contemplation of death provisions, since death-bed gifts had always been considered a part of the testator's estate.

In recent years, the courts have applied a more liberal interpretation. The Supreme Court, in a decision handed down in April, 1931 (United States *v.* Wells, 283 U. S. 102), specifically held that the contemplation of death clause is not limited to gifts causa mortis, which, it said, "are made in contemplation of impending death, are revocable, and are defeated if the donor survives the impending peril." The test laid down by the court as to whether contemplation of death exists is to be found in the motive actuating the transfer. If the thought of death is the controlling motive, the high court holds that the gift was made in contemplation of death.

Due to the requirement that the thought of death must be shown as the controlling motive, both the Federal Government and the States have had considerable difficulty in enforcing their contemplation of death provisions. The percentage of cases won by the Federal Government in the courts is probably less than 5 per cent, and the situation in the State courts is almost as bad. This is due, in a large measure, to the fact that the evidence required to show contemplation of death is almost wholly within the knowledge of those opposing the the tax.

Physical condition, old age, relationship between donor and donee, and the financial conditions and habits of the donor are all factors to be considered, but they do not furnish a decisive test. Even in cases where the donor had been suffering from such serious diseases as cancer, diabetes, Bright's disease, paralysis, and heart disease, the courts have held that contemplation of death was not present. In many cases, the testator has been past 70 and even 80 years of age at the time the gifts were made. The view of the courts on this point is well expressed by a Wisconsin decision (State *v.* Thompson, 154 Wis. 320). In that case the court said:

We do not think that the court can fix any particular age limit and say that after it is reached a party can give his property away only in contemplation of death. In a sense, old age is a relative term. Some men are old at 60, although they have no organic disease. Others are vigorous in mind and body at 70, and still others long after they have passed their eightieth milestone.

A similar conclusion was reached by the Supreme Court in United States *v.* Wells, (supra). Moreover, even when the donor was suffering from a mortal disease, contemplation of death has been held not to exist, upon testimony of doctors and near relatives that he was not aware of it at the time the gift was made. Furthermore, as in the Wells case, the Government has failed to sustain the tax because evidence was presented showing that the gift was the result of a preconceived plan formulated several years before it was actually made.

It appears that in only one case has a Federal court held that contemplation of death exists where the gift was made beyond the presumptive period prescribed in the statute. This was a case coming up in California, decided in 1927, in which the U. S. District Court for the Northern District of California held that a transfer made seven years prior to death was taxable. (Rengstorff *v.* McLaughlin, 21 Fed. (2d) 177). In this case, the will of the decedent was made one month after the deeds of gift were executed, and instructions for drawing both the deeds and the will were given by the decedent to her attorneys at the same time. The court considered these instruments so intimately related to each other as to constitute one transaction. This decision, however, has not been followed by any other Federal court.

There have been several suggestions offered to prevent the avoidance of estate and inheritance taxes by gifts inter vivos. One is to require the party opposing the tax to prove beyond any reasonable doubt that transfers made within 2 years prior to death were not in fact made in contemplation of death. This rule would impose the burden of proof upon such party to establish that death was not contemplated when the gifts were made, in a manner similar to that in which the burden is imposed upon the State in a criminal case to prove the guilt of the accused beyond a reasonable doubt.

Another suggestion is that a tax should be imposed on all gifts inter vivos. Congress did, in fact, impose a gift tax under the revenue act of 1924, but there was considerable doubt at the time as to whether such a tax was constitutional. The National Tax Association, in its report on Estate and Inheritance Taxation prepared in 1925, stated that the right of Congress to tax gifts under the Constitution was "to say the least, doubtful." The tax was repealed by the revenue act of 1926 and the conclusive presumption provision substituted. Since the enactment of the revenue act of 1926, the Supreme Court has sustained the validity of the gift tax (Bromley *v.* McCaughn, 280 U. S. 124), and, as pointed out heretofore, has declared the conclusive presumption provision unconstitutional.

Under the revenue act of 1932, the gift tax has once more been imposed, and at the same time greatly strengthened. The avoidance of the gift tax by making gifts in each year up to the limit of the exemption has been eliminated by a scheme of taxing the gifts on a cumulative basis, with only one exemption allowed against all taxable gifts made by the donor after the effective date of the statute. This tax is fully discussed elsewhere in this report.

The gift tax seems the most feasible remedy. France, Germany, Italy, Spain, western and southern Australia, and Japan, all impose a tax on gifts inter vivos. While Great Britain and the Canadian Provinces do not tax gifts, they are not subject to the constitutional restrictions which we have in this country and do not experience the same difficulties in connection with transfers in contemplation of death. Furthermore, their laws contain conclusive presumption provisions, ranging from 2 to 5 years from the date of death.

A gift tax makes a contemplation of death provision unnecessary. This provision has been responsible for most of the controversies and litigation involved in death tax cases, and its repeal would result in making the law more certain and easier to administer. It has been retained in the Federal law, however, in spite of the imposition of the gift tax, presumably because the rates of the estate tax are slightly higher than under the gift tax, resulting in increased revenue to the Government if it can prove a gift to have been made in contemplation of death. The fact that nearly all of the State statutes have a contemplation of death provision apparently also influenced the decision of Congress not to change the statute in this regard.

B. TRUSTS

Closely allied with the avoidance of death duties by gifts in contemplation of death is the scheme to avoid such taxes through the medium of a living trust. In the case of a gift, both the legal and equitable titles to the property pass to the donee, whereas in the case of trusts, legal title is vested in one or more trustees and the equitable title in one or more beneficiaries. The idea of the use of trusts to avoid payment of death duties is well expressed in the following opinion of a New York State court:

> A not wholly unnatural desire exists among owners of property to avoid the imposition of the inheritance taxes upon the estates they may leave so that such estates may pass to the objects of their bounty unimpaired. It is a matter of common knowledge that for this purpose trusts or other conveyances are made whereby the grantor reserves to himself the beneficial enjoyment of his estate during his lifetime. Were it not for the provision of the statute which is challenged, it is clear that in many cases the estate, on the death of the grantor, would pass free from tax to the same persons who would take it had the grantor made a will or died intestate. It is true that an ingenious mind may devise other means of avoiding an inheritance tax, but the one commonly used is a transfer with reservation of a life estate. (Matter of Keeney, 194 New York 281; aff. 222 U. S. 525.)

In Keeney *v.* New York (222 U. S. 534), the Supreme Court stated that "transfers by deed to take effect at death have frequently been classed with death duties, legacy, and inheritance taxes." The first inheritance law in the United States to provide for the taxation of transfers "intended to take effect at death" was passed by Pennsylvania in 1826. At the present time, 46 States tax transfers taking effect in possession or enjoyment at or after the decedent's death. Louisiana does not tax this type of transfer, while Nevada levies no death duties at all.

Until quite recently, the common understanding of the Federal and State statutes (with a few exceptions) has been that where the creator of a trust estate reserved a life estate or income therefrom to himself, the transfer was within the scope of the estate and inheritance tax laws which imposed the tax on transfers taking effect at or after death.

In recent cases, however, the Supreme Court has held that a trust is not subject to the Federal estate tax as a transfer to "take effect at or after death" if the title had been absolutely transferred prior to death, notwithstanding that the transferor reserved a life estate to himself. In view of these decisions, there is considerable doubt as to whether the language employed in most of the State statutes is broad enough to include transfers in trust in cases where the transferor reserves to himself a life interest. Of the 46 States at present taxing transfers taking effect at death, only nine specifically mention in their statutes transfers in which the donor makes such a reservation. These States are Colorado, Connecticut, Florida, Indiana, Iowa, Missouri, New York, North Dakota, and Tennessee. The Indiana, North Dakota, Florida, Missouri, and New York statutes expressly tax such transfers, the three latter States following the wording of the Federal law, which has been changed since the decision above referred to was rendered. In Colorado, Iowa, and Tennessee, the statutes provide that transfers in which the donor reserves to himself a life interest shall be "deemed" to take effect in possession and enjoyment at or after death, and the Connecticut law states that such transfers shall be "construed prima facie" to have been intended to take effect in possession or enjoyment at death.

In the 37 States in which the statutes do not expressly include transfers where a life interest is reserved to the transferor, their laws have been construed either by their respective attorneys general or the courts to embrace such transfers, on the theory that they come within the scope of transfers taking effect at death. Subsequent interpretations of these statutes will undoubtedly be influenced by the Supreme Court decisions above referred to. In fact, the Supreme Court has already held, in a case under the Massachusetts statute involving a reservation of income during the life of the donor, that the succession was complete upon delivery of the trust deeds and not at the date of the donor's death. This decision will, without doubt, have a far reaching effect upon the inheritance tax laws of other States.

The development of the taxation of transfers taking effect at death under the Federal law is particularly interesting. The first death duties imposed by the Federal Government were inheritance duties and not estate duties. The Federal act (July 1, 1862, sec. 11, c. 119, 12 Stat. 485, levying a tax on legacies and distributive shares of personal property) taxed "transfers by deed, grant, bargain, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor." Similar language was contained in the legacy tax provisions of the act of June 30, 1864, (c. 173, sec. 124, 13 Stat. 285). This last act also imposed a succession tax upon "all dispositions of real estate taking effect upon the death of any person."

This succession tax was upheld by the Supreme Court in Scholey *v.* Rew (23 Wall. 301, 347), the court stating that "it was not a tax on land, since the succession or devolution of the real estate is the subject matter of the tax * * * whether * * * affected by will, deed or law of descent." The language contained in the legacy tax provisions of the 1864 act was continued in the act of June 13, 1898 (c. 448, sec. 29, 30 Stat. 464).

No further death duties were imposed until 1916. On September 8 of that year the revenue act of 1916 was enacted, which provided for the first Federal estate tax. This act included in the gross estate transfers intended to take effect in possession or enjoyment at or after death. Similar language was contained in the estate tax provisions of the revenue acts of 1918, 1921, 1924, and 1926.

The Supreme Court recently held that the following types of transfers were not subject to the estate tax imposed by the revenue act of 1926:

1. A places property in trust by a deed which provides that the income shall be paid to B for his life, then to A for her life, and then that the trust shall terminate upon the death of A, at which time the property shall be distributed among the children of A. (May *v.* Heiner, decided April 14, 1930, 281 U. S. 238).
2. A places property in trust by a deed which provides that the income therefrom shall be paid to A for her life and upon her death that the trust shall be terminated and that the property shall be distributed among her children. (Burnet *v.* Northern Trust Co., decided March 2, 1931, 51 S. Ct. 342).
3. A places property in trust by a deed which provides that A shall have the right to call upon the income therefrom to supplement her income from other property if it falls below a given sum; reserves the right to dispose of the remainder of the income by ordering its payment to others and which further provides that the trust shall terminate upon the death of the last of her three children, at which time, if A is surviving, the property will be paid over to her, and if not, will then be paid to the issue of her children. (McCormick *v.* Burnet, decided March 2, 1931, 51 S. Ct. 343).—Congressional Record of March 3, 1931, page 7198.

The effect of these decisions is that such transfers were not included within the phrase "intended to take effect in possession or enjoyment at or after death."

The Treasury Department estimated that the above decisions would cost the Government about $25,000,000 in revenue. The matter was called to the attention of the Congress, and to remedy the situation House Joint Resolution 529 was enacted on March 3, 1931, the day following the Supreme Court's decision. This joint resolution sought to reach such transfers through an amendment to section 302 (c) of the revenue act of 1926 by including in the gross estate of the decedent—

> a transfer under which the transferor has retained for his life or for any period not ending before his death (1) the possession or enjoyment of, or the income from, the property or (2) the right to designate the persons who shall possess or enjoy the property or the income therefrom.

Similar language was subsequently included in the death statutes of the States of New York, Florida, and Missouri in the order named.

Under the foregoing resolution, Congress is attempting to include the corpus of an irrevocable trust in the gross estate of a decedent solely because such decedent has a life interest in the property. There is considerable doubt whether Congress may tax transfers of this character in that manner. The following examples may serve to illustrate this point:

Case No. 1.—A placed property in trust by a deed which provided that the income shall be paid to A during A's life, and upon A's death the trust shall be terminated and the property distributed to C.

Case No. 2.—A placed property in trust by a deed which provided that the income shall be paid to B during B's life, and upon B's death the trust shall be terminated and the property distributed to C.

The first case is reached by the joint resolution, but the second is not. It seems clear that in the second case there would be no justification for including the trust property in B's estate at his death; for as B had only a life interest in the property, the authority to require his estate to pay a tax on the corpus appears to be beyond the power of Congress. But is the second case any different in principle from the first, in view of the decisions of the Supreme Court previously referred to? See May *v.* Heiner (281 U. S. 238); Burnet *v.* Northern Trust Co. (51 S. Ct. 342); and McCormick *v.* Burnet (51 S. Ct. 343). In the first case, A instead of B received the income from the trust property during his life, and at A's death the trust property was distributed to C. Like B, all that A had after the trust deed became effective was a life interest, which ceased at his death. In other words, the transfer took place at the time the deed of trust was executed and not at A's death. Of course, it might be urged that A's death results in important and definite accessions to the property rights of C (Tyler *v.* U. S., 281 U. S. 497), but will A's death result in any more important and definite accessions to C than B's death?

It is extremely doubtful whether Congress, under the guise of an estate tax, may tax transfers *inter vivos* which are not "in contemplation of death." In this connection, the following quotation from Nichols *v.* Coolidge (276 U. S. 440) is of interest:

> But the conveyance by Mrs. Coolidge to trustees was in no proper sense testamentary, and it bears no substantial relationship to the transfer by death. The mere desire to equalize taxation can not justify a burden on something not within congressional power. The language of the statute is not consistent with the idea that it utilizes the gross estate merely to measure a proper charge upon the transfer by death. * * *
>
> Certainly, Congress may lay an excise upon the transfer of property by death reckoned upon the value of the interest which passes thereby. But under the mere guise of reaching something within its powers Congress may not lay a charge upon what is beyond them. Taxes are very real things and statutes imposing them are estimated by practical results.

To the same effect is the decision of the Supreme Court in Heiner *v.* Donnan (decided March 31, 1932), involving the taxation under the estate tax of gifts made in contemplation of death. Although another clause of the Federal statute was under consideration in this case, the following language is worthy of note:

> The value of property transferred without consideration and in contemplation of death is included in the value of the gross estate of the decedent for the purposes of a death tax, because the transfer is considered to be testamentary in effect. Milliken *v.* United States (283 U. S. 15, 23). But such a transfer, not so made, embodies a transaction begun and completed wholly by and between the living, taxable as a gift (Bromley *v.* McCaughn, 280 U. S. 124), but obviously not subject to any form of death duty, since it bears no relation whatever to death.

While the Supreme Court held in the Milliken case (supra) that transfers in contemplation of death are a type of transfers inter vivos which may be included in the decedent's estate, this holding appears to rest upon the theory that such gifts are motivated by the same considerations as lead to a testamentary disposition; that is, the thought of death is the actuating motive for the transfer. This rule, however, does not appear to be applicable to transfers inter vivos which are not "in contemplation of death," for they bear no relation to death. In the cases in which the Supreme Court passed upon the taxability, for estate-tax purposes, of the type of trusts contemplated in the joint resolution, it was specifically stated by the court that the constitutional question was still open. In this connection, the per curiam opinion of the court in the case of Burnet *v.* Northern Trust Co. should be noted. It is as follows:

> The question in this case is that of the construction of section 402 (c) of the revenue act of 1921 (c. 136, 42 Stat. 227, 278), a provision similar to that of section 402 (c) of the revenue act of 1918 (c. 18, 40 Stat. 1057, 1097), which has already been construed by this court, and, in this view, there being no question of the constitutional authority of the Congress to impose prospectively a tax with respect to transfers or trusts of the sort here involved, the judgment of the United States Circuit Court of Appeals for the Seventh Circuit (41 F. (2d) 732) is affirmed upon the authority of May *v.* Heiner (281 U. S. 238, 50 S. Ct. 286, 74 L. ed. 826, 67 A. L. R. 1244).

The constitutional question will most certainly be litigated, and the right to tax this form of trust through an estate tax will be in doubt for some time. As the court has already held that Congress has the authority to levy a tax on gifts (Bromley *v.* McCaughn, 280 U. S. 124), the most practicable method of preventing this form of tax avoidance is, it seems, the enactment of a tax on trusts and gifts inter vivos as a supplement to the estate tax. A gift tax has now been imposed under the revenue act of 1932.

The language of the joint resolution, as originally enacted, was of such a character as to seriously limit its effectiveness. Three criticisms of the resolution could be made: (1) The use of the word "retain"; (2) the failure to include transfers taking effect shortly before death; and (3) the uncertainty as to the effective date of the resolution.

As regards the use of the word "retain," how could a person be said to retain income which does not come into existence until the property from which the income is derived has completely passed out of his control? Moreover, the resolution referred only to the retention of the income and not the "right" to the income. In addition, where under the trust agreement the income from the trust property is not paid to the donor but to some one else, and is only payable to the donor if such other person dies prior to his death, can it be said that the donor has retained anything? He has not retained the right to designate the persons who shall possess or enjoy the property, or the income therefrom, for this right was given up when the trust agreement was executed. He has not retained the possession or the enjoyment of, or the income from, the property, for that was also given up when the trust agreement was executed.

The joint resolution embraced those transfers in which the decedent retained "an interest for his life or any period not ending before his death." It did not include transfers where the transferor retained the income, the possession or enjoyment of the property, or a right of designation, for any period ending shortly before death, such as a day, a month, a year, or two years. In such cases, the period may be ascertained only by reference to death. An example of this is a case where under the trust agreement the decedent retains the income for a "period ending two years prior" to his death. In such a case, the period of enjoyment or possession may be construed as ending at death because the distribution can not be made until death, or such transfers may be held to be ineffective for some other reason. But all questions on this point could have been avoided if the clause "or any period ascertainable only by reference to death" had been substituted for the language "or any period not ending before his death." In this connection, attention is called to the fact that in the English estate duty act the expression "on the death" is used, and this expression is defined (finance act, 1894, sec. 22 (1) (L)) as including "at a period ascertainable only by reference to the death."

There was considerable doubt as to the effective date of the joint resolution, since it was in the form of an amendment to section 302 (c) of the estate tax title of the revenue act of 1926, which was applicable to all decedents dying after February 26, 1926. Subdivision (h) of section 302 of that act specifically provides that subdivision (c) shall apply to the transfers enumerated and described therein, whether made before or after the enactment of the revenue act of 1926. Accordingly, under a strict interpretation, the joint resolution would apply to all transfers of the type contemplated therein made by any decedent dying after February 26, 1926, regardless of the actual date of transfer. The Treasury Department adopted the interpretation, however, that the resolution applied only prospectively.

This discussion of the joint resolution is more or less beside the point at this time, as since the preparation of this report was begun the objections to the resolution herein set forth have been partially corrected by further legislation. Under the revenue act of 1932 (sec. 803), amendments are made to the estate tax provisions of the revenue act of 1926, as amended by the joint resolution of March 3, 1931, by substituting for the corresponding language used in the joint resolution the following:

> * * * or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death * * *.

The first clause is aimed to reach such transfers as one where the decedent reserves to himself semiannual payments of the income of a trust which he had established, but with the provision that no part of the trust income between the last semiannual payment to him and his death should be paid to him or his estate, or where he reserves the income, not necessarily for the remainder of his life, but for a period in the ascertainment of which the date of his death was a necessary element. The second clause is to reach, for example, a transfer where the decedent, being 70 years old, reserves the income for an extended term of years and dies during the term, or where he is to have the income from and after the death of another person until his own death, and the other person predeceases him.

The words "the right of the income" are substituted for "the income" in order to reach cases where the decedent had the right to the income though he did not actually receive it. No change was made in the use of the word "retain."

It is believed that most of the problems arising out of the foregoing provisions have been greatly simplified by the enactment of the present gift tax, which may very well result in the elimination of these and certain other troublesome provisions of the estate tax.

C. COMMUNITY PROPERTY

The system of community property, which is in use in eight States of the Union, has resulted in a lack of uniformity in the distribution of the Federal tax burden upon husbands and wives living in community property States and those living in noncommunity property States. The principle underlying the community property system is that all property acquired during marriage by the industry and labor of either the husband or the wife, or both, together with the income therefrom, belongs one-half to the husband and one-half to the wife. This system appears to have originated not with the Romans, as is generally supposed, but with the Goths in Germany. The Goths were the most powerful nation in Europe about the fifth century. Their customs recognized as community property the gains acquired after marriage, and it is from such a custom that the community property systems in Spain, Holland, northern France, and Germany were developed.

Three different definitions exist in Continental Europe with respect to the meaning of community property. They are:

1. All property of the husband and wife which they owned at marriage and acquired after marriage.
2. All personal property possessed at marriage, and all personal and real property acquired during marriage except inherited property.
3. Property which was acquired during marriage out of the gains and profits realized during marriage.

Holland and Germany allow an election to be made between definitions 1 and 3. France uses definition 2. Spain applies definition 3. Whatever definition is adopted in any of the countries mentioned, the surviving spouse takes title to one-half of the community property. The community system in the United States is derived from the laws of Spain and France.

In this country, the States of Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington have adopted this system. In each of these States, the property rights of the husband and wife in income and property acquired during marriage are set forth by the statute or the constitution of the State, and the wife is given a share or interest with the husband in such income and property, which is defined under the laws as community property. The Federal Government, being bound by the property laws of the various States, has been forced to recognize the community property system.

In the case of decedents domiciled in Arizona, Idaho, Louisiana, Nevada, Texas, and Washington, the Federal practice has been to include only one-half of the community property in the estate of the deceased spouse on the theory that under the State law each spouse has a vested interest in one-half of the community property. This practice has already been passed upon by the Board of Tax Appeals and sustained in respect to the State of Washington. Furthermore, the same theory was upheld by the Supreme Court in income-tax cases involving community income in Arizona, Louisiana, Texas, and Washington (see Goodell *v.* Koch, 282 U. S. 118, Arizona; Bender *v.* Pfaff, 282 U. S. 127, Louisiana; Hopkins *v.* Bacon, 282 U. S. 122, Texas; and Poe *v.* Seaborn, 282 U. S. 101, Washington).

At one time, the Federal Government applied the same rule to California, but this position was later reversed as the result of an opinion of the United States Attorney General, holding that the entire value of the community property acquired under the laws of California should be included in the gross estate of the deceased husband, because the wife's interest was a mere expectancy during the life of her husband. This last position was upheld by two circuit courts of appeal, and in each case certiorari was denied by the Supreme Court. To prevent the wife's portion of the community property's being subject to the husband's tax, California enacted a law on July 29, 1927, providing that the interests of the husband and wife are "present, existing, and equal." There does not appear to be any court decision interpreting the effect of this last California amendment upon the community-property situation, except with respect to income taxes. As a result of the income-tax decision of the Supreme Court in U. S. *v.* Malcolm (282 U. S. 792), it appears that the wife has a vested interest in community property acquired after July 29, 1927, but there is considerable doubt whether she has a vested interest in property acquired before that date.

In a New Mexico case (Hernandez *v* Becker, 54 Fed. (2d) 542), the Circuit Court of Appeals for the Tenth Circuit has held that under the law of that State the wife does not have a vested interest in the community property, but only an expectancy, and that therefore it is not proper to include one-half of the community property in her gross estate for the purposes of the Federal estate tax.

In all of the community-property States, the wife is entitled to a one-half interest upon the death of the husband. This same rule applies to the husband, except in the case of New Mexico, where he is entitled to all community property upon the death of the wife. In all of these States, the community-property portion of the surviving spouse is free from death taxes.

In Arizona, California, Idaho, Louisiana, Texas, and Washington, the one-half interest in the community property belonging to the deceased spouse is subject to the inheritance tax. New Mexico does not impose any tax upon the death of the wife, her interest being an expectancy only; but upon the death of the husband one-half of the community property is subject to tax. Nevada, as has been pointed out, imposes no inheritance tax of any kind.

For the purpose of Federal estate taxation, husband and wife living in community property states enjoy more preferential treatment than those living in noncommunity property States. This is due to the fact that all of the property acquired by the husband after marriage, through his own efforts, in a community property State is treated as if one half belonged to the wife. In noncommunity property States, all such property is regarded as belonging entirely to the husband. The difference in the amount of the Federal estate tax is enormous. Indeed, in cases where the net estate does not exceed $100,000, it results in an entire exemption from the Federal estate tax, for the omission of one-half of the community property reduces the husband's net estate below the minimum exemption of $50,000. Moreover, this halving of community property greatly reduces the estate tax because of the progressive rates.

Assume a net estate of $1,000,000 consisting solely of community property acquired by the husband's own efforts. If the husband was domiciled in a noncommunity property State, the Federal estate tax would amount to $117,500, less the credit allowed for State death duties. If he died domiciled in a community property State, the tax would amount only to $42,500 less the credit for State death duties. This does not seem fair to persons living in noncommunity property States. The difficulty is in finding a solution.

It is argued on the one hand that Congress is forced to recognize the community property system for Federal estate tax purposes, since it is a State rule of property which is binding upon the Federal Government; that as the wife owned one-half of the property from the moment it was acquired by the husband, the husband's estate can not be taxed upon something that he did not own; and that the community property system imposes serious limitations on the husband which do not exist in noncommunity property States and which are sufficient to counterbalance any taxation benefits that may exist. On the other hand, the function of the Federal Government is to see that its tax laws operate uniformly upon its citizens. Recognizing that a State rule of property is binding upon the Federal Government in cases where the wife has a vested interest in the community property, it must be conceded that there is no transfer from the husband to the wife of the wife's portion of the community property at his death. But is a transfer necessary?

In Tyler *v.* United States (281 U. S. 491) the Supreme Court upheld the right of the Government to include the value of a tenancy by the entirety in the gross estate of the husband, although, under the common law adhered to by the particular State, no interest passed to the surviving spouse because each spouse during their lifetime had an undivided interest in the whole of the estate. In this connection, the court stated that the question was not "whether there has been a transfer of the property by the death of the decedent, or a receipt of it by right of succession, but whether the death has brought into being or ripened for the survivor, property rights of such character as to make appropriate the imposition of a tax upon that result." Applying this principle to the facts in the Tyler case, the court reached the following conclusion:

> Before the death of the husband (to take the Tyler case, 428), the wife had the right to possess and use the whole property, but so also had her husband; she could not dispose of the property except with her husband's concurrence; her rights were hedged about at all points by the equal rights of her husband. At his death, however, and because of it, she, for the first time, became entitled to exercise possession, use, and enjoyment; she ceased to hold the property subject to qualifications imposed by the law relating to tenancy by the entirety and became entitled to hold and enjoy it absolutely as her own; and then, and then only, she acquired the power, not theretofore possessed, of disposing of the property by an excercise of her sole will. Thus the death of one of the parties to the tenancy became the "generating force" of important and definite accessions to the property rights of the other. These circumstances, together with the fact, the existence of which the statute requires, that no part of the property originally had belonged to the wife, are sufficient, in our opinion, to make valid the inclusion of the property in the gross estate which forms the primary base for the measurement of the tax.

The community property system has been likened to a tenancy by the entirety. Upon the death of the husband, the wife acquires not her share, for that was already hers, but the right to manage, control, and dispose of that share by the exercise of her sole will. This right, especially in cases where the community property was acquired through the sole efforts of the husband, might be sufficient to permit the inclusion of the wife's portion of the community property in the gross estate of her husband. In order to test the validity of this theory in those States which hold that the wife's interest was vested at the time the community property was acquired, it would be necessary to amend the Federal estate tax law to expressly include the value of community property in the estate of the deceased husband. It might be advisable to enact such a provision and have it tested out by the courts. At least, some method should be adopted to remedy this situation.

D. DOWER AND CURTESY

There is no uniformity among the various States with regard to the taxation, for inheritance tax purposes, of dower and curtesy interests. This is also true in the case of interests in lieu of dower and curtesy. Some States expressly tax such interests while others expressly exempt them. In a few States, an attempt is made to include dower and curtesy interests by virtue of a ruling of the officer charged with the administration of the law. Delaware and Kentucky apply this rule. Virginia exempts dower and curtesy interests under a ruling of the attorney general. In other States, certain exemptions are allowed which are considered sufficient in themselves without making any allowance for dower and curtesy. Montana, North Carolina, and Wisconsin are examples of such States. In Arkansas, an exemption in the case of dower is allowed up to $6,000, and in the case of curtesy up to $5,000. Among the States expressly exempting dower and curtesy, or interests in lieu thereof, are Iowa, Massachusetts, Missouri, New Jersey, and Ohio. South Carolina exempts dower only, there being no estate by the curtesy.

There is apparently no prohibition in the State constitutions against the taxing of such interests. The courts have generally held that no tax may be imposed in the absence of a statutory provision. The theory under which most of the States exempt these interests is that they belong to the surviving spouse as a result of marriage and are independent of the rights of inheritance or succession.

The Federal Government expressly requires the inclusion in the gross estate for estate tax purposes of interests of the surviving spouse such as dower, curtesy, or statutory estates in lieu of dower and curtesy. This provision was attacked on constitutional grounds with respect to estates located in Missouri and Nebraska, and in some instances the district courts found for the taxpayer. (See United States *v.* Waite et al. Exrs. (Mo.) 29 Fed. (2d) 149; Crooks *v.* Hibbard, Admx. (Mo.), 25 Fed. (2d) 896; Munroe *v.* United States (Nebr.) 10 Fed. (2d) 230; Krug *v.* Allen (Nebr.) District Court; Allen *v.* Henggeler, Admx. (Nebr.) District Court.) All of these decisions, with the exception of the Munroe and Krug cases, were reversed by the circuit court of appeals and certiorari was denied by the Supreme Court. In the Munroe case, the Supreme Court entertained a writ of error which was later dismissed on motion of the Solicitor General, due to the fact that the Government inadvertently prosecuted a direct appeal to the Supreme Court instead of going first to the circuit court of appeals.

Both the Board of Tax Appeals and the Court of Claims have upheld the right of the Government to subject dower and curtesy interests to the Federal estate tax. The great weight of authority, therefore, upholds the constitutionality of this provision of the Federal statute. In view of the decisions of the Supreme Court in the Tyler case (cited under community property) and in New York Trust Co. *v.* Eisner (256 U. S. 345) and Edwards *v.* Slocum (264 U. S. 61), there does not appear to be much question as to the validity of this provision.

E. FUTURE INTERESTS

The taxability of limited and remainder interests is one of the most complicated phases of inheritance taxation. Here we are confronted with the valuation of life estates, vested and contingent interests, and interests which may be suddenly terminated by the happening of some event or the performance of some condition. The confusion among the various States as to the distinction between vested and contingent interests adds to the difficulty. These problems are largely avoided under an estate tax, for the reason that such a tax fastens itself upon the whole estate before distribution, without regard to the value of distributive shares.

The valuation of life estates is, in the great majority of States, determined by the use of mortality tables and interest rates prescribed in their statutes. In Delaware, the practice is to ignore the life estate, with the consent of the parties, and to assess the tax against the remainderman. In Maryland, the value of the life estate is determined by the orphans' court. As mortality tables are based upon the law of averages, they naturally disregard the physical condition, medical history, or the occupation of the life tenant. In a few States, such as California, Colorado, Idaho, and Kentucky, if the tax is not determined prior to the death of the life tenant, the actual duration of the life estate is adopted in place of the figure in the mortality table.

The tax, in most States, is computed on each interest separately, the remainder interest being ascertained by deducting the value of the life estate from the entire corpus. In the case of vested interests, the tax is generally immediately due and payable without awaiting the termination of the prior estate. This results in some hardship to the remainderman by reason of the fact that he is forced to pay a tax on property which does not come into his possession until some later time. Some States, including Arizona, Illinois, Kansas, Nebraska, and Oregon (in the case of personal property), have attempted to remedy this hardship by providing that payment may be postponed by the filing of a bond. In a few States, such as Massachusetts, Michigan, New Jersey, Pennsylvania, and Virginia, the tax is not payable until the beneficiary comes into possession of the property.

Contingent interests are made immediately taxable in most States. At first, this practice did not meet the unqualified approval of the courts, on the theory that there was no transfer because there was no transferee, but this practice is now generally accepted as valid and constitutional. The purpose of such a rule is to insure the State prompt revenue from this source. If payment were postponed until the contingency happened, the State might never receive its revenue, due to the fact that the funds might be entirely dissipated through mismanagement or for some other reason. In computing the tax on contingent interests, the States use different methods. They are as follows:

1. *Highest rate method.*—Most States adopt the rule that the tax should be payable immediately at the highest rate which would be possible on the happening of the most remote contingency, with the right of refund in case subsequent events disclose that the tax is overpaid. This rule is applied by California, Idaho, Illinois, Indiana, Iowa, Kentucky, Missouri, New Hampshire, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, and Washington. The

following examples taken from the Illinois regulations show how the rule works:

A remainder after a life estate was given to the testator's four children, with the provision that if any should die without issue, that one's share should go to the survivors. For the purpose of the tax, the remainder is regarded as being distributed to one such child on the assumption that three would die before the life tenant, leaving no issue surviving.

A testator gave the remainder over after the life estate to his next of kin surviving the life tenant. Forty-one nieces and nephews were living at the death of the testator. For the purpose of the tax the remainder is regarded as being distributed to one such niece or nephew, thus allowing only one exemption.

From the foregoing examples, it is apparent that remote contingencies may result in higher taxes by making it possible for distant relatives and strangers to take or by increasing the number of beneficiaries.

2. *Lowest rate method.*—Some States recognize the injustice of taxing contingent interests at the highest rate and tax them at the lowest rate, with the right to make additional assessments in case subsequent events disclose that a further tax is due. This is the rule applied by Arizona, Montana, Rhode Island, and Wisconsin.

3. *Time of vesting method.*—In a few States the tax is not imposed until the interest vests in possession and enjoyment. This appears to be the rule in Kansas, Massachusetts, Michigan, New Jersey, Pennsylvania, Texas, and Virginia.

4. *Compromise method.*—In other States the officer charged with administration of the law has authority to determine the tax immediately payable and if this tax is agreed to by all parties, it will be accepted as full payment of the liability. In Colorado the tax may be compounded or it may be deferred upon the giving of bond. In Connecticut the tax commission, with the approval of the attorney general, may compound the tax on such terms as may be deemed equitable. In Kansas, while the beneficiary is not required to pay the tax until he comes into possession of the property, he may, if he so desires, pay it immediately, upon the basis of a determination by the State tax commission approved by the attorney general. A somewhat similar rule obtains in Massachusetts and Tennessee.

In a few States, like Ohio, while the tax is assessed at the highest rate, it may be paid at the lowest rate if a deposit of cash or bonds is made to cover the difference. In the case of Arizona, although the tax is determined at the lowest rate, payment may be deferred, by the giving of a bond, until the beneficiary comes into possession of the property.

The general rule in most of the States with respect to limited or defeasible estates is that no deduction is allowed because of the possibility that such an estate may be divested or abridged. However, in case such contingency actually happens, refunds are usually allowed for the tax overpaid.

A tax on life interests is ordinarily payable out of the corpus of the estate. This rule, however, is not altogether equitable, in that it causes the life tenant to lose, during the continuance of his life estate, the interest upon the value of the property so paid out in payment of the tax. In the case of an annuity the loss occasioned to the corpus is required to be amortized by annual payments to such corpus out of the annuity, each payment being such proportion of the entire amount as the life expectancy of the annuitant indicates will be sufficient to equal the tax paid. Furthermore, such rule imposes a hardship on the remainderman by compelling him immediately to pay the tax on property which has not come into his possession. As pointed out before, this last hardship is alleviated in many cases by permitting the remainderman to postpone payment upon the submission of a bond. In one or two States the tax is apportioned between the life tenant and the remainderman. West Virginia appears to apply this rule.

Another difficulty in determining the valuation of future interests arises where the life tenant has the power of invasion; that is, of calling upon the trustees for a certain portion, or even the whole, of the principal for support and maintenance. In some cases the tax on the life interest is imposed only upon the interest to which the life tenant is absolutely entitled, and future assessment is postponed until such other income is actually received. In other States no account is taken at all of this power of invasion.

We have discussed most of the major problems arising out of the taxation of future interests. It is the complexity of such problems that has led many to favor an estate tax instead of an inheritance tax. As has been shown, the different rules and conflicts in the various State laws tend to make the enforcement of an inheritance tax extremely troublesome.

F. VALUATION OF PROPERTY

In most jurisdictions, the death tax is levied on the value of property as of the date of the owner's death. Under this rule, appreciation or depreciation in value after such time is not considered. In North Dakota, however, although the same rule applies, the fluctuations in the value of the property six months before and six months after death must be taken into consideration in fixing the value of the property at the time of the decedent's death. In Vermont, the tax is based upon the actual market value of the property at the expiration of one year. This rule is no doubt based upon the theory that the estate is distributed at that time. In New Mexico, the tax is imposed on the actual value of the property at the date of appraisal, while in Indiana the date of the transfer is controlling. A modification of the Indiana rule is found in Maryland. There, when an estate is left for life to a person not subject to the inheritance tax, with remainder to collateral donees, the tax is imposed upon the value of the estate at the time of the transfer to such donees.

In the absence of any statutory provision regarding valuation of estates, the courts have held that the value of the decedent's property must be determined as of the date of the decedent's death, and not as of the date of probate or distribution.

In the case of transfers made in contemplation of death, the value of the property at the time of the transfer is generally used as a basis for death taxes. The value of contingent remainders, when presently taxable, is usually ascertained by deducting from the gross estate the value of the intervening life interest.

Under the Federal statute, the basis of valuation of property included in the gross estates is the "value" thereof at the time of the decedent's death, following the general rule in the great majority of the States. The statute is silent as to the meaning of the term "value," using it without limitation. The Treasury regulations, however, interpret the term as meaning the "fair market value," which is defined as the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell.

The expressions "fair market value," "clear market value," "full value," "actual value," "cash value," and so on, are used interchangeably in the various jurisdictions. All have the same significance, however, and refer to the price which the property would bring in the open market.

In Great Britain, the estate duty is based on the "principal value" of the property, which is defined as the price which, in the opinion of the commissioners of inland revenue, the property would fetch if sold in the open market at the time of the decedent's death, such value to be ascertained by the commissioners by any means they think fit. The price which property "fetches" is the gross sale price without deduction for the costs of sale, and is ascertained on the assumption that the property is sold in such manner as might reasonably be calculated to obtain the best price for the property. The above rule governs the valuation of the property generally, and is applied in conjunction with special rules for different classes of property, such as stocks and bonds, etc.

While the difficulties arising in connection with the valuation of property are, for the most part, mere questions of fact, much litigation has been occasioned, and some cases involving complex questions of law have been presented to the courts. The valuation of real property is always attended with difficulties. In the absence of an active market, the determination of values is a matter of opinion only, frequently becoming nothing more than guesswork. Stocks, bonds, grain, and other commodities which are actively dealt with on an exchange or over the counter are fairly susceptible of exact valuation, but in the case of country real estate, stock of close corporations, patent rights, good will, etc., it is difficult to fix true worth. The valuation of oil and mineral lands is largely speculative.

The problem of the proper valuation of real estate needs little exposition. Everyone is familiar with the great discrepancies in assessments for local property taxes. The same difficulties occur in connection with valuations for inheritance and estate tax purposes, only more so, because the assessed valuation is only one of many factors to be taken into consideration. Often there have been no sales in the neighborhood which may be used for comparative purposes, and in many instances there is no real estate market at all. Under such circumstances, the opinion of experts must be relied upon, and of course they are quite likely to differ materially in their appraisals. Many factors must be considered, such as the location and condition of the property, the character and tendency of the neighborhood, pending improvements, adverse developments, suitability for special purposes, and so on. Original cost and, as heretofore mentioned, assessed valuation, must also be taken into account.

Where the property consists of an undivided interest in realty, adjustment must be made on account of the limited market for such an undesirable interest, particularly if it is a minority holding. The valuation of property subject to lease, and of leasehold interests in real property, present additional difficulties. The fact that property is encumbered by a lease frequently has an adverse affect on its salability, and this must be taken into consideration in determining its value.

Tangible personal property such as household goods, clothing, etc., can be easily valued, particularly as their worth is usually only nominal. Intangible property, however, gives rise to many problems. Inactive securities and stock of close corporations are the chief items in this class. Often stocks of large corporations are held by many stockholders, yet are not an active or speculative security. Such stocks must be appraised on the basis of published financial statements, dividends declared, private sales of the stock, and opinion evidence. In the case of closely held stock, there is also no market price to determine its value, and considerable litigation has arisen in connection with its appraisal. One notable instance was the Ford Motor Company case. In valuing the stock of close corporations, the true value of the assets must be ascertained as well as the value of the good will and other intangible factors. The book value of the stock, alone, does not show its true value, but is an important factor to be considered along with other evidence.

In the case of active securities, fair market value implies a price made in a normal market, and not under abnormal or temporary conditions. Thus, where a market has been manipulated through a stock pool or other means, the prices prevailing at that time do not represent fair market value. On the other hand, where prices crumble under a wave of selling, they also can not be said to represent a proper valuation, and adjustments must be made.

The value of mortgages may be affected by the financial responsibility of the mortgagor, the length of time the mortgage has to run, and the location and character of the premises. So, also, the credit standing of a debtor may affect the value of notes and other choses in action owned by a decedent.

Patents and copyrights are most difficult to appraise. The value of such property is ordinarily determined by prospective earning power, which is not easy to fix with any degree of accuracy. Often there may be a market for a patent, and in such a case the price offered should furnish some evidence of its value.

Good will is another factor in valuation, causing a great amount of litigation and difficulty. That good will is a valuable asset has been recognized for centuries, but no fixed rule can be set up for determining its worth. The practice of the Federal Government is to make an individual analysis of each case. The English courts very early laid down the rule that good will was nothing more than the probability that the old customers would return to the old place, but this rule has been found insufficient to cover modern conditions. To-day the rule laid down by Leake seems more nearly to define good will for present-day purposes. Leake holds that good will is the present value of the right to receive expected superprofits, the term meaning the amount by which future revenue, increase, or advantage to be received is expected to exceed any and all economic expenditure incident to its production. The practice of the Federal Government conforms generally to this definition, and may be said to treat as good will the capitalized value of the excess earnings over a fair rate or return. To determine this "capitalized value" is the problem that must be worked out. In appraising good will, it must be realized that it is ephemeral, and that owing to the laws of competition and change it can not be expected to exist permanently.

To discuss the methods of valuation involved in appraising particular kinds of property would require more space than this chapter permits. Suffice it to say that the methods naturally differ somewhat in each jurisdiction, and are determined by the character of the property involved. In prior years the Federal Government worked out and developed various methods of valuation and rules of thumb, but in later years practical business methods have been put into effect and the rigid use of formulas is not encouraged.

G. POWERS OF APPOINTMENT

Owners of property, either by will or deed of trust, often delegate to another person the power to appoint the beneficiary or beneficiaries who shall receive the property, generally after the termination of an intervening estate. Such powers are known in the law as powers of appointment. Except where restricted by the terms of their creation, powers of appointment may be exercised either by deed or will. Where the donee of the power fails to exercise it, the property with respect to which it is given reverts to the estate of the donor. Transfers resulting from the exercise, and in many cases, also, from the failure to exercise, a power of appointment, are to-day taxable under the inheritance and estate tax laws of a great many States. The Federal law requires the inclusion in the estate of a decedent of any property with respect to which he exercised by will or testamentary disposition a general (as distinguished from a limited) power of appointment.

Under the common law the transfer under a power of appointment was deemed to originate in the donor, the exercise of the power by the donee being considered, in legal effect, to be nothing more than the writing into the blank left by the testator's will the names of the appointees. After inheritance-tax laws were enacted, the courts held that as a transfer under a power of appointment took effect at the death of the donor of the power, there could be no tax on property passing under a power where the donor died before the statute was passed. This caused New York to amend its law in 1897 by providing that property transferred under a power of appointment should be deemed a taxable transfer in the same manner as though it had belonged absolutely to the donee of the power. This provision was upheld by the United States Supreme Court (Chanler *v.* Kelsey, 205 U. S. 466), and the rule treating the donee as the source of the title now prevails in most States. Incidentally, this rule allows the States to determine the rates and exemptions under their inheritance taxes according to the relationship between the beneficiary and the donee of the power. North Carolina, however, while assessing its tax at the death of the donee, determines the rate by the relationship existing between the appointee and the donor of the power. In Maine it has been held that even though the appointee is deemed to take from the donor, the relationship of the beneficiary to the donee determines the rate. (Re Luques, 114 Me. 236.)

Unless the law of a State expressly provides for the taxation of a transfer resulting from the exercise of a power of appointment, no tax can be imposed upon the estate of the donee. Hence, in those States where the statute makes no provision for the taxation of such transfers, they are generally treated like any other contingent remainder and the tax is imposed on the donor's estate.

Where the donee of a power fails to exercise it, some States nevertheless subject the property to a transfer tax in the same manner as though the donee owned the property and had disposed of it by will. The legality of a tax based upon the fiction of a transfer from the donee in such a case is somewhat uncertain as the courts are in disagreement on the point. A provision in a former New York statute treating the failure to exercise a power of appointment as a taxable transfer was held invalid by the State court (Re Lansing, 182 N. Y. 238), but the Massachusetts court upheld a similar provision in the law of that State (Minot *v.* Treasurer, 207 Mass. 588). Where the donee fails to act, the property, of course, reverts to the estate of the donor, but the Massachusetts court declared that it did so because of the conduct of the donee. This rule is followed in about half the States.

A majority of the States make no distinction between a general power of appointment and a limited or special power. Under a general power, a donee has absolute discretion in making the appointment, while under a special or limited power the appointment may be made only in favor of a restricted class of persons. In some jurisdictions, notably under the Federal law, a general power of appointment is deemed to give practical ownership to the donee, while a special power is held to convey nothing except the right to determine future ownership on the basis of the donor's expressed wishes. This distinction seems logical, because under a general power a person has absolute dominion over the property and the source of title therefore may be said to be in him. Notwithstanding this distinction, few States differentiate between general and special powers, taxing both in the same manner.

Complex problems involving the jurisdiction to tax arise when the donor of a power of appointment lives in one State, the donee in another, and the property is in still another State. In one case (Wachovia Bank & Trust Co. *v.* Doughton, 272 U. S. 567) it was held that where the donee of a power of appointment lived in North Carolina and the donor lived in Massachusetts, where the property was situated, the State of North Carolina could not tax the exercise of the power by the donee. This case illustrates the exercise of a power by a resident which was derived from a nonresident. Where a power of appointment is exercised by a nonresident donee, derived from a resident donor, the general rule appears to be that if the property over which the power is exercised is within the jurisdiction of the State a tax may be imposed on the transfer.

Under the Federal statute, only a general power of appointment is taxed, and even then it must actually be exercised by some testamentary disposition or the property need not be included in the donee's taxable estate. The regulations issued under the Federal statute provide that where the donee is required to appoint to a specified person or class of persons, the power is not general, and even though it is exercised the property need not be included in the estate of the donee. In determining whether a given power is general or special, the courts sometimes look to the law of the State where the power was created. Thus, for Federal purposes, a power may be general in one State and special in another. For example, it was at one time held that even under the specific provision of the Federal act, a power of appointment in Pennsylvania was not general if it could only be exercised by will. This is not true to-day, however. In a Maryland case the United States Circuit Court of Appeals recently held that a certain power was not general because the donee could not appoint his creditors. (Leser *v.* Burnet, 46 Fed. (2d) 756.) If the Federal statute were so amended as to define what constitutes a general power of appointment for the purpose of the tax, much difficulty would be avoided. Or, the Federal Government could follow the example of some of the States and tax both limited and general powers. It would seem, however, that the justification for the taxation of general powers does not obtain with respect to special powers, which are not, like a general power, equivalent to ownership.

Under the Federal statute, property subject to a general power of appointment is taxed first as a part of the estate of the donor of the power, and then again in the estate of the donee if and when the power is exercised by testamentary disposition. However, if the donee's death occurs within five years of that of the donor, and the property was taxed in the donor's estate, no further tax will be imposed on the donee's estate with respect to the property. If the power is exercised by deed, the property is taxable only if the deed were executed in contemplation of death or were intended to take effect in possession and enjoyment at or after the donee's death. Thus, the Federal estate tax on the donee's estate may be avoided if the power is not exercised at all, or if it is exercised by a deed not of a testamentary character.

There is a further possibility of avoiding the Federal tax and at the same time carrying out the intent of both the donor and the donee of the power. For example, if A died leaving his property to his wife, B, for life, with a general power of appointment, and it is provided in A's will that in the event B fails to exercise the power the property shall go to C, their son, then if B desires to appoint to C she can do so by simply failing to exercise the power, thereby escaping a tax on her estate with respect to that property. Some State courts have held that where a beneficiary would receive the same estate under the will of the donor as he would under the exercise of the power by the donee, he may elect to take under the original will and eliminate the donee as the source of title. In fact, the New York court (Re Lansing, supra) has held that the exercise of the power in such a case is a nullity, since it makes no change in the devolution of the property. This question has never been decided by the United States Supreme Court with respect to the Federal law. However, in a district court case coming up under the revenue act of 1918 (Pennsylvania Co. *v.* Lederer, 292 Fed. 629) it was held that the exercise of a power of appointment by the donee was taxable even though the appointee would have taken the same estate if it had not been exercised. A similar decision was rendered by the Board of Tax Appeals a few years ago. (Estate of Maria C. Hone, 17 B. T. A. 464.) In both these cases the tax could have been avoided if the power given had been a limited one, or, if general, if it had not been exercised.

To change the Federal law so as to require the inclusion in the estate of a decedent any property with respect to which he had a power of appointment, whether exercised or not, would have certain consequences which might not be desired. For instance, inasmuch as the tax on the property passing under a power of appointment is paid out of the donee's estate and not out of the property transferred, it is possible that on that account the donee may not wish to exercise it. Moreover, it is possible for the donee of a power to be in absolute ignorance of its existence, and his failure to exercise it under such circumstances would result in an unjust penalty against his estate.

PART V

COMMENTS AND SUGGESTIONS

Part V. Comments and Suggestions

A. LEGAL AND PRACTICAL LIMITATIONS ON FEDERAL ESTATE TAX LEGISLATION

The Federal Government, unlike the States, does not derive its authority to levy death duties from any power to regulate the succession and devolution of property at death, for that power is reserved exclusively to the States. Federal death duties are imposed by virtue of the Constitutional provision granting the Congress authority to levy and collect taxes.

The Constitution divides taxes into two classes: (1) "Direct taxes" and (2), "duties, imposts and excises." This classification is a vital one, for "direct taxes" are required to be apportioned according to population, whereas "duties, imposts and excises" are not subject to such requirement. While the latter class of taxes does not have to be apportioned according to population, the Constitution does require that they be uniform throughout the United States. Death duties fall into the latter class, since the Supreme Court holds that they are excises. (Knowlton *v.* Moore, 178 U. S. 481; New York Trust Company *v.* Eisner, 256 U. S. 345.) They are accordingly subject to the rule of uniformity and not to the rule of apportionment. The term "uniformity" has been construed by the Supreme Court to mean "geographical uniformity," the court stating that all that the Constitution requires is "that the law shall be uniform in the sense that by its provisions the rule of liability shall be alike in all parts of the United States." (Florida *v.* Mellon, 273 U. S. 12; Knowlton *v.* Moore, *supra.*)

In addition to the uniformity limitation, there should be mentioned the due-process clause of the fifth amendment, which is invoked if the taxing provision is so palpably arbitrary and unreasonable as to lead to the conclusion that it is not the exercise of taxation but a confiscation of property; or, what is equivalent thereto, is so wanting in basis for classification as to produce a gross and patent inequality. In other words, the classification must be reasonable, and not arbitrary or capricious.

The fifth amendment has been held to be violated in some cases where Congress attempted to impose retroactive legislation. An example of this is the case of Nichols *v.* Coolidge (274 U. S. 531), in which the Supreme Court held that the revenue act of 1918 was invalid in so far as it attempted to include in the gross estate of a decedent the corpus of an irrevocable trust distributable at death but executed before the Government imposed any estate tax. However, mere retroactivity is not in itself sufficient to invalidate the statute. If the transfer was subject to an excise when made, a mere increase in the tax pursuant to a policy of which the donor was forewarned at the time he elected to exercise the privilege does not change its character. It is only when the nature and amount of the tax burden imposed could not have been understood and foreseen by the taxpayer at the time of the transfer that retroactivity will render the tax invalid. (Milliken *v.* United States, 283 U. S. 15; Phillips *v.* Dime Trust & Safe Deposit Co., 284 U. S. 1.)

Furthermore, revocable transfers may be subject to death duties regardless of whether they were made before or after the enactment of the taxing statute. This is on the theory that until the moment of death the decedent retains an interest in the property which gives him the power of disposition over it as completely as if the transfer had not been made. This rule was applied by the Supreme Court in Chase National Bank *v.* United States (278 U. S. 327), in which it was held that policies of insurance taken out before the taxing act, were taxable where the decedent reserved the power to change the beneficiary. The same rule was applied by the Supreme Court in Reinecke *v.* Northern Trust Company (278 U. S. 339), in which it was held that an antecedent trust was subject to the estate tax because the grantor reserved a power of revocation. However, in the same case the Supreme Court held that, where the decedent reserved a power of revocation, but such power could only be exercised with the concurrence of the beneficiaries or a majority of them, for all practical purposes the trust passed as completely from the decedent's control as if the transfer had been absolute.

From the foregoing, the following rules may be deduced as to the power of Congress to impose retroactive death duties;

1. Congress may not tax a transfer retroactively if at the time the transfer were made there was no statute in force levying a tax of the same character on such transfer.

2. Congress may increase a tax retroactively if a tax of the same character were in effect at the time the transfer was made.

3. Revocable transfers (except where the power of revocation may be exercised only with the concurrence of the beneficiaries or a majority of them) may be subjected to death duties regardless of whether they were made before or after the enactment of the taxing statute.

Aside from the legal limitations on Federal death tax legislation, there might be mentioned certain practical limitations. In the first place, due regard ought to be given in enacting such legislation to the death taxes imposed by both the States and the Federal Government; otherwise, the taxpayer will be subjected to an unreasonable burden. Congress undoubtedly had this object in view, as well as that of encouraging uniformity of taxation among the States, when it enacted the 80 per cent credit clause in the revenue act of 1926. As explained in a former part of this report, this clause allows a credit, up to 80 per cent of the Federal estate tax, for death taxes paid to the States.

In the second place, many of the State laws have become inseparably interwoven with the estate tax provisions of the revenue act of 1926. Since the enactment of that act, nearly half of the States have passed estate tax laws in addition to their inheritance tax laws. Of these States, practically all have so framed their statutes as to secure the full benefit of the 80 per cent credit provision, and their laws are prima facie based upon the Federal law of 1926. Moreover, four of the six States which have enacted estate tax laws only, base their rates upon the Federal law. In a great many cases, the repeal of the 80 per cent credit clause would render their laws ineffective and invalid. This might result in serious consequences when it is considered that only five States have annual sessions of their legislatures. Regular sessions of the legislatures of Kentucky, Louisiana, Mississippi, Missouri, and Virginia are held in the even years; in Georgia, Massachusetts, New Jersey, New York, and South Carolina, they are held annually; while in the remaining States, they are held in odd years, except in the case of Alabama, where they are held quadrennially.

In view of the above, it is believed that, in general, basic changes in the estate tax provisions of the revenue act of 1926 should not be made effective until the expiration of at least one year after they are enacted into law. The additional estate tax included in the revenue act of 1932 did not violate this principle, since it left the revenue act of 1926 in full effect with a few minor changes and simply superimposed an additional estate tax upon the old law. This additional estate tax allows of no credit for State death duties paid and therefore leaves the State statutes and revenues in the status quo.

B. INEQUITIES OF THE PRESENT SYSTEM TO THE TAXPAYER

1. SHRINKAGE IN PROPERTY VALUES

For the purpose of the Federal estate tax, the value of property to be included in the gross estate is determined by its value at the date of death. This date is also adopted by the majority of the States in determining the value of property subject to their inheritance and estate taxes. The date of death is logically the proper date, for it is at the moment of death that the taxing authority first has a right to step in and take its share of the property in the form of a death duty. Inequities and hardships arise, however, in cases where there is a large decrease in property values between the date of the decedent's death and the date the tax is due. In actual cases, the shrinkage has been found to be as great as 60 per cent of the value of the estate, and situations may arise which will result in a complete confiscation of the estate. If the tax could be paid in kind, no inequities would result from a sudden decline in value between the date of death and the due date of the tax. This result could be accomplished by providing that the death tax rate should be determined according to the value of the net estate at the date of death but that such rate should be applied to the net value of the estate one year after death instead of the value of the net estate at death. A full discussion of the operation of this plan is contained in a letter to Hon. Willis C. Hawley, then chairman of the Joint Committee on Internal Revenue Taxation, dated February 2, 1930, from the staff of that committee. This letter and accompanying chart are embraced in Exhibit U of the appendix of this report.

2. RESIDUARY LEGATEE

The estate tax as distinguished from the inheritance tax may operate to work certain hardships. In an estate tax, the decedent can not be reached. The real burden is upon the beneficiary and distributee. The widow and those nearest to the decedent are generally made residuary legatees of the estate. Since the tax is usually paid out of the residue of the estate, it necessarily follows that the widow and those more closely related to the decedent are compelled to bear the entire burden of the estate tax, whereas those beneficiaries who are of a more remote relationship, and strangers, escape tax on their beneficial shares due to the fact that such shares are in the form of special bequests. This burden becomes entirely unfair when a shrinkage in value takes place as described in paragraph 1. To a large extent, this can be corrected by the decedent in drawing his will.

3. UNEQUAL BURDEN ON LIKE AMOUNTS

By its very nature, the estate tax imposes a greater burden upon a beneficiary who receives a given amount from a large estate than upon one who receives a like amount from a small estate. This is due to the fact that the estate tax fastens upon the whole estate before it is distributed. However, the testator can by will regulate the manner in which this tax burden is to be borne, and in most cases, it is payable out of the residuary estate, and, therefore, does not affect the legacies of other beneficiaries.

4. MULTIPLE TAXATION

In the past, multiple taxation of the intangible personal property of nonresident decedents by the several States has resulted in unconscionable burdens on estates in many cases. Most States, in addition to taxing the transfer of intangible property of their own decedents, also taxed, on one ground or another, the intangibles of nonresident decedents. Thus it was possible for an estate to be obliged to pay a transfer tax on the same property in several different States. If the estate consisted of any corporate stock, it might conceivably have been taxed not only by the State of the decendent's domicile, but also by the State of incorporation of the corporation, the State where the corporation's property was located, the State where the stock transfer was made, the State where the securities were kept, and so on. The situation became so intolerable that public opinion forced certain corrective measures to be taken. Some States exempted intangible property of nonresidents from their tax, while others incorporated reciprocal provisions in their statutes, agreeing not to tax the intangibles of decedents of those States which did not tax the intangibles of their own decedents. More than three-fourths of the States have now taken advantage of the benefits of reciprocity agreements.

While the development of reciprocity among the States has been of great benefit to estates, the Supreme Court, by a series of recent decisions, has also taken a large part in relieving the burden of multiple taxation. Thus, in Rhode Island Hospital Trust Co. *v.* Doughton (270 U. S. 69), the court held that a State other than that of the incorporation of a company could not tax its stock belonging to a nonresident decedent merely because the corporation owned property in the State. In Farmers Loan & Trust Company *v.* Minnesota (280 U. S. 204), it was held that State and municipal bonds of Minnesota could not be taxed by that State when the owner resided in another State. In Baldwin *v.* Missouri (281 U. S. 586), the court held that bank deposits and other intangibles located in Missouri but owned by a decedent domiciled in Illinois could not be taxed in Missouri. The question of business situs did not arise. In Beidler *v.* S. C. Tax Commission (282 U. S. 1), a debt owing by a domestic corporation to a nonresident decedent was held not subject to an inheritance tax.

The death blow to the multiple taxation of stocks was dealt by the Supreme Court early in 1932 in deciding the case of First National Bank of Boston *v.* Maine (284 U. S. 132). In that case, the court held that shares of stock in a Maine corporation, owned by a decedent domiciled in Massachusetts, were not subject to an inheritance tax in Maine. It is thought that as a result of this decision, the States will no longer attempt to tax the stocks of domestic corporations owned by nonresident decedents. It should be pointed out, however, that the court still leaves open the question of stocks having a so-called business situs in a State other than the domicile of the owner.

C. INEQUITIES OF THE PRESENT SYSTEM TO THE GOVERNMENT

1. INCREASE IN PROPERTY VALUES

Just as the shrinkage of property values after the death of the owner causes a hardship on the estate, which must pay the tax on the basis of the valuation at the owner's death, so the increase in property values after his death works to the disadvantage of the Government. It may be said, however, that one disadvantage balances the other, and this is perhaps largely true. In the one case, the estate pays the same tax although the property is less, and in the other, the Government receives the same tax although the property is greater.

In times of rising prices and values, the benefit is all on the side of the estate, while in a period of depression the Government has all the advantage. Even in strictly normal times, there may be some benefit or disadvantage one way or the other. Almost always there is some increase in the estate, at least through earnings and interest. Whether it would be to the advantage of the Government, in the long run, to make some adjustment is difficult to say, but certainly for it to take advantage of any increase in values and deny credit for any decrease, or to adopt one rule in times of falling values and another in boom times, would hardly be fair. In any event, though the earnings of the estate after the death of the owner are not reached under the estate tax, they are generally subject to the Federal income tax in the hands of the executor and distributees.

Whether the Federal Government would have the power, under the guise of an estate tax, to tax accretions to the estate, including interest and other earnings, after the death of the decedent, has never been determined. However, the law of Montana at one time provided that the State inheritance tax should be levied on the increase of all property arising between the date of death and the date of distribution, and this statute was held by the supreme court of that State to be a constitutional exercise of the taxing power. (Re Tuohy, 35 Mont. 431.) The law was subsequently repealed. The Maryland court has held that the income accruing during administration must be included in valuing the estate, and that the tax shall apply to the amount of the estate distributed. (Safe Deposit & Trust Co. *v.* State, 143 Md. 644.)

Attention is again drawn to the plan of taxation suggested in Exhibit U of the Appendix of this report, in which it is proposed to levy the tax on the net value of the estate one year after the death of the owner, but at a rate to be determined according to the value of the net estate at the owner's death.

2. BASIS OF PERSONAL PROPERTY IN CERTAIN CASES

Since the Federal estate tax is based upon the value of the decedent's estate at the time of his death, any increment to the estate after such date and before distribution of the property escapes this tax. Whether such increment is reached under the income tax depends upon the basis of valuation which the property takes in the hands of the taxpayer. If the basis for purposes of the income tax is the value of the property at the death of the decedent, the increment is taxed; but if the basis is the value at the time of distribution, the increment up to that date escapes the income tax.

Under the revenue act of 1932, the basis for determining gain or loss, for income-tax purposes, on the sale or other disposition of property transmitted at death, is, in the following cases, the fair market value thereof at the time of the death of the decedent:

(1) Where personal property was acquired by specific bequest;

(2) Where real property was acquired by general or specific devise, or by intestacy;

(3) Where the property, real or personal, was acquired by the decedent's estate from the deceased.

In all other cases, if the property was acquired by will or intestacy, the basis is the fair market value of the property at the time of distribution to the taxpayer.

Included within the phrase "all other cases" is personal property acquired by general or residuary bequest. Thus, where a trustee acquires personal property by general bequest, the basis of the property, on a sale by him, is the value at the time of distribution to him. The basis to the executor, in all cases, is the value of the property at the date of the decedent's death.

Oftentimes, the executor and trustee under a will are one and the same person. Thus, in the case of a general bequest of personal property, he is in a position to make use of one basis of valuation or the other according to which will most benefit the estate. The trustee, of course, may use a later basis than the executor, and where it is desired to sell personal property subject to a trust during the period of administration, the executor-trustee may determine whether it would be most advantageous to sell as executor or as trustee. Where the personal property has increased in value in the hands of the executor, under a general bequest, the property may be distributed to the trustee, who may use the higher basis in computing gain or loss on the sale, thereby diminishing the taxable increment and greatly reducing or entirely avoiding the income tax.

The theory upon which the distinction is made between personal property subject to a general bequest and that acquired by specific bequest is that for practical purposes a specific legatee acquires the property substantially at the date of the decedent's death, but the general or residuary legatee acquires it for practical purposes only when it is distributed. This theory was first adopted by Congress in the revenue act of 1928, and was advanced by the Court of Claims in the Matthiessen case (65 Ct. Cl. 484).

It is interesting to note that the United States Supreme Court in a later case (Brewster *v.* Gage, 280 U. S. 327) held contra to the Court of Claims theory. The question was as to the basis of certain stocks sold by a residuary legatee. Under the applicable revenue acts (acts of 1918 and 1921), the basis was the value at the date of acquisition, and the taxpayer contended that such date was the time of distribution to him. The Treasury regulations interpreted the word "acquisition" as meaning the date of the testator's death, and this position was sustained by the court. In its opinion, the court stated that while title to personalty does not immediately vest in the heirs or legatees, they acquire immediately on the death of the owner a right to their distributive share, the title to which, on distribution, relates back to the date of his death. It was further stated that Congress had the power to fix the basis of personal property as the value at the date of the decedent's death, and that there was nothing in the acts in question to show a contrary intention.

Since Congress has changed the law, the decision in the Brewster case is not applicable under the 1928 and 1932 revenue acts. Hence, if it is desired to prevent the avoidance of income taxes now resulting through allowing, in effect, an election of basis of value according to the benefit to the estate, it will be necessary to amend the present income tax law.

3. COMMUNITY PROPERTY STATES

Under the community property system, which, as has previously been pointed out, exists in eight of the States, only one-half of the property of a decedent is included in his estate, the surviving spouse being the owner of one-half the community property. The Federal Government, being bound by the property laws in the several States, is thus denied the power to tax more than half the estate of a decedent at his death. This results in making the Federal estate tax considerably less than half what it otherwise would be, due not only to the fact that the estate is cut in two but also on account of the progressive rate schedule. On a net estate of $200,000, for example, the Federal tax (after credit for State death taxes) is $8,300 in a noncommunity property State, and $1,500 in Idaho, which has the community property system. On a $1,000,000 estate, the respective taxes are $84,300 and $32,500. Of course, the remaining half of the estate is taxed when the surviving spouse dies, but the total tax is still much less than it would have been had the whole estate been taxed at one time.

There is one slight advantage to the Government in a community property State, however, in case the wife dies first. In such event, one-half the husband's estate becomes subject to tax as belonging to the wife, even though she had no part in its production and had no other property of her own. This apparent advantage is more than offset by the fact that when the second half of the estate is levied upon it is taxed at lower rates than if the two portions had been taxed together. This may be illustrated by the following example, in which the wife is the first to die, having no separate property of her own:

	Size of net estate	
	$200,000	$10,000,000
Tax on death of wife:		
Community property, State	$1,500	$757,000
Nonommunity property State	0	0
Tax on death of husband:		
Community property State	1,500	757,000
Noncommunity property State	8,300	2,026,900
Total tax:		
Community property State	3,000	1,514,000
Noncommunity property State	8,300	2,026,900
Loss to Government	5,000	512,900

The same situation pictured above would occur if the husband died first, except that in the noncommunity property State the Federal Government would collect the whole tax at once without having to wait for the death of the wife.

The general question of community property is discussed in Part IV of this report.

4. LEGAL METHODS BY WHICH THE ESTATE TAX MAY STILL BE DIMINISHED

From a legal standpoint, tax avoidance, as distinguished from tax evasion is permissible, and has received the sanction of the courts. For example, the Supreme Court of the United States, in a case coming up under the stamp act of 1862, which imposed a tax of 2 cents on checks drawn for an amount in excess of $20, said that the practice of giving several checks in amounts of less than $20 to pay a larger bill was a legal avoidance of the tax.

Most of the early death tax statutes took no cognizance of gifts causa mortis or of transfers in contemplation of death, and these means were often resorted to in order to escape the tax. Joint estates were also used for this purpose. Gradually, these forms of transfer were comprehended in the taxing statutes. The creation of trusts has been resorted to as a means of avoiding death taxes, but most statutes have been so amended as to restrict their use somewhat.

If a person has a power of appointment with respect to certain property of another, the property subject to the power must be included in his estate if the power is general and if it is actually exercised. Thus, to escape the tax, the donee need only to fail to exercise the power. The tax may also be avoided if the donee of the power makes an appointment in his lifetime by a deed not made in contemplation of death and not intended to take effect in possession or enjoyment at or after this death, provided he has the power to appoint by such means. A bona fide sale of the property by the donee for an adequate and full consideration also makes unnecessary the inclusion in his estate of the property subject to the power.

Bequests to public, charitable, religious, and similar institutions are not taxable as a part of a decedent's estate. If the entire net estate is given to charity the estate is not subject to tax, and to the extent that gifts are made to such institutions the net taxable estate is diminished, and, due to the progressive rates of the tax, the amount of the tax is more than proportionately reduced. Prior to the revenue act of 1932, it was possible for a decedent to give his residuary estate to charity and for his estate to take full the deduction therefor against the gross estate, although the charity might in fact get nothing, or at least much less than the actual amount of the residuum, due to the fact that the estate tax probably would be paid out of it. The statute has now been changed so that the amount of the tax must be subtracted from the deduction in such cases.

Before the enactment of the present gift tax the estate tax could be avoided by the owner of property making outright gifts to intended beneficiaries in his lifetime. The gift tax was enacted largely to prevent this avoidance, but since the rates are about one-fourth less than those of the estate tax they provide an inducement for the owner of property to give it away before he dies. Moreover, in addition to the general exemption of $50,000 allowed against the total gifts made by the decedent after the effective date of the tax, gifts to any person in any one year not in excess of $5,000 are not taxed.

Life insurance taken out by a decedent on his own life and payable to beneficiaries other than his executor or trustee for the benefit of his estate, is exempt from the estate tax to the extent of the first $40,000 of the total amount thereof. Where the policies are not taken out by the decedent, but some other person insures his life, the proceeds are not taxable as a part of his estate regardless of the amount involved. As to what would be the effect if the insured, in his lifetime and not in contemplation of death, made an assignment of his policies is open to question. Such an assignment would hardly come within the regulations of the Bureau of Internal Revenue covering insurance, which require the inclusion in the estate of policies of insurance where the decedent, during his life, retained any of the legal incidents of ownership. This opportunity for avoidance is now apparently prevented by the gift tax.

Insurance trusts are often resorted to for the purpose of escaping the estate tax, the insured delivering his policies to a trustee, giving the latter the power to collect the proceeds at his death, to invest and reinvest the proceeds, and distribute the income and principal to designated persons in accordance with the trust agreement. Sometimes the donor agrees to pay the premiums and sometimes sufficient income-producing property is turned over to the trustee for this purpose. Trusts for the benefit of the estate of the donor are naturally subject to tax, and in other cases their taxability depends upon the control of the donor over the policies. The reservation of the right to change beneficiaries has been held by the Supreme Court to be the same as a right to revoke, and in either case the transfer is not complete until the death of the transferor and hence is taxable.

In the case of trusts of other property a similar rule applies, the transfer being taxable as a part of the donor's estate if the enjoyment thereof was subject at the date of the donor's death to the exercise of a power to alter, amend, or revoke, or where such a power was relinquished in contemplation of death. While property transferred under an irrevocable trust may escape the estate tax, it is, however, subject to the gift tax. A trust made in contemplation of death or to take effect in possession or enjoyment at or after death, though irrevocable, is, of course, taxable. For a full discussion of the question of trusts, including recent amendments to the estate tax law relating thereto, see Part IV of this report.

D. RELATION OF DEATH DUTIES TO THE ACCUMULATION OF WEALTH

The fundamental economic theory upon which the death tax is based is that every person enjoys only a life interest in the property which he acquires in his lifetime and that upon his death the State may claim the whole of his estate. Having the power to take all of the estate, the State may regulate its distribution by taking such portion as it may desire, and it may accord to the persons named in the decedent's will the privilege of taking such portion as he may designate, or, in the absence of a will, such share as the State shall provide. It will be recalled that the right to devise property by will is a right given by the State, and that several foreign countries considerably restrict this right.

Jeremy Bentham, the English jurist and philosopher, fathered the idea of abolishing intestate succession except between near relatives, while John Stuart Mill, following him, favored restriction of the amount which anyone might receive either by will or inheritance. In his book on Principles of Political Economy, Mill contends that private property means only the guaranteeing to individuals the fruits of their own labor and abstinence, and not that of others transmitted to them without any merit or exertion of their own. Thus we have the basis for the rising tide of agitation in this country for the limitation of inheritance through death taxes.

There are two schools of thought regarding the imposition of death duties, one basing their use on the need for revenue, the other on the ground of social reform. When death taxes were first imposed in this country the rates were so low that obviously their purpose could not have been the leveling of great fortunes. As a matter of fact, at that period there was little accumulation of great wealth in the hands of a few. Moreover, the first death taxes generally applied to collateral heirs only, most States exempting direct heirs from the tax.

Theodore Roosevelt, when President, projected the social purpose of high death taxes into the field of discussion. In a speech made in 1906, he stated that the country would ultimately have to consider some scheme, such as a progressive tax, to put it out of the power of the owners of enormous fortunes to hand on more than a certain amount to any one individual. Under his leadership, the Progressive Party, in its platform in 1912, favored the leveling of large fortunes and the prevention of the concentration of wealth. The plank was as follows:

> We believe in a graduated inheritance tax as a national means of equalizing the obligations of holders of property to government; and we hereby pledge our party to enact such a Federal law as will tax large inheritances, returning to the States an equitable percentage of all amounts collected.

In his advocacy of limiting inheritance by death taxes, Mr. Roosevelt had on his side one who, from the large amount of his wealth, might be expected to be on the other side of the proposition, namely, Andrew Carnegie, the multimillionaire steel king and philanthropist. In his Gospel of Wealth, Mr. Carnegie noted with satisfaction the growing tendency to tax more and more heavily the large estates left at death, and favored going much further in that direction, under a plan of progressive rates. In an article entitled "My Partners, the People," Mr. Carnegie gives further light upon his philosophy, stating that he could see no reason why, at the death of its possessor, great wealth should not be shared by the community, which was the most potent cause or partner in its creation. "Where wealth accrues honorably," he says, "the people are always silent partners." He contended that a contribution from the owners of enormous fortunes at death would do much to reconcile "dissatisfied but fair-minded people" to the "alarmingly unequal distribution of wealth" arising from the new industrial conditions and the era of unprecedented prosperity then existing.

At the first national conference on State and local taxation, held at Columbus, Ohio, in 1907, cognizance was taken of the possibility of using the inheritance tax for social as well as revenue purposes. It was apparent to some, at least, that it would be impossible to accomplish this purpose through State death taxes on account of the ease with which a wealthy person could transfer his residence to a State having lower death taxes or none at all. The only way a person could escape a Federal death tax, of course, would be by becoming a citizen of another country and divesting himself of all tangible property in the United States. Even investment in tax-exempt securities would be of no avail.

Among the representatives at the 1907 conference, there was some difference of opinion as to the propriety of using the inheritance tax for the purpose suggested by President Roosevelt. Prof. Joseph H. Underwood, of the University of Montana, in referring to the President's position, stated that it was nothing more than an "enforced logical and practical and statesmanlike recognition of the public rights in great accumulations of economic and political power." He said that the heir starts in economic power where the decedent left off, and contended that the same arguments that apply to progressive taxation apply to highly progressive taxation. Prof. Charles J. Bullock, of Harvard University, felt that a retributive inheritance tax could only remedy some of the ill effects of the undue concentration of wealth, and suggested, instead, a removal of the causes. Mention was made of the possible constitutional aspect of the attempt to reduce large fortunes by taxation.

The present Federal estate tax was enacted, it will be recalled, in 1916. The avowed purpose of the tax was to raise revenue. No social reason for its imposition was advanced, and indeed, the fact that the maximum rate was 10 per cent on the excess of the net estate over $5,000,000 negatives any such purpose. The rates were slightly increased in 1917, and in the same year a special war estate tax was imposed in addition, the maximum rate under the two taxes being 25 per cent. This maximum rate was in effect all during the participation of this country in the World War. After the war, the maximum rate was retained at 25 per cent, it being applicable to that portion of the net estate in excess of $10,000,000. The tax was still avowedly levied for revenue purposes. The same rates were continued under the revenue act of 1921.

Under the revenue act of 1924, Federal taxes, in general, were reduced to the extent of approximately $500,000,000. But, under that same act, the estate tax was increased to a maximum of 40 per cent. Was it done for the purpose of raising revenue? Obviously not.

Then what was the purpose of this increase? The answer will be found in the statements of those who advocated and fought for it.

After the revenue bill of 1924 had been reported to the House of Representatives with the maximum rates of the former act unchanged, Representative C. W. Ramseyer, of Iowa, introduced an amendment increasing the rates to a maximum of 40 per cent. This amendment was adopted by the House by a substantial majority. In speaking for his amendment, Mr. Ramseyer gave several "social" reasons for its adoption. One was to prevent the concentration and perpetuation of large fortunes in the hands of those who contribute nothing, or very little, to the creation of them. Another was that the recipients of large inheritances are enabled to live on the income without effort and to remain idle instead of doing productive work. He then made reference to the fact that when a rich man dies his heirs get an "economic power" to command the labor and services of others who did not have the good fortune to have wealthy ancestors. One of Mr. Ramseyer's statements is as follows:

> In this country we do not recognize inherited political power. We do recognize, and I think rightly, the right of inheritance of economic power. I would be one of the last to favor the abolition of all inheritance laws, but I do believe that the amount of economic power thus to be transmitted to an heir or legatee without exertion on his part, without his contributing to the welfare of society and the creation of the fortune he is to enjoy, should by law be limited * * *.

In the revenue revision of 1925–26 a representative of the American Farm Bureau Federation, in appearing before the House Ways and Means Committee in favor of the Federal estate tax, gave as one of his reasons for urging its continuation the fact that "at the higher rates applicable to large estates it tends to redistribute wealth." This was a very frank acknowledgment of the purpose of the higher rates. It may be said, parenthetically, that under the 1926 act, the maximum rate of the 1924 estate tax was scaled down retroactively to a maximum of 25 per cent. On estates of decedents dying after the enactment of the 1926 act, a maximum rate of 20 per cent was applied.

In reducing retroactively the old rates the Congress, in effect, expressed its opinion that the 40 per cent maximum was excessive. Nevertheless, the purpose of fairly substantial maximum rates still obtained. In 1927 Representative W. R. Green, of Iowa, then chairman of the Ways and Means Committee of the House of Representatives, gave as one of his reasons for favoring the continuation of Federal estate tax the fact that—

> The great estates now extending in some instances to more than $1,000,000,000 are increasing by leaps and bounds. They are a menace to our institutions, for their owners have more power than the President himself.

In the revenue revision of 1927–28 a representative of the American Federation of Labor, in appearing before the Ways and Means Committee in favor of the Federal tax, spoke as follows:

> It should be the American policy to demand that this tax be levied to prevent in the future the perpetuation and further accumulation of immense fortunes in the hands of those who did little, if anything, to create them.
>
> * * * * * * *
>
> The statement of the Secretary of the Treasury that less than three-tenths of 1 per cent of our population paid 95.5 per cent of our total income tax should warn us that wealth is getting into fewer and fewer hands.

Goldsmith's lines—

> Ill fares the land to hastening ills a prey,
> Where wealth accumulates and men decay.

are often heard in the debates in Congress. It must be evident, therefore, that at least some consideration is given to the "social" purpose of the estate tax in its retention by the Congress in spite of weighty opposition from many sources.

Former Secretary of the Treasury A. W. Mellon, in opposing before the Senate Finance Committee the high estate tax which the House of Representatives inserted in the revenue bill of 1924, contended that the social necessity for breaking up large fortunes in this country did not exist. He recalled that our forefathers had declined to implant on this continent the principle of primogeniture, under which the eldest son alone inherited and properties were kept intact for generations. He stated that under America law estates are divided equally among the children, so that in a few generations any single fortune would be split into many moderate inheritances. Secretary Mellon urged that monetary success was not a "crime," but that it added to the total wealth of the country and resulted in an increase in the standard of living as a whole. Mention was made of the fact that the power of Congress in connection with inheritances was limited to the levying of an excise, and that whether extreme rates could properly be considered as such would be a question for the Supreme Court.

In addressing the National Conference of Inheritance and Estate Taxation, in 1925, Hon. Charles S. Dewey, then an Assistant Secretary of the Treasury, uttered a warning against too high death taxes, stating that it was proper that upon a man's death his estate should pay to the Government a portion of his wealth amassed under its protection, but that this was a different matter from confiscating his wealth and thereby depriving him, in his lifetime, of the incentive to work and accumulate. President Coolidge, in addressing the same conference, held that the Government should not seek social legislation in the guise of taxation, and Professor Bulloch, of Harvard, pointed out that confiscatory tax laws were neither financially successful nor economically sound.

To summarize, it must be admitted that one thing that has helped to retain the Federal estate tax has been the fact that at the higher rates it does tend to redistribute wealth. As long as the rates are not confiscatory, there can, perhaps, be no general objection to requiring the estates of wealthy persons to return to the Government, at the death of the owner, a portion of the property amassed under its protection and through the patronage of its people. How high the rates should go is a matter of judgment. Where the decedent has his fortune in cash and bonds there is practically no economic disturbance when the State takes a large share. Where the decedent has his fortune all in one large going business, there may be unfortunate economic disturbances when the State takes too large a share, for the control of the business will pass into inexperienced hands which may wreck this particular industry. It would appear that if death tax rates are to be fixed from social considerations, the problem should be approached with the idea of arriving at a fair average rate which will not bear too heavily on any ordinary type of estate. Moreover, the inequities of the estate tax in comparison with those of the inheritance tax become more pronounced when very high rates are used.

E. THE DEATH TAX FIELD—WHO SHOULD OCCUPY IT?

We have observed that from the earliest times the sovereign has exercised the right to regulate the disposition of property at the death of the owner, and that as a corollary to that right death taxes have been levied upon the estates of decedents or upon the shares distributed to the beneficiaries.

In the United States, the power to regulate the descent and distribution of property lies with the several States. The Federal Government, being one of designated powers, has no such right. Nevertheless, Federal death duties, in one form or another, have been imposed from time to time since the Colonial period. How can they be justified?

Under the Constitution, the Federal Government has the power to "lay and collect taxes," and this power has been held by the Supreme Court to authorize the imposition of Federal death duties. While State inheritance taxes are based upon the right to regulate the distribution of property, the occasion for the Federal tax is the transmission or receipt of property at the death of the owner.

Notwithstanding the fact that the Federal Government has the "power" to occupy the field of death taxation concurrently with the States, it has been strongly urged that it should abandon the field in their favor. The argument is made that since the right of inheritance is controlled by the States, there is no logical basis for the Federal tax. Historically, it is said, the Federal Government has used the estate tax only in emergencies and not as a permanent policy. It is contended, further, that death taxes are more readily collectible by the States, and that Federal taxation involves duplication in machinery and a usurpation of State revenues. Another argument used is that the Federal tax system is fairly well diversified, while State and local revenues lie on altogether too narrow a base, and that hence the estate tax field should be left to the States. Many of the other arguments used against the Federal estate tax may be said to apply equally against any taxation of estates whatever, even by the States. These arguments will not be discussed here, however.

On the other hand, in behalf of the Federal estate tax, it is urged that without the Federal Government in the field, State death taxes would be ineffective and would disintegrate because of competition among the States; that since wealth is not created in one locality but from all over the Nation, the whole country should share in the taxation thereof; that the Federal tax is a necessary corollary to the income tax, since complete avoidance of taxation through investment in tax-exempt securities can not be effected under the estate tax and since appreciation in the value of property is reached by the estate tax; and that it would be better to have one tax on estates than 48 separate tax systems. The latter argument is one used in support of the exclusive occupation of the death tax field by the Federal Government.

The present Federal estate tax dates from 1916, and with the amendments made from time to time it has been in effect continuously ever since. At the time it was first enacted only five States had no death duty in any form, and the entry of the Federal Government into the field consequently meant a double burden in almost every State. The Federal tax was levied for revenue purposes, the necessity for which arose out of the increased expenditures for national defense.

Whatever apology was needed for the adoption of this form of taxation by the Federal Government appears in the report of the Ways and Means Committee in submitting the revenue bill of 1916 to the House of Representatives. The report states that the inheritance tax laws of the various States had never been a very large source of revenue, and compares the total receipts in all the States in which an inheritance tax was levied with death tax receipts in Great Britain. It was shown that while collections in the States totaled only $28,000,000 in 1915, Great Britain, in 1914, realized $132,000,000 from death duties. Apparently it was felt that whatever additional burden might be imposed by the Federal tax, the estates should well be able to bear it.

The weakness in the State inheritance tax systems had been in the fact that in only 12 States did the tax extend to lineal heirs, and then it was but a nominal one. No great amount of revenue was realized, therefore, because the larger part of most estates was distributed tax-free to lineal heirs. Congress decided that a moderate Federal tax on the whole estate would, together with the inheritance taxes imposed by the States, make a logical tax structure. Estimates made at the time indicated that about $50,000,000 would be realized from the tax by the Federal Government in a normal, full year of operation, making the total collections in this country still much less than in Great Britain.

When the Federal tax was imposed in 1916, it was met with vigorous opposition on the part of the States on the ground that it constituted an interference with State revenues and State rights. Experience has since shown, however, that the Federal tax has actually stimulated State collections.

By 1924, receipts from the Federal tax had risen to over $100,000,000, the rates having been raised somewhat in the meantime. Nevertheless, it was urged that the rates should be still further increased. One Member of Congress pointed out that Great Britain, in 1923, had collected nearly $232,000,000 in death taxes, and that as the national wealth of that country was only from one-third to one-fifth that of the United States, we could collect from $600,000,000 to $1,000,000,000 from death taxes with Great Britain's rates.

It will be recalled that the Federal estate tax was increased in 1924 to a maximum of 40 per cent, although in 1926 the rates were retroactively reduced to a maximum of 25 per cent. However, it was urged in 1924 that there were two compelling reasons for the imposition of taxes on the privilege to inherit or receive property, viz: (1) as a much-needed source of revenue and (2) as a means of preventing the perpetuity of large fortunes and the concentration of wealth in the hands of a few who contributed little or nothing to its accumulation.

When the argument was advanced that the increase in rates would result either in driving the States from the death tax field or in an intolerable burden of double taxation, provision was made in the 1924 revenue act for credit against the Federal tax of any death taxes paid to the States, up to 25 per cent of the Federal tax. This credit was increased to 80 per cent under the revenue act of 1926.

It was felt that with the Federal Government levying an estate tax, with substantial credit allowed against it for State death taxes, there would be more uniformity in the death tax burden. Otherwise, some States would have no death taxes at all, others would impose very low rates, and still others somewhat higher rates. In favor of the Federal tax, it was said that if it were to be abolished, the States would be able to impose only nominal inheritance taxes, since wealthy people would take up their residence in States having no such taxes or where the tax was the lowest. It was also argued that the abandonment of this field of taxation by the Federal Government would create intensive competition between the States to induce rich men to take up residence within their respective jurisdictions, and would encourage States with inheritance taxes to repeal them for their self-protection. Thus, the Federal tax was held up as a means of protecting this source of revenue for the States.

As a practical matter, the result of the 80 per cent credit provision has been to increase greatly the State revenues from death taxes, since practically every State has now amended its law so as to reap a portion of the revenue which would ordinarily be collected by the Federal Government. Thus, instead of the Federal Government realizing the entire amount of the tax which it levies, a minimum of 20 per cent thereof is collected, since the States, almost without exception, have made their rates approximately equal to 80 per cent of the Federal tax under the revenue act of 1926.

Through the credit provision, the Federal Government, in effect, says to the States: "We are going to insist upon the collection of a certain tax from the estates of decedents, and accordingly will levy a Federal estate tax. However, in order to avoid double taxation, we will permit a credit to be taken against our tax, up to 80 per cent thereof, for any death taxes paid to the States. The estates, however, will only get credit for the amount of State taxes actually paid. Therefore, if your taxes do not happen to equal 80 per cent of the Federal tax, the Government will collect just that much more than the minimum of 20 per cent it expected to get. However, if you wish to bring your rates up to 80 per cent of our tax, you can collect that much more revenue without the estates having to pay any more tax then they otherwise would. In other words, the entire death tax field, up to 80 per cent of the Federal tax, is yours if you care to use it."

Due to this credit provision, it could not be said that the Federal Government under the revenue act of 1926 was taking away from the States any substantial portion of their rightful revenues. On the contrary, it was making it possible for the States to collect more in death taxes than they could possibly realize if they were left to compete among themselves. This fact goes far toward justifying the Federal levy, and should answer a number of arguments made against it. The death tax field, moreover, is a fruitful one. In the past, the States have shown a disposition not to tap it to the full extent of its capacity to bear taxation. Reference has already been made to the fact that in 1915, before the Federal tax was enacted, the States collected only $28,000,000 from death taxes. In 1930, the State revenues from this source were over $180,000,000. Nevertheless, it must be pointed out that the 80 per cent credit provision may inaugurate a dangerous principle inasmuch as its use applied to other subjects of taxation might effectually coerce the States into enacting tax legislation which they might not want.

Prior to the enactment of the revenue act of 1932, there was no double taxation where the State death tax did not exceed 80 per cent of the Federal tax under the revenue act of 1926. This is still true, in a literal sense, even with the enactment of the additional estate tax under the act of 1932, against which no credit is allowed for State death taxes. The total Federal tax will, of course, be greater, but if the State taxes remain unchanged, and do not exceed 80 per cent of the tax under the 1926 act, full credit will still be allowed against the total Federal tax for State death taxes paid. Whether this additional estate tax will permanently remain in our Federal tax structure, is, as yet, uncertain.

The repeal of the Federal estate tax imposed by the revenue act of 1926 would automatically result in the abolition of many of the State death duties, particularly those levied for the express purpose of taking advantage of the 80 per cent credit provision. This is due to the fact that most of the States have both a basic tax and an additional tax, the latter being imposed for the purpose of bringing the State tax up to 80 per cent of the Federal tax. It is often provided, in respect of the additional tax, that it shall become null and void upon the repeal of the Federal tax or the 80 per cent credit provision. In the case of Alabama and Florida, the only tax imposed is an estate tax levied for the sole purpose of benefiting from the Federal credit. Thus, the withdrawal of the Federal Government from the estate-tax field would mean the automatic reduction of the total death taxes in more than one-half of the States, and the complete abrogation of the tax in a few jurisdictions. It would also immediately reduce the revenue of many States. The States without death taxes would then become havens of refuge for the ultra rich, who, by investing all their wealth in tax-exempt securities, could not only escape taxation at death but in their lifetime as well. Unless there is a unified and universal system of death taxes, there will be none at all. The Federal Government, alone, can secure the necessary uniformity, unless one model form of death duty is agreed on by all the States. As long as there remained a single State without an inheritance tax, the whole system would be inequitable from a national standpoint.

Not only would interstate competition cause a virtual collapse of an inheritance tax system with high rates, but there would be factors within each State to bring it about. Great wealth, more often than not, means great political power. This is especially true so far as concerns the section of the country where that wealth is located. Its influence might be direct or indirect but in either case there would be difficulty in passing adequate estate tax legislation in many States. That the National Legislature is not controlled by the great fortunes of the country is evidenced by the fact that we have a Federal tax at rates much higher than any State has ever levied except on collaterals, the present maximum being 45 per cent.

The argument that since the States have the exclusive right to regulate the disposition of property they should have the exclusive power to tax that disposition, has already been mentioned. In this contention there is much force, but on the other hand Congress has the right to lay and collect taxes, and the Supreme Court has held that a tax on estates is within its constitutional powers. Though it be conceded that the States have the exclusive power of regulation, yet the same property receives many benefits from the Federal Government, and it is only fair that some contribution should be made in return for those benefits. Moreover, through investment in tax-exempt securities, and otherwise, the property of many decedents escapes taxation in the lifetime of the owners, as was mentioned heretofore. In addition, it must be admitted that the great fortunes of this country were not made within the borders of any one State, but under our whole national economic system. Is it fair, therefore, for the State of the owner's domicile to claim, as against the United States, the exclusive power to tax his property at death simply because of his residence there, when perhaps 99 per cent of his fortune was made in the other 47 States? Should not the other States, through the power of the Federal Government to tax the estate, share therein?

The contention that the Federal estate tax has, in the past, been used only in times of great emergency is without much weight. There was no war or other great emergency in 1797 when the first Federal legacy tax was imposed. It is true that a similar tax was imposed during the Civil War, but it was not repealed until 1870. There was no war in progress in 1894 when, under the income tax imposed in that year, the value of property acquired by inheritance was included for taxation purposes. This statute was, as will be recalled, declared unconstitutional on account of the income-tax features. It is true, also, that during the Spanish-American War a death tax on personal property was imposed, but it remained in effect until 1902, and collections still continued to come in until 1907. The present estate tax was imposed in 1916, as has been stated, when the Nation was not at war, although it was at the time engaged in strengthening the national defenses. This tax has been in effect ever since, although the World War ended 14 years ago. But even if it were to be admitted, for the sake of argument, that Federal death taxes had been imposed only in time of great emergency, would this be any reason why they should not be levied as a permanent tax if they were otherwise found to be necessary and proper?

Practically, an estate tax is not a good form of taxation for emergency purposes. In the first place, the revenues which are needed at such times would be slow to come in, due to the fact that it takes a year to settle an estate and payment of the tax can generally be spread over a period of several years. Thus, if a war were to break out which would last, say, for one year, it would be over before the first revenues would be received. If it lasted five years, receipts would still be coming in at that time from the first year of the operation of the statute.

In the second place, even if the estate tax were to be used only as an emergency measure, it would be necessary to have it on a permanent basis so that it might be applied immediately. The administration of the estate tax involves many complex problems, and a trained force of administrators is necessary if it is to be applied with any degree of success. One of the defects of the Federal revenue system in the Civil War period was that there was no internal-revenue machinery in existence. The result was that the Government did not begin to realize any great amount of revenue until after the war was over. If the machinery is once put into operation, however, the estate tax can be increased or decreased at will, according to the necessity for revenue; but even then, the revenues will be slow to respond to any rate changes, whether up or down. The tax, therefore, if it is to be imposed by the Federal Government, should be as much a peace-time tax as a war tax. Moreover, it would obviously be unfair to impose the tax only intermittently, since it would then fall on only a very small group of the whole population, whereas if it were imposed on a permanent basis all eventually would come within its scope.

To answer another argument against the Federal estate tax, it is not true that the first death taxes imposed in this country were levied by the States. The Federal tax of 1797 has elsewhere been mentioned. Pennsylvania, in 1826, became the first State to levy a true inheritance tax. Thus, the first Federal death tax antedated the first State tax by nearly 30 years.

The argument that the imposition of the Federal estate tax involves duplication of machinery can be used with even more force against the State death taxes. It must be remembered that the Federal Government has only 1 "machine," so to speak, while the States, at present, have 47. Think of the saving in administrative expenses if only the Federal tax were imposed!

If it be argued that the Federal estate tax deprives the States of revenue, which, as has been pointed out, it does not, it may be answered that the issuance of tax-free securities by the States, which in 1930 amounted to over $17,000,000,000, deprives the Federal Government of much income-tax revenue. The only way in which the Federal Government can reach this great wealth is under the estate tax.

It is often said that the States need the revenue more than does the Federal Government. To answer this assertion, it is only necessary to state that they are now getting more revenue from it than they would be able to realize if the Federal Government were not in the estate tax field.

One eminent authority on taxation a few years ago suggested that the Federal Government should leave the taxation of estates to the States since Federal taxes were fairly well diversified, while State and local taxes rested on altogether too narrow a base. The remedy for this situation, however, lies with the States. Their field of taxation is practically unlimited, while Federal taxation is decidedly restricted. The States have perhaps relied too much upon the general-property tax, and until the last few years have left unexplored the rich fields of income taxation, business taxes, and excises. Moreover, it has already been pointed out that the imposition of the Federal estate tax has in no way prevented, but on the other hand has encouraged, the imposition of State death taxes.

The question may be asked, "What is the proper field of State and of Federal taxation?" As each day passes, this question is getting more and more difficult to answer. As a result of what Professor Seligman calls "overmastering economic forces", the principle of separation of sources of revenue between the States and the Federal Government may be said to have largely disappeared. It was once considered that the States should avail themselves of the sources of direct taxes, such as the property tax and the poll tax, and that the Federal Government should impose indirect taxes, such as customs duties, excises, etc. In recent years, there has been a marked tendency of one to encroach upon the sources of the other. Indirect taxes, such as customs duties and excises, were in the past the sole recourse of the Federal Government. Real-property taxes are practically inhibited to the Federal Government on account of the apportionment clause of the Constitution, but these taxes are the chief reliance of the States. Through a constitutional amendment, the Federal income tax, which is a direct tax, has been made available since 1913. Many States also impose income taxes. The field of indirect taxes is the chief battle ground at present. Nearly all the States levy a tax on gasoline in the form of an excise, or indirect tax. Many have taxes on tobacco, a source of revenue traditionally belonging to the Federal Government. Many more examples might be given. Where the duplication and overlapping will end, no one knows. So far as the estate tax is concerned, however, a fairly equitable division of the field has been accomplished and until further progress is made in regard to the whole question of encroachment, the present plan will doubtless be continued.

From 1924 until the enactment of the revenue act of 1932, the presence of the Federal Government in the field of death taxes has been primarily to insure that a certain minimum tax is collected from the estates of decedents. The revenues have been comparatively small. Should the Federal Government abandon the field entirely? Should the States abandon it in favor of the Federal Government? Or should both continue to occupy the field concurrently?

No compelling reason can be set forth why the death-tax field should be exclusively occupied by either the Federal Government or the States. Strong arguments can, of course, be advanced in favor of one or the other, but it appears that the most satisfactory solution of the problem is to leave the matter in the status quo, at least until some plan can be evolved for apportioning the entire tax field.

Whatever arguments may be advanced on a theoretical basis in favor of the Federal Government abandoning the death-tax field, from a practical basis this should not be done until the States enact new death duties drafted without reference to the Federal law. If we should suddenly abandon this field, we would do irreparable damage to State revenues, for in over one-half the States their additional estate duties would be automatically eliminated. One solution of the matter might be to leave the estate-tax field to the Federal Government and the inheritance-tax field to the States. In this connection it is pointed out several European countries have both levies; that is, they tax the estate as a whole and then impose another tax on each beneficiary's share.

F. SHOULD THE FEDERAL GOVERNMENT SUBSTITUTE AN INHERITANCE TAX FOR THE ESTATE TAX?

Elsewhere in this report the relative merits of the estate tax and the inheritance tax are discussed. It is there concluded that while the estate tax is the simpler and the easier to administer of the two forms of death duties, the inheritance tax is the more equitable.

In 1916, when the present Federal death duty was first imposed, Congress adopted the estate tax rather than the inheritance tax because it was considered that such a levy could be "readily administered with less conflict than a tax based upon shares." (H. Rept. No. 922, 64th Cong., 1st sess.) At the same time, it was felt than an inheritance tax, even though imposed at high rates, would prove disappointing in revenue yield on account of the fact that it would attach only after the distribution of the estate into many smaller shares. At the time of the imposition of the tax, it will be recalled, the Government was seeking new sources of revenue. Thus, as between these two reasons for adopting the estate tax over the inheritance tax, the fact that it would produce more revenue may have been the more controlling.

In explaining the revenue bill of 1916 to the House of Representatives, the then chairman of the Ways and Means Committee (Mr. Kitchin) made the following statement:

> We levy the tax on the transfer of the flat or whole estate. We do not follow the beneficiaries and see how much this one gets and that one gets, and what rate should be levied on lineal and what on collateral relations, but we simply levy on the net estate. This also prevents the Federal Government, through the Treasury Department, going into the courts contesting and construing wills and statutes of distribution.

During the consideration of the revenue bill of 1918, the Senate amended the measure by substituting an inheritance tax for the estate tax carried in the House provisions. The House, however, refused to accept the amendment, presumably for the same reasons that it proposed an estate tax in place of an inheritance tax in the first instance. The Senate proposal was to base the tax on the individual shares of the beneficiaries, but no recognition was to be given to consanguinity, direct heirs being subject to the same rates as collaterals and strangers. In 1924, the Senate again attempted to substitute a similar share tax, but the House once more refused to yield.

Aside from the revenue argument in favor of the estate tax, from a practical standpoint it appears that a Federal inheritance tax would bring about many difficulties of administration which the proponents of such a tax, having regard only for its so-called equities, are given to overlook. The transmission and receipt of property on the death of the owner thereof takes place by virtue of the laws of the several States. The probate of wills, and the administration of the estates of decedents dying intestate, is exclusively a matter within their jurisdiction. As long as the Federal Government levies a tax on the net estate of a decedent as a unit it does not become involved in matters of probate and administration. With such a tax, it need not be concerned with the rights of the heirs or beneficiaries, or generally with the valuation of life estates and contingent interests. However, with the Federal Government levying a share tax it would necessarily become directly interested in such matters. Before the tax could be fixed, the shares of the beneficiaries would have to be determined in the State courts. In case of dissatisfaction on the part of the Federal Government with the settlement arrived at, it might want to appeal some questions to a Federal court, such as the valuation of the property. There might result an interference with the jurisdiction of the State courts, a great amount of confusion, and considerable extra expense in arriving at a settlement.

It is quite clear that the inheritance, or share, tax has a number of so-called equities existing in its favor. For example, it imposes a lower tax on direct heirs than on collateral heirs and strangers in blood. This is eminently fair, and is supported by the custom of many centuries. It taxes a given share, say $1,000, in a large estate no more than the same share in a small estate. The inheritance tax is payable by each beneficiary, but the estate tax is generally payable out of the residuary estate, and is thus often saddled on a single beneficiary, perhaps one of the immediate family of the decedent or even a charitable organization. This is a matter, however, that can be provided for by the testator in his will, either by setting up a separate fund for the payment of the tax or by requiring it to be ratably apportioned against each beneficiary.

The fact is often lost sight of that under our present system of death taxes, with most of the States imposing share taxes as their basic levy and with the Federal Government imposing a tax on the estate as a unit, recognition is still given to consanguinity and distribution. It is true that the Federal tax gives no such recognition, but when it is added to the State inheritance levy, the direct heirs will be found in many cases to be bearing a lighter burden than collaterals, and collaterals a lighter burden than strangers in blood. Let it be assumed, for example, that a $150,000 estate is divided by the decedent into three shares, one-third going to his sons, one-third to a collateral relative, and one-third to a stranger in blood. The State inheritance tax on the son's share will probably be in the neighborhood of $500 on the average; that on the collateral relative's share about $1,500; and that on the share of the stranger in blood about $3,000. The present Federal tax on an estate of $150,000, after deducting the exemption and allowing the credit for the State death taxes, would be $4,600. If this tax were apportioned against each of the three shares, it would amount to $1,533.33 in each case. Thus, the total death tax burden on the son, the collateral heir, and the stranger, respectively, would be as follows:

Son:	
State inheritance tax	$500. 00
Share of Federal tax	1, 533. 33
Total	2, 033. 33
Collateral heir:	
State inheritance tax	1, 500. 00
Share of Federal tax	1, 533. 33
Total	3, 033. 33
Stranger in blood:	
State inheritance tax	3, 000. 00
Share of Federal tax	1, 533. 33
Total	4, 533. 33

It is therefore apparent that when the Federal and State death taxes are considered as a unit, which for all practical purposes they are, the burden is usually lighter on direct heirs than on collaterals and strangers, in most of the States. This relief in favor of consanguinity is more marked in the case of the smaller estates than in the larger ones, and in the case of estates located in States having an inheritance tax with no additional estate tax.

Under the estate tax, discrimination in rates in favor of direct heirs is, of course, impossible. It has been pointed out in the preceding paragraphs that this fact still permits of a discrimination when the total Federal and State tax is taken into consideration. But, it may be asked whether this discrimination is as important as is generally supposed. It is possible, of course, to make some discrimination in favor of direct heirs by exemptions.

The principal reason, perhaps, for imposing more favorable rates on direct heirs is that a man should not be penalized for making adequate provision for his dependents. However, as long as the Federal exemption is kept sufficiently high, this principle can be carried out just as effectively as by discriminatory rates. If the exemption is sufficient to leave undisturbed so much of the estate as is necessary for support of the decedent's family, it makes little difference how high the rates are above the exemption. Of course, such an exemption benefits strangers participating in the estate as well as the direct heirs, but they can be adequately taxed under the State inheritance tax. However, the possibility of making some provision in the estate tax for direct heirs is suggested in another part of this report.

So far as regards the distribution of the tax among the beneficiaries of an estate, the whole matter, as has been pointed out, is within the control of the testator in making his will, whether under an inheritance tax or an estate tax. By properly drawing his will, the testator can, for all practical purposes, convert an inheritance tax into an estate tax if he chooses, leaving each beneficiary the desired amount and providing for the payment of the tax out of the residuary estate. On the other hand, an estate tax can, in effect, be converted into a share tax if the testator requires in his will that the tax be deducted pro rata from the share of each beneficiary. The estate tax can be ascertained at once after valuation of the estate, and if the testator himself has a fairly accurate account of his property he can determine in advance the total burden on his estate and carry out his precise intentions as to the net amount which he desires each beneficiary to receive.

Aside from the practical advantages favoring the imposition of the estate tax by the Federal Government rather than an inheritance tax, there are several important theoretical considerations. If the estate of a decedent may be said to owe an obligation to the Federal Government, it is an obligation that attaches to the estate as a unit and not to the distributive shares. If the estate has escaped its fair share of taxes in the lifetime of the owner, the Federal Government should collect those "back taxes" by levying on the total property left by the decedent, not on the shares received by the separate beneficiaries. If the Government is to collect substantial revenue from the tax, it must be levied before the estate is divided and the taxable shares diminished by exemptions and brought under lower brackets of the progressive rate schedule, unless the schedule of inheritance tax rates are to be substantially greater than the estate tax rates. Moreover, if the death tax is to reach the unearned increment of property, such as the increase in land values, the increase in the value of stocks, etc., which is not reached under the income tax if the property is not sold in the lifetime of the owner, the tax should be applied before the property is distributed.

From a practical standpoint, it would seem that the estate tax is best adapted for use by the Federal Government, and its imposition is not unsupported by theory. Its simplicity, its case of administration, and its larger revenue yield are factors which strongly influenced its adoption in the first place and which still favor its retention. It is true that the inheritance tax appears somewhat more equitable, but the possibilities of incorporating into the estate tax some of the equitable features of the inheritance tax should not be overlooked.

G. REVENUE POSSIBILITIES OF DEATH DUTIES

The national wealth of this country has, in recent years, been estimated to be in the neighborhood of $360,000,000,000. Therefore, if we assume that property devolves on the average of about once in 35 years, it would appear that about $10,000,000,000 in gross value of property must devolve annually. The transmission and receipt of this property constitutes a legitimate and fruitful source of revenue. At the present time the Federal Government and all the States except one (Nevada) are making use of it as such. To what extent, however, does this property bear a burden of taxation in proportion to its capacity to pay?

In 1930, the States collected a total of $180,000,000 from death taxes and the Federal Government about $65,000,000, making a total of $245,000,000 realized from this source in the United States. The combined tax of the Federal and State Governments was, therefore, about 2½ per cent of the estimated total amount of property which is assumed to devolve each year. In other words, if this property were invested so that it earned only 2½ per cent interest, the total death tax burden could be paid in one year without taking any of the capital.

In its fiscal year ending March 31, 1931, Great Britain collected £82,600,000 (about $413,000,000) from death duties. It is estimated that the national wealth of Great Britain is about one-third that of this country, or approximately $120,000,000,000. On this basis, assuming again that property devolves once in 35 years, the amount passing annually would be of the value of about three and one-half billion dollars. Thus, the British tax in 1931 would have been about 12 per cent of the total value of the estates. The rates of the British death duties are, of course, comparatively high and the exemptions quite low. In this country, the combined Federal and State rates are fairly low on the smaller estates and the exemptions are quite large.

The relation of death taxes to the total tax burden in Great Britain and the United States is shown in the following table:

Death taxes in the United States and Great Britain

Fiscal year	Death tax collections		Per cent of total internal taxes	
	United States (Federal and State)	Great Britain	United States	Great Britain
1917	$46, 115, 000	$155, 960, 000	3. 8	8. 0
1918	88, 885, 000	158, 675, 000	2. 1	6. 3
1919	129, 919, 000	154, 000, 000	2. 9	4. 9
1920	168, 283, 000	213, 800, 000	2. 8	5. 9
1921	219, 746, 000	235, 905, 000	4. 1	6. 8
1922	209, 922, 000	262, 605, 000	5. 2	10. 1
1923	201, 898, 000	282, 475, 000	5. 7	11. 8
1924	186, 664, 000	287, 785, 000	4. 9	13. 2
1925	192, 593, 000	294, 585, 000	5. 2	13. 3
1926	212, 093, 000	306, 650, 000	5. 2	14. 3
1927	212, 531, 000	337, 160, 000	5. 0	16. 9
1928	192, 686, 000	384, 923, 000	4. 5	18. 3
1929	210, 489, 000	404, 673, 000	4. 6	19. 8
1930	245, 564, 000	395, 529, 000	4. 5	19. 6
1931	----------	415, 464, 000	----------	19. 3

The foregoing table discloses that while Great Britain has, in recent years, been realizing approximately one-fifth her total tax revenues from death duties, in this country the Federal and State Governments combined have raised less than one-twentieth of their total taxes from this source.

As between the Federal Government and the States, the relation of death tax collections to total taxes levied has been as follows:

Federal and State death taxes

Year	Collections		Per cent of total taxes	
	Federal	State	Federal	State
1915		$28,784,000		7.9
1916		30,748,000		8.4
1917	$6,077,000	40,038,000	0.8	9.8
1918	47,453,000	41,432,000	1.3	9.0
1919	82,030,000	47,889,000	2.1	9.0
1920	103,636,000	64,647,000	1.9	9.2
1921	154,043,000	65,703,000	3.4	9.0
1922	139,419,000	70,503,000	4.4	8.2
1923	126,705,000	75,193,000	4.8	8.2
1924	102,967,000	83,697,000	3.7	8.2
1925	101,422,000	91,171,000	3.9	8.2
1926	116,041,000	96,052,000	4.1	7.6
1927	100,340,000	112,191,000	3.5	8.3
1928	60,087,000	132,599,000	2.2	8.8
1929	61,897,000	148,591,000	2.1	9.2
1930	64,770,000	180,794,000	2.1	10.1
1931	48,078,000		1.9	

While the relation of death taxes to total taxes in all the States combined has been fairly constant, there is great variation in this relationship within the various States. In Rhode Island, in 1930, the death tax receipts constituted 39 per cent of the total taxes levied; in Massachusetts, 26 per cent; in New York, Pennsylvania, and Illinois, 19 per cent; in California, 13 per cent; in Colorado, 6 per cent; in Iowa, 3.5 per cent; in Texas, 1 per cent; and in Mississippi, three-tenths of 1 per cent. It must not be assumed, of course, that the rates in these States vary accordingly, because they do not. It so happens that of the total taxes necessarily levied, the amount received from death taxes made up the indicated percentages of the whole. Also, the relative size of the estates of decedents dying in the respective States naturally has something to do with the amount of revenue received, and the foregoing percentages will show considerable change from year to year.

Since 1924, the revenues of the Federal Government from the estate tax have been decreasing because of the credit allowed by the Federal law of that year for death taxes paid to the States. At first, a credit was permitted up to 25 per cent of the Federal tax, but in 1926 it was increased to 80 per cent. This credit, which is now fully effective upon the receipts, has caused considerable shrinkage in the Federal collections. To take full advantage of the credit, the States, almost without exception, increased the rates of their death taxes up to 80 per cent of the Federal tax under the act of 1926, and their receipts have correspondingly increased.

The additional Federal estate tax imposed by the revenue act of 1932, against which no credit is allowed for State death taxes paid, will undoubtedly considerably increase the Federal revenues from this source. Its effect will not be fully felt, however, until the fiscal year 1934, since itdid not become effective until June 6, 1932. Under the law, the tax is not due until one year after the decedent's death, and the time for payment may be extended over a period of eight years. The Treasury Department estimates that in the first full year of operation—that is, the fiscal year 1934—it will produce an additional revenue of about $135,000,000. Estimates made by the sponsor of the law place the anticipated revenue yield much higher. The Treasury figures were based on current depreciated values, and in a normal year the revenue yield will undoubtedly be considerably greater. Taking the Treasury estimate, however, which is admitted to be conservative, the total death tax burden, State and Federal, will be in the neighborhood of $400,000,000 when the new rates are fully effective. This will be approximately the amount collected in Great Britain, which has one-third our population and wealth.

Under the British tax, only estates of less than £100 (about $500) are exempt. Under our Federal tax, the exemption is $100,000 under the 1926 law and $50,000 under the additional tax imposed by the 1932 law. The State exemptions are somewhat lower. The total death tax rates in this country, under the existing laws of the States and the Federal Government, nearly equal the British rates in the case of the larger estates. The maximum British rate is 50 per cent and the maximum Federal rate is 45 per cent. On the basis of comparative national wealth, our receipts would be three times those of Great Britain if we adopted similar rates throughout. The discrepancy is due to the difference in the exemptions and higher British rates in the lower brackets. Great wealth is the exception and not the rule, and when the smaller estates are eliminated through exemptions, the base naturally becomes considerably narrowed. This is especially evident in the case of the Federal estate tax, when it is considered that during the years 1927 to 1930, inclusive, the average number of estate-tax returns filed was slightly in excess of 10,000 for the entire United States.

In the calendar year 1930 the number of returns filed by resident decedents was 8,798, and by nonresidents 1,584. Of those filed by residents, the number in each class was as follows:

Federal estate-tax returns, 1930 (resident decedents)

Size of net estate after $100,000 exemption:	
Returns filed but no net taxable estate—	
Gross estates under $50,000	56
Gross estates over $50,000	1, 714
Net taxable estate—	
Under $50,000	2, 258
$50,000 to $100,000	1, 236
$100,000 to $200,000	1, 235
$200,000 to $400,000	1, 006
$400,000 to $600,000	425
$600,000 to $800,000	257
$800,000 to $1,000,000	132
$1,000,000 to $1,500,000	190
$1,500,000 to $2,000,000	98
$2,000,000 to $2,500,000	57
$2,500,000 to $3,000,000	35
$3,000,000 to $3,500,000	13
$3,500,000 to $4,000,000	16
$4,000,000 to $5,000,000	28
$5,000,000 to $6,000,000	8
$6,000,000 to $7,000,000	7
$7,000,000 to $8,000,000	7
$8,000,000 to $9,000,000	4
$9,000,000 to $10,000,000	1
$10,000,000 and over	15

The number of estates and the amount of property not subject to the Federal tax can be approximated by reviewing the returns filed. For example, in 1930 the gross value of the property shown on the returns filed was $3,638,000,000. Thus, out of the $10,000,000,000 of property that is assumed to devolve annually, only 36 per cent, or a little over one-third, was returned for tax. The remaining two-thirds must have composed the estates of decedents in which the net value in each case was less than $100,000, the amount of the Federal exemption. If the estate tax is to be used principally for the purpose of leveling large fortunes, then there is no object in decreasing the exemption and taxing the smaller estates. If, however, it is desired to use the tax for strictly revenue purposes, the amount realized can at any time be greatly increased by fixing the exemption somewhat lower. This was done in the case of the additional Federal estate tax imposed by the revenue act of 1932, under which the exemption is fixed at $50,000, instead of $100,000 as under the 1926 law, thus bringing within the scope of this particular tax many estates not reached under the basic act of 1926.

The present maximum rate of 45 per cent is the highest rate ever imposed by the Federal Government. What the maximum rate should be is both an economic and a social question, and it is difficult to fix a definite point beyond which it might be said that the tax was confiscatory or that it exacted an undue burden.

Much confusion and misunderstanding exist in connection with the application of this maximum rate, many people being under the impression that it is a flat rate applicable to the whole estate when in excess of $10,000,000. This, of course, is not true. The 45 per cent rate is imposed only with respect to that portion of the net estate in excess of $10,000,000, the rates being graduated down to 1 per cent on the first $10,000 of any net taxable estate, whatever its size. The composite, or average, rate on an estate of $10,000,000 would be approximately 30 per cent, not 45 per cent.

H. SUGGESTIONS

I. POSSIBILITY OF INCLUDING SOME OF THE EQUITABLE PROVISIONS OF THE INHERITANCE TAX IN THE ESTATE TAX

It has been pointed out before that the inheritance tax has certain equitable features not found in the estate tax. These features include taxing the shares of direct heirs at lower rates than collaterals and strangers in blood, granting larger exemptions to direct heirs, taxing the beneficiary the same whether his share is in a large estate or a small one, and the equitable apportionment of the tax burden among all the distributees. The possibility of including some of these equitable provisions in the Federal estate tax will be pointed out, although it should be mentioned that this can be done only at the expense of simplicity and certainty.

Plan A.—Determination of statutory exemption according to relationship and number of beneficiaries.

Under this plan, the present specific exemption would be eliminated and a variable one substituted, to be determined by the number of the beneficiaries and their relationship to the deceased. This plan is used in the New York estate tax statute, under which the amount of the net estate transferred to a husband or wife, not exceeding $20,000, is exempt from tax, and in the case of children and a few other close relatives, not exceeding $5,000 in each case. No allowance is made for transfers to certain collateral heirs and to strangers under the New York law.

The amount of the exemption and the inclusion or exclusion of certain beneficiaries is, of course, a matter of policy for the Congress to determine if it should care to adopt this plan. This much should be said, however, that if the exemption is granted to any persons beyond the immediate family of the decedent there will arise many problems in connection with the determination of the rights of the respective beneficiaries, which the estate tax seeks to avoid by levying on the estate as a unit.

If desired, a small specific exemption could be provided with respect to every estate and an added exemption granted for transfers to the direct heirs. This would eliminate the taxation of small estates within the exemption even when passing to collaterals or strangers.

The principal argument in favor of the plan herein suggested is that it would remedy the situation under the present law where an estate is taxed at the same rate whether it is distributed to 1 son or to 10 sons. The present fixed exemption does not make allowance for such cases. However, where the distribution of the estate is to collaterals and strangers as well as to direct heirs, the benefit of the exemption in favor of the direct heirs may inure to the other distributees also, since it is deducted from the entire net estate. This may not be important in the ordinary case where the stranger receives a small specific bequest and the direct heirs the residuary estate, out of which comes the full amount of the tax. If the tax could be ratably apportioned among the distributees, with due allowance for the exemption in favor of the direct heirs, the plan would bring about the desired result. There is some doubt as to whether the Federal Government would have the power to require its estate tax to be thus apportioned. The States clearly would have such a power, however. In fact, the New York law now requires both the Federal and State estate taxes to be equitably apportioned by the executor or administrator among the distributees, except where the testator directs otherwise in his will. A similar statute could, of course, be enacted in all the other States.

Plan B.—As an alternative to plan A, a partial refund of the estate tax could be made to the direct heirs upon the basis of a recomputation made after the estate had been distributed.

While this plan has certain advantages over plan A, principally that it would permit prompt collection of the tax in the first instance without the necessity of awaiting a determination of the rights of the beneficiaries, the cost of administration would be greater owing to the recomputation of the tax and the making of refunds.

The plan set forth would contemplate the payment of the tax upon the same basis as it is at present. Then, after the rights of the beneficiaries have been determined under State law, the direct heirs would have to certify their relationship to the deceased, the amount of their share, and the tax, if any, deducted therefrom in payment of the estate tax to the Federal Government. Each share would be treated as a separate estate and the tax recomputed, under the exemption and rates provided. A refund would then be made of the excess of the tax actually deducted from the share over the tentative tax thus computed. If no tax had been assessed against the share, then no refund would be made. If the beneficiary happened to be the residuary legatee, and had paid the entire tax, credit would be given only for the amount properly attributable to that share on a pro rata basis.

Discussion.—There are two methods by which recognition can be given to consanguinity. The first is by discriminatory exemptions, the other by discriminatory rates. Plan A involves the use of the first method; plan B of both.

Under the exemption method, the discrimination becomes less as the size of the estate increases. It is obvious that a $50,000 exemption makes a greater relative difference in the tax on a $100,000 estate than on a $1,000,000 estate. Thus, for practical purposes, the exemption method is only effective in the case of the smaller estates. The only way to give substantial recognition to consanguinity in all cases is by discriminatory rates. It is questionable, however, whether this favoritism is so necessary in the case of the larger estates. If not, then the exemption method is sufficient.

2. DIVISION OF THE DEATH TAX FIELD BETWEEN THE STATES AND THE FEDERAL GOVERNMENT

Elsewhere in this report it is suggested that neither the Federal Government on the one hand, nor the States on the other, should occupy the field of estate and inheritance taxation exclusively, since each have not only the power to levy death taxes but strong reasons for doing so. It is there suggested, also, that the only way thus far developed to preserve the field of death taxation for those States which wish to use it is for the Federal Government to levy a tax and allow a credit against it for State death taxes paid.

Prior to 1924, the Federal estate tax law permitted no credit for death taxes paid to the States, with the result that the combined Federal and State taxes were, in many instances, far in excess of what might be considered a reasonable burden. This was due not only to the fact that the Federal Government and the States levied on the same property, but also to the fact that the same property was often taxed in several States. This was the case principally with intangible personalty, such as stocks and bonds, mortgages, notes, and so forth. Moreover, there was little uniformity in the State laws, and the Federal law worked more of a hardship in some States than in others.

When the Federal rates were increased in 1924, it was inevitable that some allowance would have to be made for State death taxes paid, and as a result the law was made to provide for a credit of such taxes against the Federal tax, up to 25 per cent thereof. A few States then amended their laws so as to bring their rates up to where their tax would equal 25 per cent of the Federal tax so as to take full advantage of the credit. As a result of the agitation for the repeal of the Federal estate tax in 1926, and in order to leave the field of death taxes largely to the States, this credit was increased to 80 per cent. Thus, those States which cared to do so could levy a tax equal to 80 per cent of the Federal tax without imposing any additional burden on the estate, because the Federal Government would have collected that portion of the tax if the States did not. The result was that practically all of the States changed their laws so as to take advantage of the credit, and so a fairly uniform system of death taxes was finally worked out.

Under the revenue act of 1932, as has elsewhere been pointed out, an additional estate tax was levied, against which no credit was allowed for State death taxes paid. The practical result of this tax was to bring the total death tax burden, State and Federal, up to a point where the highest rate is 45 per cent, applicable to that portion of net estates over $10,000,000. The States collect the same tax as they did before the enactment of the 1932 act, and presumably the same tax as they would have continued to collect if the additional tax had not been enacted. Thus the imposition of this tax has not had any effect on the State revenues. The additional tax may be said to represent the difference between what was being levied on the estates of decedents by both the States and the Federal Government and what Congress considered they could reasonably pay without any undue burden.

The question may arise whether the States should be allowed to participate in this additional tax. They can, of course, secure a larger revenue by simply increasing their rates, but there would then result what would perhaps be an intolerable burden on estates. The immediate purpose for the imposition of the additional Federal estate tax was the raising of much-needed revenue by the Government. To have allowed a credit against this additional tax would have reduced the yield.

After the present emergency has passed, there doubtless will be considerable agitation for the elimination of this additional tax, and even for the retirement of the Federal Government from the death-tax field altogether. Whether this additional tax should be eliminated is a question of policy for the determination of the Congress. However, it may be said that inasmuch as the estate tax is not adapted to use in sudden emergencies, due to the long interval after the imposition of the tax before it becomes productive of revenue, and the further fact that it is perhaps unfair to put a penalty on the accident of death during a particular period of years, Congress should as soon as possible determine what is to be its policy with reference to the taxation of estates and then adhere to that policy so far as it is possible to do so. Frequent changes in estate-tax rates, especially when such changes are of considerable magnitude, can hardly be defended on any ground except mere expediency.

The determination of what burden estates can reasonably bear perhaps should not be settled by the Congress alone, since the States also have a direct interest in the matter. If it should be determined, however, by a gentlemen's agreement between the States and the Federal Government, that 45 per cent or any other is the maximum rate that should be applied, then further determination should be made as to what portion of the tax should be collected by the Federal Government and what portion by the States. The tax can be made uniform by letting the Federal Government impose the maximum tax agreed upon, and then permitting a credit equal to the portion of the tax desired to be reserved to the States.

The States can then, in so far as they choose to do so, impose a tax equal to that amount, and no estate will then have to pay any more or any less whether the property is situated in one State or another, since the Federal Government will collect the whole of the tax if the State does not levy any death tax at all, and where the State does not impose a tax equal to the credit allowed, the tax collected by the Federal Government will be that much greater.

In determining what share of the tax should be allocated to the Federal Government, consideration should be given not only to the protection and privileges which all property receives at the hands of the General Government, but also to the fact that the citizens of all the States contribute to the great wealth that is built up under our national economic system. Another important fact which is often lost sight of should be brought to mind; namely, that owing to the permanent character of corporations, they are not affected by the death of their stockholders. A death tax on the transfer of corporate stock can be imposed only by the State of the owner's domicile. The property of the corporation may be situated in all the other States, and although an interest in this property in effect is transferred at the death of the owner of the stock, these other States are powerless to tax the transfer under estate or inheritance tax laws. Of course, there is nothing to prevent the State of incorporation from imposing a stock-transfer tax, but such levies are usually only nominal, and in any event do not benefit the other States, in which most or all of the corporate property frequently is situated. Under a Federal death tax, however, all the States indirectly benefit from the taxation of the stock, and that is the only way in which the States other than the domicile of the stockholder or the State of incorporation can participate.

The importance of this peculiar situation may be emphasized by recalling to mind that in the case of estates of over $10,000,000, it has been shown that, on the average, over 80 per cent of the property is composed of intangibles, such as stocks and bonds. This means that the States where great wealth is concentrated often get more than their fair share of death taxes when it is considered that the real wealth which they tax is actually located in many other States which are themselves powerless to reach it by death taxes.

It appears that the more wealth an individual possesses the less likely it is that it was amassed under the protection of any one State or through the patronage of its people. Thus, it may be thought desirable that some determination ought to be made, in adjusting the respective shares of the Federal and State Governments in the collection of death taxes, as to whether or not the Federal share should be greater as the size of the estate increases. In other words, whether there should be a variable credit against the Federal tax for State death taxes paid, depending upon the amount of the net estate. A sliding scale of credits could be set up allowing, for example, a credit of 80 per cent where the estate was not greater than $100,000, graduated down to a credit of, say, 10 per cent where it exceeded $10,000,000 in value. The exact percentages could be worked out by joint agreement among the States and the Federal Government. The figures given are not suggested as providing a proper distribution, but only to show how a variable credit might be provided. It would even be possible to divide the estate tax field into two parts, the states being allowed the tax derived from estates of under a certain amount and the Federal Government all the tax on the large estates of over that amount.

If the present system of taxation of estates of decedents (State and Federal) were continued indefinitely, it would result in the division of the death tax field between the Federal Government and the States at a ratio of about two-thirds to the former and one-third to the latter. This division applies only to the upper brackets, however, since the State taxes usually exceed the amount of the Federal credit in the lower brackets. In the case of an estate of $10,000,000, for example, where the State tax was equal to the 80 per cent credit, the total Federal and State tax was about $1,334,500 before the enactment of the revenue act of 1932, and of this sum, the Federal Government received only $266,900, or 20 per cent. The additional Federal tax on such an estate amounts to $1,760,000, making a total tax (Federal and State) of $3,094,500, of which $2,026,900, or 65 per cent, goes to the Federal Government. Thus, if the Federal Government levied a single tax, with a maximum rate of 45 per cent, and allowed a credit for State taxes up to 35 per cent of the Federal tax, it would collect practically the same amount of revenue it now does from estates of $10,000,000. As the size of the estate diminishes, the percentage of the total tax collected by the Federal Government increases, being over 70 per cent in the case of estates of $1,000,000. In a few States, however, where the State tax is greater than 80 per cent of the Federal tax under the 1926 act, the percentage collected by the Government will be less because the total tax will be greater.

The substitution of a single Federal death tax for the two taxes imposed at the present time would greatly simplify the administration of the law and would make the work of executors and administrators of estates much easier. Of course, sufficient time would have to be allowed to permit the States to readjust their laws which are for the most part based upon the Federal act of 1926. Under the present system, there are two schedules of rates, two different exemptions, and in one case credit is allowed for State death taxes paid and in the other it is not. With a single Federal tax, allowing a properly adjusted credit for State death taxes, the foundation would be laid for a fairly permanent system of taxation of estates in this country.

3. REVALUATION OF ESTATES

Attention has already been called to the situation resulting from the increase or decrease in property values after the death of a decedent. Under the present arrangement, where the tax is based on the value of the property as of the date of the owner's death, no allowance is made for either accretion or depletion. Where the property has declined in value at the time it is distributed to the beneficiaries, the tax may largely absorb it; and where there has been an increase in value, the increment is not reached by the estate tax.

A plan providing for such contingencies is set forth in Exhibit U of the appendix, under which a tax would be computed on the value of the estate at the time of the owner's death, and the composite rate ascertained. This composite rate would then be applied to the value of the estate at the time of its distribution. Thus, if the estate has decreased in value, some relief is afforded by reason of the fact that the tax is imposed on this depreciated value, even though the rate is higher than under the regular schedule. On the other hand, if the estate has increased in value, the increment is taxed, though at a lower rate than under the regular schedule.

Other plans have been suggested, but they generally do not provide for a rule which works both ways. The Ways and Means Committee recommended to the Congress a plan for revaluation of depreciated estates as a consequence of the extreme decline in values beginning in the fall of 1929. The plan was not enacted largely because of the great amount of refunds that would have been necessary if it had become law, affecting State as well as Federal revenues. Viewed prospectively, however, the equity of making some adjustment for depreciation in estates is apparent. It is hardly the policy of the Congress to confiscate estates of decedents in any case, yet unless some action is taken with reference to the problem the tax will continue to border on confiscation in some cases. If an adjustment is made, the plan ought to be such as would work equity both to the Government and the taxpayer, and it should be incorporated in the law as a permanent feature.

While during the past few years the country has undergone what has been termed a "depression," it may well be that in the next few years it will experience "boom" times again. Under such circumstances, the advantage coming from the enactment of such a plan as is suggested in Exhibit U lies largely on the side of the Government. Unless retroactive legislation were enacted to take care of the cases where the estates have depreciated in the past few years, they would be beyond the scope of the provision here suggested.

It may be doubted whether it would be worth while to make a detailed estimate of the value of every estate at the time of the owner's death and again at the time of distribution in order to determine whether the tax is to be increased or decreased. Every estate undoubtedly increases or decreases in value to a certain extent within the 1-year period after the decedent's death, and the change in the amount of the tax would be infinitesimal in most cases. Therefore it may be deemed advisable to place some limitation on the application of the suggested plan, requiring a change in value of more than, say 15 per cent, before the provision could be invoked.

As an alternative to this plan, it might be provided that the Federal tax should in no case exceed the amount which would be payable if the highest rate applicable to any portion of the net estate at death were applied to the entire net value of the estate at the time of distribution.

Another plan which might be suggested would be to make no alteration in rates but to limit the total tax payable to an amount not exceeding a given percentage, say 50 per cent, of the value of the net estate at distribution. This method, however, would be disproportionately beneficial to the larger estates.

4. DESIRABILITY OF GREATER UNIFORMITY IN STATE STATUTES

Substantial uniformity in the death tax burden on the larger estates throughout the various States has resulted from the influence of the provision of the Federal estate tax act of 1926 which permits a credit against the tax imposed thereby, up to 80 per cent thereof, for death taxes paid to the States. Prior to the enactment of this credit provision, which was first allowed under the 1924 act to the extent of only 25 per cent, there was little uniformity among the States with regard to death taxes. Some States had comparatively high rates, others low rates, and the States of Alabama and Florida had no death taxes at all. Thus, prior to 1924, there was a wide variation in the death-tax burden in the several States.

While a general uniformity of burden has now been brought about, there still remain a number of problems that should doubtless be dealt with. For example, a majority of the States have both an inheritance tax and an estate tax. The basic levy is the inheritance tax, while the estate tax is imposed in most cases for the purpose of bringing the State tax up sufficiently high to take full advantage of the Federal credit. If a single tax could be imposed, it would be much easier for the States to administer and for the representatives of the decedent's estate to apply. In another part of this report, it is suggested that the States might avail themselves of the inheritance, or share tax, leaving the use of the estate tax to the Federal Government. In this way, proper discrimination can be made in favor of direct heirs over collaterals, and in favor of collaterals over strangers, which is not possible under an estate tax.

In nearly all of the States, the basic tax is on the distributive shares of the estate, the rates and exemptions being governed by the relationship of the beneficiaries to the decedent. For this purpose, the beneficiaries are usually divided into three groups, namely, direct heirs, collateral heirs, and strangers in blood. Some States have a larger number of classes, while others have but one or two. Thus, there is no uniformity in the classification of beneficiaries for the purpose of determining the rates and exemptions. A beneficiary may be in one class in State A, in another in State B, and in still another in State C.

Not only are the classifications of beneficiaries different, but the exemptions applicable to each class are likewise quite divergent in the several States. In the case of a widow, the exemption ranges from \$5,000 to \$75,000; in the case of a child, from \$2,000 to \$25,000; and so on.

In addition to the variance in the exemption applicable to the several classes of beneficiaries, there is also little uniformity among the States with regard to the rates imposed on each class. In a number of States, the maximum rate applicable to direct heirs is 5 per cent or less, and in others it reaches higher levels, running up to 16 per cent. On remote relatives and strangers in blood, the maximum rate varies from 5 per cent or less to 40 per cent. Thus, there is little uniformity among the States in the treatment of persons standing in the same relationship to a decedent.

It is, perhaps, desirable that death duties should be as uniform as possible throughout the United States. However, it must be recognized that each State has the right to determine its own policy of taxation. In view of the variations in these policies, the divergence of wealth, resources and industry, constitutional limitations, and other factors, absolute uniformity of death duties is almost too much to be hoped for. The enactment by the States of some model plan of inheritance taxation would bring about the uniformity desired, and some time in the future it is hoped that this goal will be reached. In the meantime, doubtless some forward steps in this direction can be taken without any radical change in policy on the part of the States.

One of the worst evils of State inheritance taxation has been the multiple taxation of intangible personal property, such as stocks and bonds, notes, and so forth. Most of the States, in addition to taxing the personal property of their resident decedents, regarded intangible personal property of nonresidents, under certain circumstances, as having a situs for taxation purposes within the State. It was thus possible for an estate to be taxed a number of times on the same property. For example, if the decedent owned stock in a corporation, it might have been taxed by the State of his domicile, the State of incorporation of the corporation, the State where the property of the corporation was located, the State where the transfer of the stock was made, and the State where the securities were kept. If more than one State claimed the decedent as a resident, there would be another tax added to the list. The States took this problem in hand, and by reciprocity agreements among themselves largely did away with this practice. Under recent decisions of the Supreme Court, multiple taxation has been dealt a severe blow on constitutional grounds. However, attacking this problem as they did, the States have shown a willingness to cooperate, and it is to be hoped that further progress will be made in working out desirable reforms.

A considerable portion of the first part of this report is given over to a discussion of the laws of descent and distribution in the various States and in certain foreign countries. It is in its law of descent and distribution that each State gives effect to its policy regarding the distribution of property of decedents dying intestate. With almost no exceptions, the direct heirs of the decedent are favored over the collateral heirs, and where there are no heirs the property escheats to the State.

It was with the thought in mind that the taxation of inheritances should perhaps bear some relation to the statutes of descent and distribution that a summary of the laws governing the devolution of property was included in this report. The privilege of inheriting property, whether through intestacy or by will, is derived from the State. The more remote the relationship of the recipient of the property to the decedent, the greater may be said to be the privilege accorded. But do the inheritance tax statutes give sufficient recognition to this principle in imposing the tax on the different classes of heirs? Reference has already been made to the fact that the beneficiaries are grouped into classes varying from one to five in number. In New Hampshire, direct relatives are exempt from the tax, and collaterals and strangers are taxed at a flat rate of 5 per cent with no exemptions. Thus, in that State there is no discrimination in the taxation of an inheritance going to a brother, nephew, or uncle of a decedent and one going to an utter stranger, either through the medium of rates or of exemptions. In Maryland, New Mexico, Pennsylvania, Tennessee, and Vermont, collaterals are also placed in the same class with strangers. In some instances, only certain collaterals are included, as is the case in Iowa. In that State, brothers and sisters are given a separate and more favorable classification. Michigan also favors brothers and sisters but leaves uncles and nephews in the same group with strangers.

The State of Wisconsin represents the reverse of the situation prevailing in the States just referred to. In that State, strangers in blood are not only given an entirely different classification but are taxed at a minimum rate of 40 per cent. The maximum rate in the case of inheritances by uncles and aunts is 30 per cent; brothers and sisters, 20 per cent; and direct heirs, 10 per cent. Wisconsin may thus be said to give due regard to consanguinity in fixing the rates of tax, thus bringing the statute in general conformity with the principles underlying the order of descent and distribution. Arkansas also has a maximum rate of 40 per cent on strangers, but uncles and aunts, and nephews and nieces, are included within the class. In the other States, although discrimination is made in favor of direct heirs over collaterals, and in favor of collaterals over strangers, the maximum rate in the case of strangers is often not far removed from the maximum rates in the case of the other groups. Moreover, the maximum rate in the case of strangers is often not very high. For example, in Maryland, New Hampshire, New Mexico, and Vermont, it is 5 per cent; in Wyoming, 6 per cent; in Maine, 7 per cent; in Connecticut, Delaware, and Rhode Island, 8 per cent.

Strangers take property from a decedent only by virtue of a will or other testamentary disposition. They are not within the purview of the statutes of descent and distribution. The law of the State gives effect to the decedent's will and allows the stranger to benefit from its provisions. Hence it is fair for the State to take a substantial portion of the inheritance.

So far as remote relatives are concerned, a testator seldom has them in mind in making his will. If he dies intestate, it is only by grace of the law of descent and distribution that they participate in the estate at all. In many cases, no doubt, if the testator had made a will they would have been ignored. In other cases, the testator would probably have had no knowledge even of their existence. The controversy growing out of the settlement of the Wendell estate in New York is a good example of this situation. In such cases, it is certainly proper and fair for the State to step in and tax the beneficiaries heavily. The way is open for more of them to do so if they see fit. The present lack of uniformity in the taxation of strangers in blood is clearly illustrated by the several charts in Exhibit O of the appendix, to which attention is drawn. A similar situation exists with reference to the taxation of remote relatives, although the charts do not cover this group.

5. MISCELLANEOUS SUGGESTIONS FOR LEGISLATION

(*a*) *Gifts made in contemplation of death.*—Under the chapter dealing with "Contemplation of Death," the difficulties attending the inclusion within the estate tax of gifts made by a decedent in contemplation of death are pointed out. The Supreme Court recently held unconstitutional the provision of the 1926 act under which gifts made within two years of the death of a decedent were conclusively presumed to have been made in "contemplation" of death. Since there is now only a prima facie presumption in such cases, it will be almost impossible to prove that a testator had death in mind when making a particular gift in his lifetime. The simplest manner in which to reach such gifts is under a gift tax, and such a tax has now been imposed. Thus, the necessity for even the prima facie presumption in the estate-tax statute no longer exists. Its elimination would obviate a considerable amount of litigation, and the Federal Government would lose in revenue only the difference between the amount of the estate tax and the amount of the gift tax. This revenue will largely be lost whether the statute is changed or not, because the percentage of cases in which the Government is able to prove contemplation of death is probably less than 5 per cent, and the Government must go to considerable expense in litigating the matter in each case. Moreover, it is not even to the Government's interest to litigate since the whole gift tax goes to the Federal Government without credit for State taxes paid.

(*b*) *Transfers in trust.*—There is considerable doubt as to the constitutionality of taxing under the estate-tax statute transfers in trust made during the lifetime of a decedent which were not in contemplation of death. (See discussion of Trusts in Part IV.) Such transfers, however, would clearly be taxable under the present gift-tax statute. In the past, much litigation has been occasioned over the taxation of transfers in trust, and it is thought that if they were removed from the scope of the estate tax the administration of the law would be greatly simplified at little, if any, loss to the Government.

(*c*) *Community property.*—The problem of the taxation of estates of decedents residing in States having the community property system is discussed in Part V of this report under the caption "Inequities of the Present System to the Government." It is there shown that on the death of a decedent in a community-property State, only half his property is taxable, since the surviving spouse is deemed to be the owner of the other half. This results in the Federal Government losing considerable revenue through the breaking up of the estate and causing it to be taxed under lower brackets of the progressive rate schedule. Even though the property of the surviving spouse is later taxed, the total burden on the estate is considerably less than it would have been had the property been situated in a State not having the community property system.

In Part IV of this report, there is a general discussion of the community property system. It is there pointed out that the interest of a wife in the property of her husband is a vested one, and that as the Government is bound by the property laws of the States it must recognize that the one-half of the community property which becomes exclusively the wife's on her husband's death is not taxable as a part of his estate. The question is raised, however, whether a transfer is necessary to enable the Government to levy a tax on her share at that time. It is suggested that while the wife does not "acquire" the property on the death of her husband she does at that time gain the exclusive right to manage, control, and dispose of it, and that the acquisition of this right might be a sufficient basis upon which to tax the property. To definitely determine whether this can be done, the Federal statute would have to be amended to include the wife's interest and then be tested in the courts.

(*d*) *Powers of appointment.*—The present Federal estate tax law requires the inclusion in the estate of a decedent of any property as to which he exercised a general power of appointment, whether by will, or by a deed made in contemplation of death or intended to take effect in possession or enjoyment at or after death. The statute, however, does not define a "general" power, and much litigation and difficulty is occasioned in determining whether a given power is general or limited only. It is suggested that the statute be amended to remedy this ambiguity.

I. CONCLUSION

The main purpose of this report has been to set forth the principal facts which may be properly considered both by the Federal Government and the States in enacting death duties. &ny onclusions which are drawn in the report should be considered as entirely tentative, except such as are conclusively shown by facts and not by theory.

In viewing the subject matter of the report as a whole, however, it does not seem out of place to state certain principles which we believe have been established and to raise certain issues which we believe might well be discussed with the view of arriving at some well rounded scheme of death duties to be imposed by the Federal Government and the States.

It is the opinion of this office that the following statements are adequately supported by the report:

(1) The inheritance tax is more equitable than the estate tax, but the estate tax is far easier of administration.

(2) It must be admitted that the present Federal estate tax, with rates reaching a maximum of 45 per cent, is based not only on revenue considerations but on the social purpose of bringing about distribution of wealth. In such a situation, there appears to be no good reason for frequent and radical changes in the rate structure. A large estate should pay as much tax in a prosperous year as in a year of depression. The estate tax rates should be standardized.

(3) The present death tax system, with two estate taxes levied by the Federal Government, and with both an estate tax and an inheritance tax levied by most of the States, is excessively complex and should be simplified even if the tax burden is not materially changed.

(4) A well-balanced death duty is one of the best forms of taxation and is a good revenue producer.

Without drawing conclusions, it is also desired to raise the following issues for the consideration of the public and of the committee.

(1) Should the Federal Government occupy the higher estate tax field only? That is, should a tax be levied by it only on the larger estates?

(2) Should the State governments occupy the inheritance tax field only? That is, should they use the inheritance tax solely and tax all inheritances over a relatively small amount?

(3) What is the correct average share of the total death-tax burden which the Federal Government should take in the case of the larger estates? In other words, is the 60 per cent which we now secure from our double estate tax the correct proportion?

(4) Should an attempt be made to include some of the equitable features of the inheritance tax in our estate tax? For instance, should we increase the exemption according to the number of direct heirs?

(5) Should some provision be enacted to prevent confiscation of estates by death duties where there is a sudden shrinkage in values after death?

(6) What can be done to bring about the simplification of both Federal and State death duties?

It is hoped that this discussion of death duties together with the tables contained in the appendix may serve a useful purpose in connection with future legislation on this subject. The following members of the staff of the joint committee have contributed largely to the subject matter contained in the report: Mr. Colin F. Stam, Mr. G. D. Chesteen, Mr. L. L. Stratton, Mr. B. C. Brown, and Mr. Leslie M. Rapp.

Respectfully submitted.

L. H. Parker, *Chief of Staff*.

APPENDIX

EXHIBIT A

SUMMARY OF THE LAWS OF DESCENT AND DISTRIBUTION IN CERTAIN FOREIGN COUNTRIES (AS OF JULY 1, 1931)

I. England

For many centuries, England recognized the principle of primogeniture, but with the exception of entailed estates this was finally eliminated in 1925. The present rule in the case of a person dying intestate, on the basis of the administration of estates act of 1925, is as follows:

For both real and personal property:

1. Children and their descendants.
2. Father and mother in equal shares, or the survivor alone.
3. Brothers and sisters of the whole blood.
4. Brothers and sisters of the half blood.
5. Grandparents in equal shares.
6. Uncles and aunts of the whole blood.
7. Uncles and aunts of the half blood.
8. The surviving husband or wife absolutely.
9. The Crown, or Duchy of Lancaster, or the Duke of Cornwall.

The above rule is subject to the following rights of husband or wife, as the case may be:

Husband or wife—

1. Takes personal chattels (not including money or securities or business interests) and 1,000 pounds, if relations are left but no issue, relations taking in remainder.
2. If intestate leaves issue, the residuary estate is divided into two equal portions, husband or wife taking life interest in one-half the estate for life, with remainder interest in the issue, the other one-half of the estate being taken by the issue immediately.
3. If intestate leaves no issue, the entire residuary estate is held in trust for the husband or wife for life.
4. If no relations or issue are left, husband or wife takes all absolutely. (See No. 8 in the order of descent.)

The new rule laid down in 1925 abolished curtesy, dower, freebench, etc. As before noted, it does not affect the descent of an "entailed interest," and an estate by curtesy can still arise in equity on the death of a married woman tenant in tail. A comparison of the application of the new rule and the old law is interesting, and is quoted from "A Brief Guide to the New Code of Intestacy," by D. Gwyther Moore.

EXAMPLE

(Intestate leaves a widow, two sons, two daughters.)

Old law	*New code*
Real estate: The widow's right to dower. Eldest son is heir-at-law.	(*a*) Widow takes— (1) Personal chattels. (2) 1,000 pounds free of duties. (3) Life interest in half of residue.
Personal estate: Widow, one-third. Sons and daughters, two-thirds equally between them.	(*b*) Sons and daughters take equally— (1) One-half residue, absolutely. (2) Reversionary interest in other half.

II. France

The distinguishing feature of the French rule for the descent and distribution of property is the division of the estate into two equal portions in the case of no issue. One of these portions goes to ascendants and one to collaterals. No primogeniture rule exists in France. The present rule is as follows:

For both real and personal property:

1. Children and descendants.
2. Brothers and sisters and descendants (one-half) to the sixth degree. Father and mother (one-half); if only one survive, one-fourth—three-fourths to brothers and sisters.
3. Ascendants of paternal and maternal line. (No right of representation in this class. Ascendants inherit to the exclusion of all other persons any object given the descendant and still existing in kind, and if sold, the ascendant is entitled to the proceeds.)
4. If none of the above, widow or widower, if not previously separated.
5. In default of regular heirs or surviving spouse, estate passes to the Government.

The above rule is subject to the following rights of husband or wife, as the case may be:

Husband or wife—

1. Takes life interest in one-fourth where there are children of the marriage.
2. Takes life interest in part equal to that of a legitimate child, but not exceeding one-fourth, where there are children from a previous marriage.
3. Takes life interest in one-half where there are natural children or legitimate descendants of same, or brothers and sisters of the deceased, or descendants thereof, or ascendants of the deceased.
4. Takes life interest in whole, in all other cases.

Neither dower nor curtesy exist in France.

III. Germany

It appears that the distinguishing feature of the German rule for the descent and distribution of property is to be found in the fact that the rights of a surviving spouse are absolute and do not consist in a life interest. The present rule is as follows:

For both real and personal property:

1. Children and descendants.
2. Parents and descendants.
3. Grandparents and descendants.
4. Great grandparents and descendants.
5. More remote ancestors and descendants.

NOTE.—(The first three take per stirpes; others per capita.)

The above rule is subject to the following rights of husband or wife as the case may be:

Husband or wife—
1. Takes one-fourth of estate if there is issue.
2. Takes one-half of estate if there is no issue but living relatives of certain degree.

Neither dower nor curtesy exist in Germany.

IV. Italy

The distinguishing feature of the Italian rule of descent and distribution of property is the precedence of brothers and sisters over the father and mother. The present rule is as follows:

For both real and personal property:

1. Children and descendants (lawful descendants).
2. Brothers and sisters.
3. Fathers and mothers.
4. Ascendants.
5. Next of kin within tenth degree.
6. State.

The above rule is subject to the following rights of husband or wife as the case may be:

Husband and wife—
1. Takes life interest in a portion equal to share of a child (not over one-fourth).
2. Takes one-third if there are no legitimate children but others who may take.

Neither dower nor curtesy, as such, exist in Italy. It might also be noted that the owner can dispose by will of only one-half of his property if there are children, or two-thirds if no children. The balance goes to "forced heirs."

V. Spain

The distinguishing feature of the Spanish rule of descent and distribution of property is the community property principle, which allows the surviving spouse to take one-half of the marriage partnership estate. The present rule is as follows:

For both real and personal property:

1. Legitimate descendants.
2. Legitimate ascendants.
3. Natural children legally recognized.
4. Brothers and sisters.
5. Surviving spouse.
6. Collaterals up to the fourth degree.
7. State.

The above rule is subject to the following rights of husband or wife, as the case may be:

Husband or wife—
1. Takes one-half of marriage partnership estate.
2. Takes in addition life interest in portion of the remainder varying from the smallest share which any of the children could inherit up to all in case of no surviving relatives.

Neither dower nor curtesy, as such, exist in Spain. It might also be noted that the owner can dispose of only one-third of his property by will. The balance goes to "forced heirs."

EXHIBIT B

SUMMARY OF THE LAWS OF DESCENT AND DISTRIBUTION IN THE UNITED STATES (AS OF JULY 1, 1931)

GENERAL NOTE

There follows, in this exhibit, a brief summary of the laws of descent and distribution in force in the several States and in the District of Columbia as of July 1, 1931.

These laws are set out under two main heads: A. Rights of the surviving spouse; and B, Order of descent and distribution—a separation which, at the same time, serves the main purposes of the report and accords with the prevailing legal view that the surviving spouse, in a strict sense, does not take as heir but by virtue of the marriage relation.

The rights of the surviving spouse, whether widow or widower, are stated in full under each contingency—a method which, at the expense of some repetition as to personalty or realty, is considered clearer. Dower and curtesy rights are noted where there is an election between these rights and the rights given by the intestate law.

The second head, "Order of descent and distribution," relates to an estate, or that portion of an estate, in which a surviving spouse has no interest. In the ordinary case, the heirs and distributees of any estate may be determined, however remote of kin, from the several "orders." To determine the rights of such as kindred of the half blood, adoptive kindred, illegitimates, and aliens, however, recourse must be had to the statutes and decisions.

"Next of kin" are generally determined according to the computation of the civil law, that is, by counting the degrees (or generations) up from the decedent to the common ancestor and then down to the claimant. Unless otherwise noted, this is the computation used, and claimants of equal degree take equally.

Questions involving the right to take by representation must also be resolved by reference to the statutes and the decisions. It may be stated, however, that the right is extended to descendants of the decedent, but among collaterals is generally limited to descendants of brothers and sisters.

The notes concluding each résumé, besides indicating the preferences among "next of kin," set out the principal exceptions to what has preceded, both with reference to the rights of the surviging spouse and the order of descent and distribution. Ancestral property, whether recognized generally or restricted to the estates of unmarried minors, is the principal cause of alteration in the order of descent.

ALABAMA

A: Rights of surviving spouse (see note):

(1) Widow takes—

(*a*) One-third realty for life, and a child's part in the personalty but not less than one-fifth if children survive.

(*b*) One-third realty for life, and all the personalty if no children, but descendants of children survive.

(*c*) One-half realty for life, and all the personalty if no descendants, but parents, or brothers or sisters and their descendants, survive.

(*d*) All the realty and personalty if no descendants, parents, brothers, sisters, or descendants of brothers or sisters survive.

A. Rights of surviving spouse (see note)—Continued.
 (2) Widower takes—
  (a) All the realty for life, and one-half the personalty if descendants, parents, or brothers and sisters or their descendants survive.
  (b) All the realty and personalty if no descendants, parents, brothers and sisters, or descendants of brothers or sisters survive.

B. Order of descent and distribution:
 1. Children and their descendants.
 2. Parents.
 3. Brothers and sisters and their descendants.
 4. Next of kin.
 5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes except as noted below:

NOTE—*Rights of surviving spouse.*—The widow's interest in her husband's realty is a dower right. The dower is shown above for the usual case, but it is subject to two exceptions: First, if the estate is insolvent, her share is limited to one-third; second, if she is possessed of a separate estate, her dower in the realty is limited to the excess, if any, of the value of the dower over the value of her separate estate.

NOTE—*Class 2.*—If only one parent survives, brothers and sisters and their descendants collectively, take one-half.

ARIZONA

(Community property State)

A. Rights of surviving spouse:
 (1) Widow takes—
  (a) One-half the community property, one-third the separate realty for life, and one-third the separate personalty if descendants survive.
  (b) All the community property, one-half the separate realty, and all the separate personalty if no descendants but parents survive.
  (c) All the community property and all the separate property if no descendants or parents survive.
 (2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
 1. Children and their descendants.
 2. Parents.
 3. Brothers and sisters and their descendants.
 4. Next of kin.
 5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes except as noted below:

NOTE—*Class 2.*—If only one parent survives, brothers and sisters and their descendants, collectively, take one-half.

NOTE—*Class 4.*—In this class one moiety goes to the paternal, the other to the maternal kindred, the nearest lineal ancestors or their descendants on each side taking.

ARKANSAS

A. Rights of surviving spouse:
 (1) Widow takes—
  (a) One-third realty for life, and one-third personalty if kindred survive.
  (b) All realty and personalty if no kindred survive.
 (2) Widower takes—
  (a) One-third realty for life and one-third personalty if descendants survive.
  (b) One-half realty for life and one-half personalty if no descendants but other kindred survive.
  (c) All realty and personalty if no kindred survive.

B. Order of descent and distribution:
1. Children and their descendants.
2. Father.
3. Mother.
4. Brothers and sisters and their descendants.
5. Next of kin.
6. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes except as noted below:

NOTE—*Classes 2 and 3.*—If the estate came by the father, it shall ascend to the father and his heirs; if by the mother, to the mother and her heirs. If the estate was a new acquisition, it shall ascend to the father for life, then to collaterals as stated; if no father, it ascends to the mother for life, then to the collaterals, as stated.

NOTE—*Class 5.*—In this class, the nearest ancestors and their children, and the descendants of their children take.

CALIFORNIA

(Community property state)

A. Rights of surviving spouse:
(1) Widow takes—
(*a*) All community property and one-third separate property, if more than one child, one child and descendants of one or more, or descendants of more than one survive.
(*b*) All community property and one-half separate property, if one child, or descendants of one, parents, brothers, sisters, or descendants of brothers or sisters survive.
(*c*) All community property and all separate property, if no descendants, parents, brothers, sisters, or descendants of brothers or sisters survive.
(2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
1. Children and their descendants.
2. Parents.
3. Brothers and sisters and their descendants.
4. Next of kin.
5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below.

NOTE—*Class 3.*—If decedent was an unmarried minor any inheritance from a parent goes to the other children of such parent or their descendants.

NOTE—*Classes 2, 3, and 4.*—If decedent leaves no issue, and any part of the estate was the separate property of a previously deceased spouse which came to the decedent by descent, devise, or bequest, such property goes to the children of the deceased spouse, then to parents, then to brothers and sisters. If none of the above survive, the property goes to the next of kin of decedent, as above.

COLORADO

A. Rights of surviving spouse:
(1) Widow takes—
(*a*) One-half if descendants survive.
(*b*) All if no descendants survive.
(2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
1. Children and their descendants.
2. Parents.
3. Brothers and sisters and their descendants.
4. Next of kin. (See note.)
5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes.

NOTE—*Class 4.*—In this class the nearest lineal ancestors and their descendants take, grandparents, uncles, and aunts and their descendants taking equally.

CONNECTICUT

A. Rights of surviving spouse:
  (1) Widow takes—
    (*a*) One-third of realty and personalty if descendants survive.
    (*b*) All realty and personalty up to $2,000 and one-half the excess, if a parent but no descendants survive.
    (*c*) All realty and personalty if no descendant or parent survive.
  (2) Widower takes in same manner as widow above.
B. Order of descent and distribution:
  1. Children and their descendants.
  2. Parents.
  3. Brothers and sisters and their descendants.
  4. Next of kin.
  5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes.

DELAWARE

A. Rights of surviving spouse:
  (1) Widow takes—
    (*a*) One-half realty for life, and one-third personalty if children and descendants survive.
    (*b*) All realty for life and all personalty if neither children nor descendants survive.
  (2) Widower takes in same manner as widow above.
B. Order of descent and distribution:
  1. Children and their descendants.
  2. Parents.
  3. Brothers and sisters and their descendants.
  4. Next of kin.
  5. The State.

The property of the intestate, or such portion as does not go to the surviving spouse, passes in the order shown above, the persons in one class excluding those in subsequent classes except as noted below:

NOTE—*Classes 2, 3, and 4.*—Realty which came to intestate by an ancestor descends to brothers and sisters of the blood of the ancestor.

NOTE—*Class 4.*—In this class, those of equal degree (and their descendants by representation) take equally, preference within the same degree being given to those claiming through the nearest ancestor. Collateral kindred claiming real estate through a nearer common ancestor are preferred over those claiming through a more remote ancestor.

DISTRICT OF COLUMBIA

A. Rights of surviving spouse:
  (1) Widow takes—
    (*a*) One-third realty for life and one-third personalty if descendants survive.
    (*b*) One-third realty for life and one-half personalty if no descendant, but parent, brother, sister, or child of brother or sister survive.
    (*c*) One-third realty for life and all the personalty if no child, parent, grandchild, brother, sister, or child of brother or sister but other kindred survive.
    (*d*) All realty and personalty if no kindred survive.
  (2) Widower takes in same manner as widow above, except that as to realty, in cases where widow would take one-third for life, widower takes all for life if issue was born of the marriage capable of inheriting.

B. Order of descent and distribution:
 I. Descent—
  1. Children and their descendants.
  2. Brothers and sisters and their descendants.
  3. Father.
  4. Mother.
  5. Next of kin. (See note.)
  6. Kindred of spouse or spouses.
  7. The United States.
 II. Distribution—
  1. Children and their descendants.
  2. Father.
  3. Mother.
  4. Brothers and sisters and their descendants.
  5. Next of collateral kin to the fifth canon-law degree.
  6. Grandparent (male preferred to female on same side).
  7. District of Columbia.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

NOTE—*Classes 2, 3, 4 and 5 descent.*—In the case of ancestral realty those of the blood of the ancestor in any degree are preferred.

NOTE—*Class 5 descent.*—In this class descent is to the nearest ancestors (male being preferred in same degree) or their descendants.

FLORIDA

A. Rights of surviving spouse:
 (1) Widow takes—
  (*a*) One-third of realty for life and one-third of personalty if more than one child survive.
  (*b*) One-third realty for life and one-half personalty if only one child survive.
  (*c*) One-third realty for life and one-half the personalty if no children but other descendants survive.
  (*d*) All of realty and personalty if no descendants survive.
 (2) Widower takes—
  (*a*) Realty and personalty with children and descendants if such survive.
  (*b*) All realty and personalty if no descendants survive.

B. Order of descent and distribution:
 1. Children and their descendants.
 2. Parents.
 3. Brothers and sisters and their descendants.
 4. Next of kin.
 5. Kindred of spouse.
 6. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes.

NOTE—*Class 4.*—In the case of this class the estate is divided into two moieties, one moiety each going to paternal and maternal kindred as follows: (1) Grandfather; (2) Grandmother, uncles, aunts, and their descendants, and so on to the nearest male ancestor, then to the nearest female ancestor of the same degree, and their descendants.

GEORGIA

A. Rights of surviving spouse (see note):
 (1) Widow takes—
  (*a*) A child's part, but not less than one-fifth of realty and personalty if descendants survive.
  (*b*) All realty and personalty if no descendants survive.
 (2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
1. Children and their descendants.
2. Parents, brothers, and sisters and their children and grandchildren.
3. Next of kin.
4. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes.

NOTE.—*Rights of surviving spouse.*—A widow may elect to take dower—one-third of the realty for life—in lieu of rights in realty under intestate law stated above.

NOTE.—*Class 4.*—First cousins, uncles, and aunts inherit equally and come first among "next of kin." The more remote degrees are determined by the rules of canon law as adopted and enforced in the English courts prior to July 4, 1776.

IDAHO

(Community property State)

A. Rights of surviving spouse:
(1) Widow takes—
(*a*) All the community property and one-third of the separate property if more than one child, one child and descendants of one or more, or descendants of more than one survive.
(*b*) All the community property and one-half the separate property if parent, one child, or descendants of one, survive.
(*c*) All of community and separate property if no descendant or parent survive.
(2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
1. Children and their descendants.
2. Parents.
3. Brothers and sisters and their children.
4. Next of kin. (See note.)
5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

NOTE.—*Class 2.*—If decedent was an unmarried minor, any inheritance from a parent passes to the other children of such parents or their descendants.

NOTE.—*Class 4.*—Next of kin of equal degree take equally except that those descended from the nearest ancestor are preferred.

ILLINOIS

A. Rights of surviving spouse (see note):
(1) Widow takes—
(*a*) One-third of realty and personalty if descendants survive.
(*b*) One-half the realty and all the personalty if no descendants but parents, brothers, and sisters, or their descendants survive.
(*c*) All realty and personalty if no kindred survive.

B. Order of descent and distribution:
1. Children and their descendants.
2. Parents, brothers, sisters, and their descendants.
3. Next of kin.
4. The county.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes.

NOTE.—*Rights of surviving spouse.*—The widow or widower may elect to take dower—one-third of the realty for life—in lieu of the rights in realty under intestate law stated in case (*a*) above.

Indiana

A. Rights of surviving spouse (see note):
- (1) Widow takes—
  - (*a*) One-third of the realty and personalty if more than one child survive.
  - (*b*) One-half of the realty and personalty if only one child survive.
  - (*c*) Three-fourths of the realty and personalty if no children but a parent survive.
  - (*d*) All realty and personalty if no children or parents survive.
- (2) Widower takes:
  - (*a*) One-third of the realty and personalty if children survive.
  - (*b*) All realty and personalty if no children or parent survive.

B. Order of descent and distribution:
1. Children and their descendants.
2. Parents, brothers and sisters and their descendants. (See note.)
3. Next of kin.
4. The State.

The property of the intestate or such portion as does not go to the surviving spouse, passes in the order shown above, the persons in one class excluding those in subsequent classes.

Note—*Rights of surviving spouse.*—As against creditors the widow's share in the realty is limited as follows: If the value does not exceed $10,000, to one-third; if it exceeds $10,000 but does not exceed $20,000, one-fourth; if it exceeds $20,000, one-fifth. If she remarry and descendants by a former marriage survive, she can not alienate real estate which came to her by such marriage without joinder by the children; also, if widow is childless by decedent, and she leaves surviving children of a former marriage, her interest is only for life.

Note—*Class 2.*—One-half goes to parents or survivor.

Note—*Class 3.*—If decedent acquired the inheritance by gift, devise, or descent, preference is given to the line from which it was so acquired, if otherwise acquired, it goes one-half to the paternal, one-half to the maternal line, or all to the surviving in the following order: Grandparents or survivor, uncles and aunts and their descendants, next of kin.

Iowa

A. Rights of surviving spouse:
- (1) Widow takes—
  - (*a*) One-third of the realty and personalty if descendants survive.
  - (*b*) All of the realty and personalty up to $7,500 in value and one-half the excess if no descendants but parents or heirs of latter survive.
  - (*c*) All realty and personalty up to $7,500 in value and one-half the excess if no kindred but heirs of a deceased spouse or spouses survive.
  - (*d*) All realty and personalty if no kindred of decedent or deceased spouse survive.
- (2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
1. Children and their descendants.
2. Parents.
3. Brothers and sisters and their descendants.
4. Next of kin.
5. Heirs of spouses.
6. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes except as noted below:

Note—*Nonresident aliens.*—Nonresident alien widows, and heirs and devisees of alien or naturalized citizens, may take and hold real estate for 20 years; but if at the end of that time the alien heirs have not become residents of the State, or the property sold to a bona fide purchaser, such property escheats to the State.

Kansas

A. Rights of surviving spouse:
  (1) Widow takes—
    (*a*) One-half the realty and personalty if descendants survive.
    (*b*) All the realty and personalty if no descendants survive.
  (2) Widower takes in same manner as widow above.
B. Order of descent and distribution:
  1. Children and their descendants.
  2. Parents.
  3. Brothers and sisters and their descendants.
  4. Next of kin.
  5. The county schools.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes.

Note—*Class 4.*—In this class the property passes to the nearest lineal ancestors, or the surviving, then to their descendants.

Kentucky

A. Rights of surviving spouse:
  (1) Widow takes—
    (*a*) One-third of the realty and one-half the personalty if kindred survive.
    (*b*) All the realty and personalty if no kindred survive.
  (2) Widower takes in same manner as widow above.
B. Order of descent and distribution:
  1. Children and their descendants.
  2. Parents.
  3. Brothers and sisters and their descendants.
  4. Next of kin.
  5. Kindred of spouses.
  6. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below.

Note—*Class 2.*—If no descendants survive, any inheritance in realty, the gift of a parent, passes to such parent. If an infant without issue leaves realty derived from a parent by gift, devise, or descent, it goes preferably to such parent, or kindred not further removed than descendants of grandparents.

Note—*Class 4.*—In this class one half goes to the paternal, the other half to the maternal line, or all to the surviving, the nearest ancestors taking first, then their descendants.

Louisiana

(Community property State)

A. Rights of surviving spouse (see note):
  (1) Widow takes—
    (*a*) One-half the community property and usufruct in remainder so long as she does not remarry if descendants survive.
    (*b*) Three-fourths the community property if no lawful descendants but parent survive.
    (*c*) All the community and separate property if no descendants or kindred survive.
  (2) Widower takes in same manner as widow above.
B. Order of descent and distribution:
  1. Children and their descendants.
  2. Parents, brothers and sisters, and descendants of brothers and sisters.
  3. Next of kin.
  4. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

NOTE—*Rights of surviving spouse.*—The natural child of a father does not exclude the widow from taking all the property, but the natural child of a mother excludes the widower from taking all the property. If the wife brought no dowry or an inconsiderable one with respect to the condition of the husband, and either the husband or wife die rich, leaving the survivor in necessitous circumstances, the survivor may take a fourth of the estate when there are no children, or a fourth in usufruct when there are not more than three children, or a child's part in usufruct when there are more than three children.

Further, a widow and children in necessitous circumstances and not possessed in their own right of property worth $1,000 may take from the estate of husband or father enough to make up that amount, the widow to have it in usufruct during widowhood.

NOTE—*Class 2.*—If both parents survive, they take one half equally, the other half going to brothers and sisters and their descendants; if only one parent survive, he or she takes one-fourth, three-fourths going to brothers and sisters and their descendants.

NOTE—*Class 3.*—Among next of kin, ascendants are preferred, and if there are ascendants in equal degree in both lines, those of each take half; otherwise, all goes to the ascendants in the nearest degree. Collaterals of equal degree take equally.

MAINE

A. Rights of surviving spouse:
- (1) Widow takes—
  - (*a*) One-third realty and personalty if descendants survive.
  - (*b*) One-half of realty and personalty if no descendants but other kindred survive.
  - (*c*) All realty and personalty if no kindred survive.
- (2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
1. Children and their descendants.
2. Parents.
3. Brothers and sisters.
4. Next of kin. (See note.)
5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in all subsequent classes except as noted below:

NOTE—*Class 2.*—If one parent is dead the share which would have passed to him or her passes to brothers and sisters and their children and grandchildren. If no brother and sister survive, to the surviving parent.

NOTE—*Class 3.*—Children and grandchildren of deceased brothers or sisters take by representation if a brother or sister survive. If decedent was an unmarried minor any inheritance from a parent goes to the other children of such parent or their descendants.

NOTE—*Class 4.*—Next of kin of equal degree take equally, those claiming through the nearest ancestor being preferred.

MARYLAND

A. Rights of surviving spouse (see note):
- (1) Widow takes—
  - (*a*) One-third of realty and personalty if descendants survive.
  - (*b*) One-half of realty and personalty if no descendants, but parent, brother or sister, or child of brother or sister survive.
  - (*c*) All realty and personalty if no child, grandchild, parent, brother or sister, or child of brother or sister survive.
- (2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
1. Children and their descendants.
2. Parents.
3. Brothers and sisters and their descendants.
4. Next of kin.
5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes.

NOTE—*Rights of surviving spouse.*—The surviving spouse may elect to take dower, consisting of one-third life interest in lands held by equitable or legal title during coverture, in lieu of the rights under intestate law stated above.

NOTE—*Class 4.*—Collaterals, of whatever degree, are preferred to ascendants, but if no next of kin beyond the fifth canon law degree, property escheats to the State.

MASSACHUSETTS

A. Rights of surviving spouse (see note):
- (1) Widow takes—
  - (*a*) One-third of realty and personalty if descendants survive.
  - (*b*) All the estate up to $5,000 in value and one-half the excess if no descendants but other kindred survive.
  - (*c*) All realty and personalty if no kindred survive.
- (2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
1. Children and their descendants.
2. Parents.
3. Brothers and sisters and their descendants.
4. Next of kin. (See note.)
5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes.

NOTE—*Rights of surviving spouse.*—The surviving spouse may elect to take dower, consisting of one-third life interest in all realty owned by decedent during coverture, in lieu of the rights under intestate law stated above.

NOTE—*Class 4.*—In this class those of the same degree take equally, except that descendants from the nearest ancestor are preferred.

MICHIGAN

A. Rights of surviving spouse:
- (1) Widow takes—
  - (*a*) One-third of the realty and personalty if more than one child, one child and descendants of one or more, or descendants of more than one survive.
  - (*b*) One-third of the realty and one-half the personalty if one child, or descendants of one, survive.
  - (*c*) One-half the realty, all the personalty up to $3,000 in value, and one-half the excess if no descendants, but parent, brothers, sisters, or children of brothers or sisters survive.
  - (*d*) All the realty and personalty if none of the above kindred survive.
- (2) Widower takes—
  - (*a*) One-third of personalty if more than one child, one child, and descendants of a deceased child, or descendants of two or more deceased children survive.
  - (*b*) One-half of personalty if one child, or issue of a deceased child, survive.

    Otherwise, in same manner as widow above.

B. Order of descent and distribution:
1. Children and their descendants.
2. Parents.
3. Brothers and sisters and their children.
4. Next of kin.
5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes.

Note—*Rights of surviving spouse.*—The surviving spouse may elect to take dower, life income of one-third of all of an estate of inheritance of which decedent was seized during marriage, in lieu of the rights in realty under intestate law stated above.

Note—*Class 3.*—If decedent was an unmarried minor, any realty which came from a parent descends to the other children of such parent and their descendants.

Note—*Class 4.*—Next of kin of equal degree take equally except that those claiming through the nearest ancestor are preferred.

Minnesota

A. Rights of surviving spouse:
- (1) Widow takes—
  - (*a*) One-third of realty and one-third personalty if descendants survive.
  - (*b*) All realty and personalty if no descendants survive.
- (2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
1. Children and their descendants.
2. Parents.
3. Brothers and sisters and their descendants.
4. Next of kin.
5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

Note—*Class 3.*—If decedent was an unmarried minor, any inheritance from a parent goes to children of such parent, or their descendants. If no brother or sister survive, descendants of brothers and sisters take if next of kin.

Note—*Class 4.*—Next of kin of equal degree take equally, except that those descended from the nearest ancestors are preferred.

Mississippi

A. Rights of surviving spouse:
- (1) Widow takes—
  - (*a*) A child's part of realty and personalty if descendants survive.
  - (*b*) All realty and personalty if no descendants survive.
- (2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
1. Children and their descendants.
2. Parents, brothers and sisters and their descendants.
3. Next of kin.
4. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes.

Missouri

A. Rights of surviving spouse:
- (1) Widow takes—
  - (*a*) A child's part of the realty and personalty if children of the marriage survive.
  - (*b*) A child's part of the realty and all the personalty which came to the intestate by right of the marriage if descendants by a former, but none by the last marriage survive.
  - (*c*) All realty and personalty which came to the intestate by right of the marriage, and one-half the realty and personalty of intestate if no descendants, but parents, brothers, sisters, or descendants of brothers or sisters survive.
  - (*d*) All the realty and personalty if no descendants, parents, brothers, sisters, or descendants of brothers or sisters survive.
- (2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
1. Children and their descendants.
2. Parents, brothers, and sisters and their descendants.
3. Next of kin.
4. Kindred of spouse.
5. The State.

The property of intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes.

NOTE—*Rights of surviving spouse.*—The surviving spouse may elect to take dower, consisting of one-third of the realty for life, in lieu of the rights in realty under intestate law stated above.

NOTE—*Class 3.*—In this class the nearest lineal ancestors, their children and descendants take in equal parts.

MONTANA

A. Rights of surviving spouse:
(1) Widow takes—
(*a*) One-third of realty and personalty if more than one child, one child and descendant of one, or descendants of more than one survive.
(*b*) One-half of all realty and personalty if one child, descendants of one child, parent, brother, or sister survive.
(*c*) All realty and personalty if none of above kindred survive.
(2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
1. Children and their descendants.
2. Parents.
3. Brothers and sisters and their descendants.
4. Next of kin.
5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes.

NOTE—*Class 2.*—If decedent was an unmarried minor any inheritance from a parent descends to the other children of such parent or their descendants.

NOTE—*Class 4.*—In this class next of kin take equally, except that those claiming through the nearest lineal ancestors are preferred.

NEBRASKA

A. Rights of surviving spouse:
(1) Widow takes—
(*a*) One-third of realty and personalty if parent of all children and two or more children or one child and descendants of one or more or descendants of two or more children survive.
(*b*) One-half of the realty and personalty if parent of all children, and one child, or descendants of only one child survive.
(*c*) One-fourth the realty and personalty if not the parent of all children, and one or more children or descendants of one or more survive.
(*d*) One-half the realty and personality if no descendants but other kindred survive.
(*e*) All the realty and personalty if no kindred survive.
(2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
1. Children and their descendants.
2. Parents.
3. Brothers and sisters and their children.
4. Next of kin.
5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

NOTE—*Class 2.*—If intestate was an unmarried minor any inheritance from a parent descends to the other children of such parent or their descendants.

NOTE—*Class 4.*—Next of kin take equally, except that those claiming through the nearest ancestors are preferred.

NEVADA

(Community property State)

A. Rights of surviving spouse:
   (1) Widow takes—
      (*a*) One-half the community property and one-third the separate property if more than one child, one child and descendants of one or more, or descendants of more than one, survive.
      (*b*) One-half the community property and one-half the separate property if one child, or descendants of one, survive.
      (*c*) All the community property and one-half the separate property if no descendants but parent, brother, sister, or children of brothers or sisters survive.
      (*d*) All the community and separate property if no descendants, parents, brothers, sisters, or children of brothers or sisters survive.
   (2) Widower takes all the community property; otherwise in same manner as widow above.

B. Order of descent and distribution:
   1. Children and their descendants.
   2. Parents.
   3. Brothers and sisters and their children.
   4. Next of kin.
   5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, persons in one class excluding those in subsequent classes, except as noted below:

NOTE—*Class 3.*—If decedent was an unmarried minor any inheritance from a parent descends to the other children of such parent or their descendants.

NOTE—*Class 4.*—Next of kin take equally except that those claiming through the nearest lineal ancestors are preferred.

NEW HAMPSHIRE

A. Rights of surviving spouse (see note):
   (1) Widow takes—
      (*a*) One-third of the realty and personalty if descendants survive.
      (*b*) All the realty and personalty up to $5,000 in value and one-half the excess if no descendants survive.
   (2) Widower takes—
      (*a*) In same manner as widow above, except that if descendants, but none by him, survive, his share of the realty is one-third for life.

B. Order of descent and distribution:
   1. Children and their descendants.
   2. Parents.
   3. Brothers and sisters and their children and grandchildren.
   4. Next of kin.
   5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

NOTE—*Rights of surviving spouse.*—The widow may elect to take dower, consisting of so much of the real estate as will produce a yearly income equal to one-third of the yearly income thereof, and the widower may elect to take curtesy as at common law in lieu of the rights in realty under intestate law stated above.

NOTE—*Class 3.*—If decedent was an unmarried minor, any inheritance from a parent descends to the other children of such parent or their descendants.

New Jersey

A. Rights of surviving spouse (see note):
  (1) Widow takes—
    (*a*) One-half realty for life, and one-third personalty if descendants survive.
    (*b*) All the realty purchased during coverture and remaining undisposed of, one-half of other realty for life, and all of the personalty if no descendants but other kindred survive.
    (*c*) All realty and personalty if no kindred survive.
  (2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
  I. Descent—
    1. Children and their descendants.
    2. Brothers and sisters of the whole blood and their descendants.
    3. Parents.
    4. Brothers and sisters of the half blood and their descendants.
    5. Next of kin.
    6. The State.
  II. Distribution—
    1. Children and their descendants.
    2. Parents, brothers, sisters, and children of brothers and sisters.
    3. Next of kin.
    4. The municipality.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, persons in one class excluding those in subsequent classes, except as noted below:

NOTE—*Classes 4 and 5 of descent.*—In the case of property derived from an ancestor by descent, devise, or gift, those of the blood of the ancestor are preferred.

New Mexico

(Community property State)

A. Rights of surviving spouse:
  (1) Widow takes—
    (*a*) Three-fourths of the community property and one-fourth of the separate property if descendants survive.
    (*b*) All community and separate property if no descendants survive.
  (2) Widower takes—
    (*a*) All community property in all cases; otherwise in same manner as widow above.

B. Order of descent and distribution:
  1. Children and their descendants.
  2. Parents.
  3. Brothers and sisters and their descendants.
  4. Next of kin.
  5. Kindred of spouses.
  6. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

NOTE—*Class 4.*—In this class the property passes to the nearest lineal ancestors, or the surviving, and their descendants.

NOTE—*Class 5.*—If decedent was a widow or widower and left no issue, any separate property which came to decedent by descent, devise, or bequest from a spouse goes to the heirs of the spouse; and property which was held in community with the spouse of the widow or widower goes to the issue of such spouse, or, if no issue, one-half to the heirs of decedent and one-half to the heirs of the spouse.

New York

A. Rights of surviving spouse:
  (1) Widow takes—
    (a) One-third of the realty and personalty if descendants survive.
    (b) All realty and personalty up to $5,000 and one-half the excess if no descendants but parents survive.
    (c) All realty and personalty up to $10,000 and one-half the excess if no descendants or parents but brother, sister, nephew, or niece survive.
    (d) All realty and personalty if none of the above kindred survive.
  (2) Widower takes in same manner as widow above.
B. Order of descent and distribution:
  1. Children and their descendants.
  2. Parents.
  3. Brothers and sisters and their descendants.
  4. Next of kin.
  5. Children of spouse.
  6. Next of kin of spouse.
  7. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

Note—*Rights of surviving spouse.*—Where the marriage occurred prior to September 1, 1930, the widow may elect to take dower, one-third of the realty of which decedent was seized prior to that date, and the widower may elect to take common law curtesy if wife died prior to that date in lieu of the rights under intestate law.

Note—*Class 6.*—This class takes only the property derived from the spouse by will or intestacy.

North Carolina

A. Rights of surviving spouse:
  (1) Widow takes—
    (a) One-third realty for life and a child's part but not more than one-third of the personalty if descendants survive.
    (b) One-third of the realty for life and one-half of personalty if no descendants but other kindred survive.
    (c) All realty and personalty if no kindred survive.
  (2) Widower takes—
    (a) All realty for life and a child's part in the personalty if descendants survive.
    (b) All realty for life and all personalty if no descendants but other kindred survive.
    (c) All realty and personalty if no kindred survive.
B. Order of descent and distribution:
  I. Descent—
    1. Children and their descendants.
    2. Brothers and sisters and their descendants.
    3. Parents.
    4. Next of kin.
    5. The State.
  II. Distribution—
    1. Children and their descendants.
    2. Parents.
    3. Next of kin.
    4. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes except as noted below:

Note—*Class 4.*—In the descent of property derived from an ancestor by descent, or, if decedent would have been an heir, by gift, devise, or settlement, those of the blood of the ancestor are preferred. In the case of property not thus derived, or thus derived where the blood of the ancestor is extinct, the property goes to the descendants of the nearest ancestor. Next of kin does not include ascendants.

North Dakota

A. Rights of surviving spouse:
  (1) Widow takes—
    (*a*) One third of the realty and personalty if more than one child, one child and descendants of one or more, or descendants of more than one survive.
    (*b*) One-half of the realty and personalty if only one child or descendant of only one survive.
    (*c*) All the realty and personalty up to $15,000 in value and one-half the excess, if no descendant but a parent survive.
    (*d*) All the realty and personalty up to $25,000 in value and one-half the excess, if no descendant or parent, but brothers, sisters, or their children survive.
    (*e*) All the realty and personalty if no descendant, parent, brother, sister or child of a brother or sister survive.
  (2) Widower takes in same manner as widow above.
B. Order of descent and distribution:
  1. Children and their descendants.
  2. Parents.
  3. Brothers and sisters and their children.
  4. Next of kin. (See note.)
  5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes.

Note—*Class 2.*—If decedent was an unmarried minor, any inheritance from a parent descends to the other children of such parent and their descendants.

Note—*Class 4.*—In this class, a foster parent of an infant decedent, if not a guardian of the estate is preferred. Otherwise, next of kin of equal degree take equally, except that those claiming through the nearest ancestor are preferred.

Note—*Ancestral property.*—In the case of property derived from an ancestor by gift, devise or descent, those not of the blood of the ancestor are excluded.

Ohio

A. Rights of surviving spouse:
  (1) Widow takes—
    (*a*) One-third of realty for life, one-half of first $400, and one-third of residue of personalty if descendants survive.
    (*b*) All realty for life which came intestate from an ancestor by gift, devise or descent, all other realty in fee and all personalty if no descendants survive.
  (2) Widower takes in same manner as widow above.
B. Order of descent and distribution:
  1. Children and their descendants.
  2. Parents, brothers, and sisters, and their descendants.
  3. Next of kin.
  4. The State.

The property of the intestate, or such portion as does not go to the surviving spouse, passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

Note.—*Class 2.*—In the case of realty, parents take an estate for life only, remainder to brothers and sisters; in the case of personalty they take one-half absolutely.

NOTE.—*Ancestral realty.*—In the case of realty which came to decedent from an ancestor by gift, devise, or descent, the property descends as follows:

1. Children and their descendants.
2. Brothers and sisters of the blood of the ancestor and their descendants.
3. The ancestor.
4. Descendants of the ancestor.
5. Spouse of ancestor if a parent of decedent.
6. Brothers and sisters of ancestor and their descendants.
7. Brothers and sisters not of the blood of ancestor and their descendants.
8. Next of kin of the blood of ancestor.
9. The State.

NOTE.—*Classes 2, 3, and 4.*—If no descendants by the marriage survive, any property which came to intestate from a former deceased spouse passes to the descendants of such spouse, or if none, one-half to the brothers and sisters of such spouse and one-half to the brothers and sisters of the intestate, or their descendants.

OKLAHOMA

A. Rights of surviving spouse (see note):
 (1) Widow takes—
  (*a*) One-third of the realty and personalty if more than one child, one child and descendants of one or more, or descendants of more than one survive.
  (*b*) One-half the realty and personalty if one child or descendant of one, or if parent, brother, or sister survive.
  (*c*) All realty and personalty if no descendent, parent, brother, or sister survive.
 (2) Widower takes in same manner as widow above.
B. Order of descent and distribution:
 1. Children and their descendants.
 2. Parents.
 3. Brothers and sisters and their children.
 4. Next of kin.
 5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

NOTE—*Rights of surviving spouse.*—If no descendants survive, property acquired by the joint industry of husband and wife during coverture goes to the surviving spouse, at whose death such of it as remains, if any, goes one half to the heirs of the spouse and one-half to the heirs of the intestate. If decedent was married more than once, leaves children surviving, and property not acquired during coverture with surviving spouse, the latter takes only a child's part (descendants of children taking by representation).

NOTE—*Class 3.*—If decedent was an unmarried minor, any inheritance from a parent descends to the other children of such parent of their descendants.

NOTE—*Class 4.*—Next of kin take equally except that those claiming through the nearest ancestors are preferred.

OREGON

A. Rights of surviving spouse:
 (1) Widow takes—
  (*a*) One-half of realty for life and one-half the personalty if descendants survive.
  (*b*) All of realty and personalty if no descendants survive.
 (2) Widower takes in same manner as widow above.
B. Order of descent and distribution:
 1. Children and their descendants.
 2. Parents.
 3. Brothers and sisters and their descendants.
 4. Next of kin.
 5. The State.

The property of the intestate, or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes.

NOTE—*Classes 3 and 4.*—If no brother or sister survive, their descendants take only if next of kin. In this class next of kin take equally except that those claiming through the nearest ancestors are preferred. If an unmarried minor dies leaving real property descended from an ancestor, such property goes to the heirs of the ancestor as though the minor had predeceased the ancestor.

PENNSYLVANIA

A. Rights of surviving spouse:
  (1) Widow takes—
    (*a*) One third of the realty and personalty if more than one child, one child and descendants of one or more, or descendants of more than one, survive.
    (*b*) One-half the realty and personalty if one child, or descendants of one, survive.
    (*c*) $5,000 in aggregate value and one-half the excess of realty and personalty if no descendants but other kindred survive.
  (2) Widower takes in same manner as widow above.
B. Order of descent and distribution:
  1. Children and their descendants.
  2. Parents.
  3. Brothers and sisters, their children and grandchildren.
  4. Next of kin.
  5. The State.

The property of the intestate or such portion as does not go to the surviving spouse, passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below.

NOTE—*Class 4.*—In this class descendants of grandparents take by representation if a grandparent survive, and children of uncles and aunts if an uncle or aunt survive. Otherwise, kindred of equal degree take equally.

RHODE ISLAND

A. Rights of surviving spouse:
  (1) Widow takes—
    (*a*) One-third of the realty for life and one-half of the personalty if descendants survive.
    (*b*) All realty for life, and first $3,000 in value of personalty and one-half the excess if no descendants but other kindred survive.
    (*c*) All realty and personalty if no kindred survive.
  (2) Widower takes all realty for life if issue born alive of the marriage capable of inheriting; otherwise in same manner as widow above in (*b*) and (*c*).
B. Order of descent and distribution:
  1. Children and their descendants.
  2. Parents.
  3. Brothers and sisters and their descendants.
  4. Next of kin.
  5. Kindred of spouse.
  6. The town.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

NOTE—*Classes 2, 3, and 4.*—In the case of realty which came to intestate by gift, devise, or descent from kindred, those of the blood of such kindred are preferred, if the intestate die without children.

NOTE—*Class 4.*—In this class, one-half goes to the paternal and one-half to the maternal kindred, or all to the surviving, the nearest ancestors, or the surviving, or their descendants being preferred.

South Carolina

A. Rights of surviving spouse (see note):
  (1) Widow takes—
    (a) One-third of the realty and personalty if descendants survive.
    (b) One-half of the realty and personalty if no descendant, but an ascendant, brother or sister, or child of a brother or sister of the whole blood, survive.
    (c) Two-thirds of the realty and personalty if no descendant, ascendant, brother or sister, or child of a brother or sister of the whole blood but other kindred survive.
    (d) All the realty and personalty if no kindred survive.
  (2) Widower takes in same manner as widow above.
B. Order of descent and distribution:
  1. Children and their descendants.
  2. Parents, brothers, sisters, and children of brothers and sisters. (See note.)
  3. Next lineal ascendant.
  4. Next of kin.
  5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

Note.—*Rights of surviving spouse.*—The widow may elect to take dower—one-third of the realty for life—in lieu of her rights under intestate law, stated above.

South Dakota

A. Rights of surviving spouse:
  (1) Widow takes—
    (a) One-third of the realty and personalty if more than one child, one child and descendants of one or more, or descendants of more than one survive.
    (b) One-half of the realty and personalty if one child or descendants of one child survive.
    (c) First $20,000 in value and one-half the excess of realty and personalty if no descendants but parent, brother, or sister survive.
    (d) All realty and personalty if no descendants, parents, brothers, or sisters survive.
  (2) Widower takes in same manner as widow above.
B. Order of descent and distribution:
  1. Children and their descendants.
  2. Parents.
  3. Brothers and sisters, their children and grandchildren.
  4. Next of kin.
  5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

Note.—*Class 3*—If decedent was an unmarried minor any estate which came to him by inheritance from a parent descends to the other children of such parent, or their descendants. If no brother or sister survive, their children and grandchildren take if next of kin, as such.

Note—*Class 4.*—Next of kin take equally except that those claiming through the nearest ancestors are preferred.

Tennessee

A. Rights of surviving spouse:
  (1) Widow takes—
    (a) One-third of the realty for life, and a child's share of the personalty, if descendants survive.
    (b) One-third of the realty for life, and all the personalty if no descendants but parents, brothers, sisters, or descendants of brothers or sisters survive.
    (c) All the realty and personalty if no kindred survive.
  (2) Widower takes all the realty for life if issue born alive of the marriage capable of inheriting. Otherwise in same manner as widow above.

B. Order of descent and distribution:
- I. Descent—
  1. Children and their descendants.
  2. Brothers and sisters and their children.
  3. Parents.
  4. Next of kin.
  5. Common school fund.
- II. Distribution—
  1. Children and their descendants.
  2. Parents.
  3. Brothers and sisters and their children.
  4. Next of kin.
  5. Common school fund.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

NOTE—*Class 4 descent.*—In this class one moiety goes to the paternal and one to the maternal line, the nearest ancestors and their descendants taking.

NOTE—*Ancestral property.*—In the case of realty derived from an ancestor by gift, devise, or descent those of the blood of the ancestor are preferred.

NOTE—*Class 2 distribution.*—If only the father survive he takes all the personalty; if only the mother, she takes an equal share with brothers and sisters.

TEXAS

(Community property State)

A. Rights of surviving spouse:
- (1) Widow takes—
  - (*a*) One-half the community property, one-third separate realty for life, and one-third separate personalty if descendants survive.
  - (*b*) All community property, one-half separate realty, and all of separate personalty if no descendants but parents, brothers, sisters, or their descendants survive.
  - (*c*) All community and separate property if no descendants, parents, brothers, sisters, or descendants of brothers or sisters survive.
- (2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
1. Children and their descendants.
2. Parents. (See note.)
3. Brothers and sisters and their descendants.
4. Next of kin.
5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

NOTE—*Class 2.*—If only one parent survive, one-half the property passes to such survivor and one-half to brothers and sisters or their descendants.

NOTE—*Class 4.*—In this class, one moiety goes to the paternal and one to the maternal kindred, the nearest ancestors and their descendants taking.

UTAH

A. Rights of surviving spouse:
- (1) Widow takes:
  - (*a*) One-third realty and personalty if more than one child, one child and descendants of one or descendants of more than one survive.
  - (*b*) One-half the realty and personalty if only one child or descendants of one survive.
  - (*c*) All realty and personalty up to $25,000 in value and one-half the excess, if no descendant but a brother, sister, or parent survive.
  - (*d*) All the realty and personalty if no descendant, parent, brother, or sister survive.
- (2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
   1. Children and their descendants.
   2. Parents.
   3. Brothers and sisters and their children.
   4. Next of kin.
   5. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

NOTE—*Class 2.*—If the decedent was an unmarried minor, an estate that came to him by inheritance from a parent goes to the other children of such parent or their descendants.

NOTE—*Class 4.*—In this class those of equal degree take equally, except that those claiming through the nearest ancestors are preferred. If no brother or sister survive, children of brothers and sisters take if next of kin.

VERMONT

A. Rights of surviving spouse (see note):
   (1) Widow takes—
      (*a*) All property up to $4,000 in value and one-half the excess if no descendants survive.
      (*b*) All property if no kindred survive.
   (2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
   1. Children and their descendants.
   2. Parents.
   3. Brothers and sisters and their descendants.
   4. Next of kin.
   5. The town.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

NOTE—*Rights of surviving spouse.*—The widow may elect to take dower, and the husband curtesy—one-third in value of the realty if more than one descendant survive and one-half absolutely if not more than one survive—in lieu of the rights under intestate law stated above.

VIRGINIA

A. Rights of surviving spouse:
   (1) Widow takes—
      (*a*) One-third of the realty for life and one-third of the personalty if descendants survive.
      (*b*) All the realty for life and one-half the personalty if no descendants, but parent, brother, sister, or their descendants survive.
      (*c*) All realty and personalty if no descendants, brothers, sisters, or their descendants survive.
   (2) Widower takes in same manner as widow above.

B. Order of descent and distribution:
   1. Children and their descendants.
   2. Parents.
   3. Brothers and sisters and their descendants.
   4. Next of kin.
   5. Kindred of spouse.
   6. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

NOTE—*Class 4.*—One moiety goes to the paternal and one to the maternal kindred, or all to the surviving line, the nearest ancestor (or the surviving), and their descendants, taking.

NOTE—*Class 2.*—If decedent was infant dying without issue, any inheritance from a parent descends to the kindred of that parent; but if none, to the kindred of the other parent.

WASHINGTON

(Community property State)

A. Rights of surviving spouse:
  (1) Widow takes—
    (*a*) One-half the community property, one-third the separate realty, and one-half the separate personalty if more than one child, one child and descendants of one, or descendants of more than one, survive.
    (*b*) One-half community property, one-half the separote realty and one-half the separate personalty if one child, descendants of one, or parent, brother, sister, or descendants of brother or sister survive.
    (*c*) All the community property, one-half the separate realty and all the separate personalty if no descendants, but parent, brother, sister, or descendants of brother or sister survive.
    (*d*) All the community and separate property if no descendants, parent, brother, sister, or descendants of brother or sister survive.
  (2) Widower takes in same manner as widow above.
B. Order of descent and distribution:
  1. Children and their descendants.
  2. Parents.
  3. Brothers and sisters and their descendants.
  4. Next of kin.
  5. The State.

The property of the intestate or such portion as remains after the surviving spouse has been accorded his or her rights, passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

NOTE—*Class 3.*—If decedent was an unmarried minor, any inheritance from a parent goes to the other children of such parent or their descendants.
NOTE—*Class 4.*—Next of kin take equally except that those claiming through the nearest ancestors are preferred.

WEST VIRGINIA

A. Rights of surviving spouse:
  (1) Widow takes:—
    (*a*) One-third of the realty for life and one-third of the personalty if descendants survive.
    (*b*) One-third of the realty for life and all the personalty if no descendants, but both parents survive.
    (*c*) One-third of the realty for life, a share in one-half the realty with brothers and sisters, and all the personalty if no descendants, but one parent, and brothers and sisters survive.
    (*d*) All the realty and personalty if no descendants, parent, brother, sister or descendant of brother or sister survive.
  (2) Widower takes in same manner as widow above.
B. Order of descent and distribution:
  1. Children and their descendants.
  2. Parents.
  3. Brothers and sisters and their descendants.
  4. Next of kin.
  5. Kindred of spouse.
  6. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

NOTE—*Class 2.*—Only one half goes to parent, if only one survive, and any of class 3 survive.
NOTE—*Class 4.*—One moiety goes to the paternal, one to the maternal line, or all to the surviving, the nearest lineal ancestors and their descendants taking.

Wisconsin

A. Rights of surviving spouse:
  (1) Widow takes—
    (*a*) One-third of the realty for life and one-third of the personalty if more than one child, one child and descendants of one or more, or descendants of more than one survive.
    (*b*) One-third of the realty for life and one-half the personalty if only one child, or descendants of one survive.
    (*c*) All realty and personalty if no descendants survive.
  (2) Widower takes all realty for life if descendants of the last and none by a former marriage survive and (if wife died after August 31, 1921) do not remarry. Otherwise in same manner as widow above.
B. Order of descent and distribution:
  1. Children and their descendants.
  2. Parents.
  3. Brothers and sisters and their descendants.
  4. Next of kin.
  5. The State.

The property of the intestate or such portion as remains after the surviving spouse has been accorded his or her rights passes in the order shown above, the persons in one class excluding those in subsequent classes, except as noted below:

Note—*Class 3.*—If decedent was an unmarried minor, any property which came from a parent goes to the other children of such parent and their descendants.
Note—*Class 4.*—Next of kin of equal degree take equally except that those claiming through the nearest ancestors are preferred.

Wyoming

A. Rights of surviving spouse:
  (1) Widow takes—
    (*a*) One-half the realty and personalty if descendants survive.
    (*b*) All realty and personalty up to $20,000 in value, and three-fourths of the excess if no descendants but parent, brother, sister, or descendants of brothers or sisters survive.
    (*c*) All the realty and personalty if no descendant, parent, brother sister, or descendant of a brother or sister survive.
  (2) Widower takes in same manner as widow above.
B. Order of descent and distribution:
  1. Children and their descendants.
  2. Parents, brothers, and sisters and their descendants.
  3. Next of kin.
  4. The State.

The property of the intestate or such portion as does not go to the surviving spouse passes in the order shown above, the persons in one class excluding those in subsequent classes.

Note—*Class 3.*—In this class, the nearest ascendants and their children and the descendants of such children take.

EXHIBIT C

Development of the probate duties in England

Value of personal estate	Duty													
	Act of 1694		Act of 1698		Act of 1779		Act of 1783		Act of 1789		Act of 1795		Act of 1797	
£	£	s.	£	s.	£	s.	£	s.	£	s.	£	s.	£	s.
20		0		0		0		0		0		0		0
50		5		10		10		10		10		10		10
100		5		10	1	10	2	10	2	10	2	10	2	10
300		5		10	2	10	4	10	5	10	5	10	8	0
600		5		10	2	10	5	10	8	0	8	0	12	0
1,000		5		10	2	10	6	10	11	10	14	0	20	0
2,000		5		10	2	10	6	10	15	0	20	0	30	0
5,000		5		10	2	10	6	10	20	0	30	0	45	0
10,000		5		10	2	10	6	10	20	0	40	0	60	0
25,000		5		10	2	10	6	10	20	0	40	0	60	0
50,000		5		10	2	10	6	10	20	0	40	0	60	0
100,000		5		10	2	10	6	10	20	0	40	0	60	0
500,000		5		10	2	10	6	10	20	0	40	0	60	0
1,000,000		5		10	2	10	6	10	20	0	40	0	60	0

Value of personal estate	Duty											
	Act of 1801		Act of 1804		Act of 1815				Act of 1880		Probate and account duty, act of 1891	
					Testacy		Intestacy					
£	£	s.	£	s.	£	s.	£	s.	£	s.	£	s.
20		0		0		0		0		0		0
50		10		10		10	1	0		0		0
100	2	10	2	0	2	0	3	0		0		0
300	8	0	8	0	8	0	11	0	6	0	6	0
600	15	0	15	0	15	0	22	0	15	0	15	0
1,000	30	0	30	0	30	0	45	0	30	0	25	0
2,000	50	0	50	0	50	0	75	0	62	0	60	0
5,000	75	0	75	0	100	0	150	0	140	0	150	0
10,000	110	0	110	0	200	0	300	0	275	0	300	0
25,000	210	0	260	0	400	0	600	0	690	0	750	0
50,000	510	0	550	0	750	0	1, 125	0	1, 375	0	1, 500	0
100,000	1, 000	0	1, 200	0	1, 500	0	2, 250	0	2, 750	0	3, 000	0
500,000	1, 000	0	6, 000	0	7, 500	0	11, 250	0	11, 250	0	15, 000	0
1,000,000	1, 000	0	6, 000	0	15, 000	0	22, 500	0	23, 750	0	30, 000	0

EXHIBIT D

State death taxes in force as of September 8, 1916

State	Form of tax	Rates			
		Surviving spouse and lineal descendants	Brothers and sisters	Uncles and aunts	Strangers
		Per cent	*Per cent*	*Per cent*	*Per cent*
Alabama	None				
Arizona	Inheritance, direct and collateral	1	1	2	3
Arkansas	do	1–8	1–8	3–24	3–24
California	do	1–15	3–25	4–30	5–30
Colorado	do	2–4	2–4	3–6	4–10
Connecticut	do	1–4	3–8	5–8	5–8
Delaware	Inheritance, collateral only		1	2	5
Florida	None				
Georgia	Inheritance, direct and collateral	1	1	5	5
Idaho	do	1–3	1½–4½	3–9	5–15
Illinois	do	1–2	1–2	2–4	3–10
Indiana	do	1–3	1½–4½	3–9	5–15
Iowa	Inheritance, collateral only	None.	5	5	5
Kansas	do	None.	3–12½	5–15	5–15
Kentucky	Inheritance, direct and collateral	1–3	1½–4½	3–9	5–15
Louisiana	do	2	5	5	5
Maine	do	1–2	4–5	4–5	5–7
Maryland	Inheritance, collateral only		5	5	5
Massachusetts	Inheritance, direct and collateral	1–6	3–10	5–10	5–10
Michigan	do	1	1	5	5
Minnesota	do	[1] 1–3 [2] 1½–4½	3–9	4–12	5–15
Mississippi	None				
Missouri	Inheritance, collateral only		5	5	5
Montana	Inheritance, direct and collateral	1	1	5	5
Nebraska	do	1	1	2	2–6
Nevada	do	1–5	2–10	3–15	5–25
New Hampshire	Inheritance, collateral only			5	5
New Jersey	Inheritance, direct and collateral	1–3	2–4	5	5
New Mexico	None				
New York	Inheritance, direct and collateral	1–4	2–5	5–8	5–8
North Carolina	do	1–5	3–7	5–9	5–9
North Dakota	do	1–3	1½–4½	3–9	25
Ohio	Inheritance, collateral only		5	5	5
Oklahoma	Inheritance, direct and collateral	1–4	1–4	5–10	5–10
Oregon	do	1	1	2	3–6
Pennsylvania	Inheritance, collateral only		5	5	5
	Estate	½	½	½	½
Rhode Island	Inheritance, direct and collateral	½–3	½–3	5–8	5–8
South Carolina	None				
South Dakota	Inheritance, direct and collateral	[1] 1–3 [2] 1½–4½	3–9	4–12	5–15
Tennessee	Inheritance, collateral only		5	5	5
Texas	do		2–5	3–8	3–15
Utah	Estate	3–5	3–5	3–5	3–5
Vermont	Inheritance, collateral only		5	5	5
Virginia	Inheritance, direct and collateral	1–4	1–4	5–20	5–20
Washington	do	1	3–6	3–6	6–12
West Virginia	do	1–3	3–9	5–15	5–15
Wisconsin	do	1–3	1½–4½	3–9	5–15
Wyoming	do	2	2	5	5

[1] Wife and issue. [2] Husband.

EXHIBIT E

PRESENT BRITISH DEATH TAXES

SCHEDULE 1.—*Scale of rates British estate duty (finance act of 1930)*

On net principal value of estate	Rate of duty, per cent
Exceeding £100 and not exceeding £500	1
Exceeding £500 and not exceeding £1,000	2
Exceeding £1,000 and not exceeding £5,000	3
Exceeding £5,000 and not exceeding £10,000	4
Exceeding £10,000 and not exceeding £12,500	5
Exceeding £12,500 and not exceeding £15,000	6
Exceeding £15,000 and not exceeding £18,000	7
Exceeding £18,000 and not exceeding £21,000	8
Exceeding £21,000 and not exceeding £25,000	9
Exceeding £25,000 and not exceeding £30,000	10
Exceeding £30,000 and not exceeding £35,000	11
Exceeding £35,000 and not exceeding £40,000	12
Exceeding £40,000 and not exceeding £45,000	13
Exceeding £45,000 and not exceeding £50,000	14
Exceeding £50,000 and not exceeding £55,000	15
Exceeding £55,000 and not exceeding £65,000	16
Exceeding £65,000 and not exceeding £75,000	17
Exceeding £75,000 and not exceeding £85,000	18
Exceeding £85,000 and not exceeding £100,000	19
Exceeding £100,000 and not exceeding £120,000	20
Exceeding £120,000 and not exceeding £150,000	22
Exceeding £150,000 and not exceeding £200,000	24
Exceeding £200,000 and not exceeding £250,000	26
Exceeding £250,000 and not exceeding £300,000	28
Exceeding £300,000 and not exceeding £400,000	30
Exceeding £400,000 and not exceeding £500,000	32
Exceeding £500,000 and not exceeding £600,000	34
Exceeding £600,000 and not exceeding £800,000	36
Exceeding £800,000 and not exceeding £1,000,000	38
Exceeding £1,000,000 and not exceeding £1,250,000	40
Exceeding £1,250,000 and not exceeding £1,500,000	42
Exceeding £1,500,000 and not exceeding £2,000,000	45
Exceeding £2,000,000	50

SCHEDULE 2.—*Net receipts from death taxes* [1]

Fiscal year	Estate duty	Legacy and succession duties	Total death taxes
1916–17	£25,097,630	£6,094,516	£31,192,146
1917–18	25,742,554	5,992,944	31,735,498
1918–19	25,143,566	5,656,455	30,800,021
1919–20	36,637,708	6,122,269	42,759,977
1920–21	40,613,627	6,567,454	47,181,081
1921–22	45,145,725	7,375,262	52,520,987
1922–23	48,463,487	8,031,180	56,494,667
1923–24	49,804,961	7,751,866	57,556,827
1924–25	50,514,243	8,403,046	58,917,289
1925–26	52,861,205	8,469,195	61,330,400
1926–27	59,086,239	8,345,552	67,431,791
1927–28	68,621,349	8,363,275	76,984,624
1928–29	72,231,460	8,703,153	80,934,613
1929–30	69,548,208	9,557,719	79,105,927
1930–31			82,610,000
1931–32			65,000,000

[1] Receipts for years up to and including 1921–22 are for United Kingdom, for subsequent years for Great Britain and Northern Ireland.

EXHIBIT F

PRESENT FRENCH DEATH TAXES

SCHEDULE 1.—*Scale of rates, French estate tax (taxe successorale)*

[Law of June 25, 1920, as amended by the acts of August 1926, and Dec. 29, 1929]

Fraction of estate between	Rates according to number of children, living or survived by issue, left by the decedent [1]	
	One	None
	%	%
1,000 and 2,000 francs	[2] 1.20	[2] 3.60
2,001 and 10,000 francs	[2] 2.40	[2] 7.20
10,001 and 50,000 francs	[2] 3.60	[2] 10.80
50,001 and 100,000 francs	[2] 4.80	[2] 14.40
100,001 and 250,000 francs	[2] 6.00	[2] 18.00
250,001 and 500,000 francs	[2] 7.80	[2] 21.60
500,001 and 1,000,000 francs	9.60	25.20
1,000,001 and 2,000,000 francs	14.40	28.80
2,000,001 and 5,000,000 francs	16.20	32.40
5,000,001 and 10,000,000 francs	18.00	36.00
10,000,001 and 50,000,000 francs	19.80	39.60
50,000,001 and 100,000,000 francs	21.60	43.20
100,000,001 and 500,000,000 francs	24.00	44.40
Over 500,000,000 francs	25.20	46.80

[1] Where there are 2 or more children, the tax is not imposed.
[2] The rates applicable to estates up to 500,000 francs are reduced by one-half in favor of children, grandchildren, and of the surviving spouse.

SCHEDULE 2.—*Scale of rates, French inheritance tax (droits de mutation par décès)*

	Rates applicable to the fraction of the net share from—					
	1 to 10,000 francs	10,001 to 50,000 francs	50,001 to 100,000 francs	100,001 to 250,000 francs	250,001 to 500,000 francs	500,001 to 1,000,000 francs
	%	%	%	%	%	%
Lineal descendant to first degree	[1] 1.20 [2] 3.00	[1] 2.40 [2] 4.20	[1] 3.60 [2] 5.40	[1] 4.80 [2] 6.60	[1] 6.60 [2] 7.80	9.00
Lineal descendant to second degree and between husband and wife	[1] 2.40 [2] 3.60	[1] 3.60 [2] 4.80	[1] 4.80 [2] 6.00	[1] 6.00 [2] 7.20	[1] 7.80 [2] 8.40	9.60
Lineal descendant beyond second degree	4.20	5.40	6.60	7.80	9.00	10.20
Lineal ascendant to first degree	4.80	6.00	7.20	8.40	9.60	10.80
Lineal ascendant to second degree and beyond	5.40	6.60	7.80	9.00	10.20	11.40
Between brothers and sisters	14.40	16.80	19.20	21.60	24.00	26.40
Between uncles, aunts, nephews, and nieces	20.40	22.80	25.20	27.60	30.00	32.40
Between great-uncles or grandaunts and grandnephews or grandnieces and first cousins	26.40	28.80	31.20	33.60	36.00	38.40
Between relatives beyond the fourth degree and between persons not related	32.40	34.80	37.20	39.60	42.00	44.40

	Rates applicable to the fraction of the net share from—				
	1,000,001 to 2,000,000 francs	2,000,001 to 5,000,000 francs	5,000,001 to 10,000,000 francs	10,000,001 to 50,000,000 francs	Over 50,000,000 francs
	%	%	%	%	%
Lineal descendant to first degree	10.20	11.40	12.60	13.80	15.00
Lineal descendant to second degree and between husband and wife	10.80	12.00	13.20	14.40	15.60
Lineal descendant beyond second degree	11.40	12.60	13.80	15.00	16.20
Lineal ascendant to first degree	12.00	13.20	14.40	15.60	16.80
Lineal ascendant to second degree and beyond	12.60	13.80	15.00	16.20	17.40
Between brothers and sisters	28.80	31.20	33.60	36.00	38.40
Between uncles, aunts, nephews, and nieces	34.80	37.20	39.60	42.00	44.40
Between great-uncles or grandaunts and grandnephews or grandnieces and first cousins	40.80	43.20	45.60	48.00	50.40
Between relatives beyond the fourth degree and between persons not related	46.80	49.20	51.60	54.00	56.40

[1] Rate payable when value of estate does not exceed 500,000 francs.
[2] Rate payable when value of estate exceeds 500,000 francs.

SCHEDULE 3.—*Scale of rates, French gift tax (mutations entre vifs á titre gratuit)*

[Gifts inter vivos, according to law, number of children, or degree of relationship]

	Per cent
I. To direct descending line, living or survived by issue:	
A. From ascendants to descendants under civil code where—	
More than 2 children	3.00
2 children	5.40
One child	7.80
B. By marriage contract to descendants where—	
More than 2 children	4.20
2 children	5.40
1 child	6.60
C. Other than I., A., or B., where—	
More than 2 children	6.60
2 children	9.00
1 child	11.40
II. To direct ascending line	11.40
III. To a husband or wife:	
A. By marriage contract	5.40
B. Otherwise, where—	
More than 2 children	6.60
2 children	9.00
1 child	11.40
No children	13.80
IV. To brother or sister:	
A. By marriage contract	18.00
B. Otherwise	30.00
V. To uncles or aunts, nephews or nieces:	
A. By marriage contract	24.00
B. Otherwise	36.00
VI. To great uncles, great aunts, grand nephews, grand nieces, or cousins:	
A. By marriage contract	30.00
B. Otherwise	42.00
VII. To relatives beyond the fourth degree or persons not related:	
A. By marriage contract	36.00
B. Otherwise	48.00

SCHEDULE 4.—*Receipts from French death taxes*

	Inheritance and estate tax	Gift tax		Inheritance and estate tax	Gift tax
	Francs	*Francs*		*Francs*	*Francs*
1924	1,399,352,000	143,839,000	1928	2,179,291,976	152,839,000
1925	1,450,781,000	156,575,000	1929	2,726,763,304	[1] 205,816,000
1926	1,653,292,000	161,525,000	1930	2,389,795,966	145,955,000
1927	1,940,449,518	139,714,000	1931	2,220,851,371	134,494,000

[1] Includes first three months of 1930.

EXHIBIT G

PRESENT GERMAN DEATH TAXES

SCHEDULE 1.—*Scale of rates German tax on inheritances, gifts inter vivos, and gifts restricted by special conditions*

[Act of September 4, 1925]

RATES APPLICABLE TO AMOUNTS (PER CENT)

Class	Degree of relationship	To 10,000 Reichsmarks	To 20,000 Reichsmarks	To 30,000 Reichsmarks	To 40,000 Reichsmarks	To 50,000 Reichsmarks	To 100,000 Reichsmarks	To 150,000 Reichsmarks	To 200,000 Reichsmarks	To 300,000 Reichsmarks	To 400,000 Reichsmarks	To 500,000 Reichsmarks
[1] I	Husband and wife,[2] children, adopted children, stepchildren, and illegitimate children having the legal position of legitimate children or recognized by the father	2	2.5	3	3.5	4	4.5	5	5.5	6	6.5	7
[1] II	Descendants of above, except husband and wife; descendants of adopted children only if terms of adoption extend to descendants	4	5	6	7	8	9	10	11	12	13	14
III	Parents, stepfather, stepmother, brothers, sisters, and half brothers and sisters	6	7.5	9	10.5	12	13.5	15	16.5	18	18.5	21
IV	Grandparents and more remote ancestors, descendants in the first degree of brothers and sisters, father-in-law, mother-in-law, sons-in-law, daughters-in-law	8	10	12	14	16	18	20	22	24	26	28
V	All others not specially provided for	14	16	18	20	22	24	26	28	30	32	34

Class	Degree of relationship	To 600,000 Reichsmarks	To 700,000 Reichsmarks	To 800,000 Reichsmarks	To 900,000 Reichsmarks	To 1,000,000 Reichsmarks	To 2,000,000 Reichsmarks	To 4,000,000 Reichsmarks	To 6,000,000 Reichsmarks	To 8,000,000 Reichsmarks	To 10,000,000 Reichsmarks	Over 10,000,000 Reichsmarks
[1] I	Husband and wife,[2] children, adopted children, stepchildren, and illegitimate children having the legal position of legitimate children or recognized by the father	7.5	8	8.5	9	9.5	10	11	12	13	14	15
[1] II	Descendants of above, except husband and wife; descendants of adopted children only if terms of adoption extend to descendants	15	16	17	18	19	20	21	22	23	24	25
III	Parents, stepfather, stepmother, brothers, sisters, and half brothers and sisters	22.5	24	25.5	27	28.5	30	32	34	36	38	40
IV	Grandparents and more remote ancestors, descendants in the first degree of brothers and sisters, father-in-law, mother-in-law, sons-in-law, daughters-in-law	30	32	34	36	38	40	42	44	46	48	50
V	All others not specially provided for	36	38	40	42	44	46	48	51	54	57	60

[1] If persons in Classes I or II acquire by right of succession from persons in the same classes, property which was divided by reason of decease within the past 5 years and on which the tax was paid in conformity with the present law, the tax on the said property shall be reduced by half; the tax shall be reduced by one-fourth if the division took place between 5 and 10 years.

[2] Husband and wife are exempt from tax if, when the tax falls due, there are living: (*a*) Children; (*b*) persons in legal position of legitimate children; (*c*) adopted children; (*d*) or descendants of (*a*) and (*b*); descendants of (*c*), if terms of adoption extended to descendants.

SCHEDULE 2.—*Net receipts from German death taxes*

	Reichsmarks
1925–26	27, 259, 630
1926–27	34, 602, 292
1927–28	71, 900, 000
1928–29	73, 531, 591
1929–30	82, 200, 000
1930–31	79, 000, 000

EXHIBIT H

PRESENT ITALIAN DEATH TAXES

[Act of Apr. 30, 1930]

SCHEDULE 1.—*Inheritance and gift tax* (*Tasse sulle successioni e donationi*)

RATES APPLICABLE TO AMOUNTS (PER CENT)

Degree of relationship between the decedent and the heirs or legatees	1 to 10,000 lire	10,001 to 25,000 lire	25,001 to 50,000 lire	50,001 to 100,000 lire	100,001 to 250,000 lire	250,001 to 500,000 lire	500,001 to 1,000,000 lire	1,000,001 to 5,000,000 lire	5,000,001 to 10,000,000 lire	Over 10,000,000 lire
1. Lineal ascendants, or 1 child only, or descendant thereof of only child	1.00	1.50	1.50	2.00	2.50	3.00	4.00	6.00	8.00	10.00
2. Between spouses without children or with 1 child only	1.50	2.00	3.00	4.00	6.00	8.00	10.00	13.00	15.00	18.00
3. Between brothers and sisters	4.50	5.00	6.00	7.50	9.00	11.00	13.00	16.00	18.00	21.00
4. Between uncles or aunts and nephews or nieces	5.50	6.00	7.50	9.00	10.50	13.00	16.00	19.00	22.00	25.00
5. Between great-uncles or great-aunts, cousins, other relations beyond the 4th degree, near relatives (blood or marriage relations), and persons not related	12.00	15.00	18.00	22.00	26.00	30.00	35.00	40.00	45.00	50.00

SCHEDULE 2.—*Net receipts from Italian death taxes*

Fiscal year ending June 30—	Lire
1925	147, 921, 841
1926	111, 277, 686
1927	111, 327, 118
1928	96, 795, 356
1929	89, 279, 415
1930	123, 658, 064
1931	118, 399, 264
1932	141, 148, 616

EXHIBIT I

PRESENT SPANISH DEATH TAXES

TRANSFER TAXES (LEY DE LOS IMPUESTOS DE DERECHOS REALES Y SOBRE TRANSMISIONES DE BIENES)

[Act of April 28, 1927]

SCHEDULE 1.—*Inheritance tax and gift tax*

Degree of relationship	Rate (per cent) applicable to fraction of net share between—									
	Not over 1,000 pesetas	1,000 and 10,000	10,000 and 50,000	50,000 and 100,000	100,000 and 250,000	250,000 and 500,000	500,000 and 1,000,000	1,000,000 and 2,000,000	2,000,000 and 5,000,000	Over 5,000,000
1. Children, legitimate or legitimated	1.00	1.50	2.00	2.25	2.75	3.25	3.75	4.25	4.75	5.00
2. Legitimate descendants of the 2d degree or beyond	1.00	1.75	2.25	2.75	3.25	3.75	4.25	4.50	4.75	5.00
3. Legitimate ascendants	1.00	2.00	2.50	3.25	3.75	4.00	4.25	4.50	4.75	5.00
4. Between ascendants and natural or adopted descendants	3.50	3.50	4.00	4.75	5.25	5.50	5.75	6.00	6.25	6.50
5. Between spouses on succession or usufruct arising by operation of law	1.00	1.50	2.00	2.25	2.75	3.25	3.75	4.25	4.75	5.00
6. Between spouses on any other share	5.00	5.00	5.50	6.25	6.75	7.00	7.25	7.50	7.75	8.00
7. Between collaterals to 2d degree	12.00	13.00	15.00	15.75	16.25	16.50	16.75	17.00	17.25	17.50
8. Between collaterals to 3d degree [1]	16.00	18.00	20.00	21.00	21.50	22.00	22.50	22.75	23.00	23.25
9. Between collaterals to 4th degree [1]	19.00	21.00	23.00	23.50	24.00	24.25	24.50	24.75	25.00	25.25
10. Between collaterals to 5th degree [1 2] 11. Between collaterals to 6th degree [1 2] 12. Between collaterals beyond 6th degree,[1] and persons unrelated to testator.	24.00	25.00	27.00	28.00	29.00	29.50	30.00	30.25	30.50	30.75
13. For the repose of the soul of the testator	20.00	20.00	20.00	20.00	20.00	20.00	20.00	20.00	20.00	20.00

[1] In case of intestate successions the rates in these 4 cases are increased by 25 per cent.
[2] In the case of collaterals of the fourth, fifth, or sixth degree, an additional tax of 5 per cent is levied for the benefit of workingmen's pensions.

SCHEDULE 2.—*Estate tax* [1]

[Act of February 28, 1927]

Net Estate:	Per cent
Not over 10,000 pesetas	1
10,000 to 50,000 pesetas	2
50,000 to 100,000 pesetas	3
100,000 to 250,000 pesetas	4
250,000 to 500,000 pesetas	5
500,000 to 1,000,000 pesetas	6
1,000,000 to 2,000,000 pesetas	7
2,000,000 to 3,000,000 pesetas	8
3,000,000 to 5,000,000 pesetas	9
Over 5,000,000 pesetas	10

SCHEDULE 3.—*Net receipts from Spanish inheritance tax*

	Pesetas
1922–23	62, 961, 022
1923–24	63, 743, 073
1924–25	66, 473, 932
1925–26	68, 979, 615

[1] The tax is levied on property and rights therein situated in Spain.

EXHIBIT J

RÉSUMÉ OF STATE DEATH TAXES (AS OF JULY 1, 1932)

Alabama

(a) *Form of tax: Estate tax.*—Estate tax assessed against the property of the estate taxable in Alabama.
(b) *Consanguinity.*—Not recognized in either rates or exemption.
(c) *Exemption and rates:* There is no exemption as such, but where the amount of the entire net estate is $100,000 or less no tax is imposed. The tax is equal to 80 per cent of the amount found to be due for Federal estate tax under the revenue act of 1926.
(d) *Community property.*—Not recognized.
(e) *Reciprocity.*—No provision for reciprocity, but it appears that the tax is not yet being enforced against nonresidents.
(f) *History.*—Prior to November 10, 1931, no estate or inheritance tax could be levied on account of a constitutional inhibition on such taxes. On that date an amendment to the constitution was ratified which permitted the legislature to impose an estate tax to take advantage of the 80 per cent credit clause of the Federal law.
(g) *General statement.*—The Alabama tax is levied on the net estate and not on the distributive shares.
(h) *Connection with Federal tax.*—Under the Alabama statute the rates are 80 per cent of the Federal estate tax as imposed under the revenue act of 1926. The tax automatically would become ineffective if the Federal law or the credit provision thereof were repealed.

Arizona

(a) *Form of tax: Inheritance tax.*—Inheritance tax levied on distributive share of each beneficiary at time of transfer. Similar in form to Wisocnsin statute.
(b) *Consanguinity.*—Recognized.
(c) *Exemption and rates:*

Widow, $10,000 exemption. Rates 1 per cent graduated up to 5 per cent, the latter rate being applicable to that portion of net shares in excess of $500,000 (before exemption).

Husband, lineal issue or ancestor, $2,000 exemption. Rates 1 per cent graduated up to 5 per cent, the latter rate being applicable to that portion of net shares in excess of $500,000 (before exemption.)

Brother, sister, and their descendants, widow of son, and husband of daughter, $500 exemption. Rates 2 per cent graduated up to 10 per cent, the latter rate being applicable to that portion of net shares in excess of $500,000 (before exemption).

Brother or sister of grandparent or descendant of either, $150 exemption. Rates 4 per cent graduated up to 20 per cent, the latter rate being applicable to that portion of net shares in excess of $500,000 (before exemption).

Uncle, aunt, or descendant of either, $250 exemption. Rates 3 per cent graduated up to 15 per cent, the latter rate being applicable to that portion of net shares in excess of $500,000 (before exemption).

All others, except charitable, religious, and educational organizations which are exempt, $100 exemption. Rates 5 per cent graduated up to 25 per cent, the latter rate being applicable to that portion of amounts in excess of $500,000.

(d) *Community property.*—Yes. One-half of community property subject to tax on death of husband or wife.
(e) *Reciprocity.*—No. Taxes intangible personal property of nonresidents.
(f) *History:*

First inheritance tax, 1912.
Present act, 1922.
Latest amendment, 1929.

(g) *General statement.*—Arizona imposes an inheritance tax on the distributive share of each beneficiary. The rates are graduated in accordance with the amount of such share. There is no graduation beyond $500,000. The rates are much less on the widow and direct heirs than on the collateral heirs and strangers in blood. In fact, the stranger pays approximately five times the tax that is paid in case of a widow, husband, or lineal issue or ancestor.

(*h*) *Connection with Federal tax.*—Although Arizona has enacted no legislation for the purpose of taking advantage of the 80 per cent credit clause of the Federal law of 1926, nevertheless it is approximately correct to say that the inheritance tax of Arizona is sufficient to absorb the full 80 per cent credit allowed, except in the case of widows, children, and ancestors with shares in excess of about $1,000,000. Therefore, in the case of the larger estates the Federal law prevents the tax on widows and direct heirs being as low as the State deems proper.

Arkansas

(*a*) *Form of tax: Inheritance tax.*—Inheritance tax levied on distributive share of each beneficiary, valued as of date of death.

(*b*) *Consanguinity.*—Recognized.

(*c*) *Exemption and rates:*

Widow, $6,000 exemption. Rates 1 per cent graduated up to 10 per cent, the latter rate being applicable to that portion of net shares in excess of $1,006,000 (before exemption).

Minor child, $4,000 exemption. Rates 1 per cent graduated up to 10 per cent, the latter rate being applicable to that portion of net shares in excess of $1,004,000 (before exemption).

Lineal ascendants and descendants (other than minor children), husband, widow of son, husband of daughter, $2,000 exemption. Rates 1 per cent graduated up to 10 per cent, the latter rate being applicable to that portion of net shares in excess of $1,002,000 (before exemption).

Brother and sister of full or half blood, $2,000 exemption. Rates 2 per cent graduated up to 20 per cent, the latter rate being applicable to that portion of net shares in excess of $1,002,000 (before exemption).

All others, except charitable, religious, and educational organizations which are exempt, no exemption. Rates 4 per cent graduated up to 40 per cent, the latter rate being applicable to that portion of net shares in excess of $1,002,000 (before exemption).

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—Recognized only in transfers of stock of domestic corporations where transferor was resident of State which does not impose a like tax on residents of Arkansas.

(*f*) *History:*

First inheritance tax, 1901.

Present act, 1909.

Extensive amendments, 1929.

(*g*) *General statement.*—Arkansas imposes an inheritance tax on the distributive share of each beneficiary. The rates are graduated in accordance with the amount of such share. There is no graduation beyond $1,000,000 in excess of the exemption. The rates are much less on the widow and direct heirs than on the collateral heirs and strangers in blood. In fact, the stranger pays about 4 times the tax paid by the direct heirs.

(*h*) *Connection with Federal tax.*—Although Arkansas has not enacted legislation for the purpose of taking advantage of the Federal credit clause, the rates are sufficient to absorb the full 80 per cent credit allowed by the Federal tax, except in the case of direct heirs with very large shares (over $5,000,000). The tax on strangers is much heavier than the Federal tax.

California

(*a*) *Form of tax: Inheritance and estate tax.*—Inheritance tax levied on distributive share of each beneficiary valued at time of death of decedent. Present law modeled after Wisconsin and New York statutes. Estate tax levied on estate so as to secure remainder, if any, of 80 per cent credit allowed by Federal law of 1926.

(*b*) *Consanguinity.*—Recognized in inheritance tax.

(*c*) *Exemption and rates:*

Inheritance tax.—

Widow, $50,000 exemption. Rates 4 per cent graduated up to 8 per cent, the latter rate being applicable to that portion of net shares in excess of $300,000 (before exemption).

Minor child, $24,000 exemption. Rates 1 per cent graduated up to 10 per cent, the latter rate applying to that portion of amounts in excess of $500,000 (before exemption).

(c) *Exemption and rates*—Continued.

Inheritance tax—Continued.

Husband, lineal ancestor, lineal issue, $10,000 exemption. Rates 1 per cent graduated up to 10 per cent, the latter rate being applicable to that portion of net shares in excess of $500,000 (before exemption).

Brother, sister, or descendant of either, widow of son, husband of daughter, $5,000 exemption. Rates 3 per cent graduated up to 12 per cent, the latter rate being applicable to that portion of net shares in excess of $100,000 (before exemption).

Uncle, aunt, or descendant of either, $1,000 exemption. Rates 4 per cent graduated up to 12 per cent, the latter rate being applicable to that portion of net shares in excess of $100,000 (before exemption).

All others, except charitable, religious, and educational organizations, which are exempt, $500 exemption. Rates 5 per cent graduated up to 12 per cent, the latter rate being applicable to that portion of net shares in excess of $50,000 (before exemption).

Estate tax.—The following is quoted from the law: "Where the tax imposed by this act (inheritance act) is of a lesser amount than the maximum credit of 80 per cent of the Federal estate tax allowed by the Federal estate tax act because of said tax herein imposed, then the tax provided for by this act shall be increased so that the amount of the tax due this State shall be the maximum amount of the credit allowed under said Federal estate tax act."

(d) *Community property.*—Yes; but not recognized by Federal authorities in computing tax up to 1927 (see U. S. *v.* Robbins 269 U. S. 315). Point still doubtful in re Federal tax in spite of amendment to California Civil Code in 1927.

(e) *Reciprocity.*—Yes. Does not tax intangible personal property of nonresidents residing in States which impose no death taxes on intangible personalty of California's decedents.

(f) *History:*

First inheritance tax, 1853.
New law, 1893.
Complete revision, 1905.
Numerous amendments up to 1929.
Estate tax provision, 1927.

(g) *General statement.*—California's basic death tax is an inheritance tax levied on the fair market value of the share of each beneficiary as of the date of decedent's death. The estate tax is merely a provision which allows California to get the full benefit of the 80 per cent credit allowed by the Federal estate tax law of 1926 when the amount of such credit is in excess of the tax imposed by the inheritance tax. The rates of the inheritance tax are graduated in accordance with the amount of each share. The rates are less on direct heirs than on indirect. Collateral heirs pay approximately 50 per cent greater tax.

(h) *Connection with Federal Tax.*—The inheritance and estate tax together absorb the full 80 per cent credit allowed by the Federal law in all cases. The estate tax was enacted for that specific purpose. If the Federal estate tax were repealed it appears that the California estate tax would become ineffective.

Colorado

(a) *Form of tax:*

Inheritance and estate tax.—

Inheritance tax levied on distributive share of each beneficiary, valued as of date of death.

Estate tax levied on residents' estates exceeding $1,000,000 so as to take up the 80 per cent credit allowed by Federal tax law. Incorporates the provisions of the Federal law.

(b) *Consanguinity.*—Recognized in inheritance tax.

(c) *Exemption and rates:*

Inheritance tax.—

Widow, $20,000 exemption. Rates 2 per cent graduated up to 7.5 per cent, the latter rate applying to that portion of net shares in excess of $170,000 (before exemption).

Husband, parent, lineal descendant, $10,000 exemption. Rates 2 per cent graduated up to 7.5 per cent, the latter rate applying to that portion of net shares in excess of $160,000 (before exemption).

(c) *Exemption and rates*—Continued.

Inheritance tax—Continued.

Brother, sister, mutually acknowledged child, stepchild, grandparent, daughter-in-law, and son-in-law, $2.000 exemption. Rates 3 per cent graduated up to 10 per cent, the latter rate applying to that portion of net shares in excess of $202,000 (before exemption).

Uncle, aunt, or lineal descendant of either, no exemption except where transfer is under $500 in which case entirely exempt. Rates 4 per cent graduated up to 14 per cent, the latter rate applying to that portion of amounts in excess of $500,000.

All others, except charitable, religious, and educational organizations which are exempt, no exemption except where transfer is under $500, in which case entirely exempt. Rates 7 per cent graduated up to 16 per cent, the latter rate applying to that portion of amounts in excess of $500,000.

Estate tax.—

The rates are all 80 per cent of the Federal rates under the act of 1926 and the exemption is the same ($100,000).

The inheritance tax paid is a credit against the estate tax and it is further provided that in no event shall the estate tax exceed the difference between 80 per cent of the Federal tax and the total of the inheritance tax credits.

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—No reciprocal provision, but intangible personal property of nonresident decedents is not taxed; therefore, Colorado residents are exempt under the reciprocal provisions of other States.

(f) *History:*

First inheritance tax, 1901.

Several amendments up to 1913.

Complete revision in 1927, including enactment of estate-tax provision.

Latest amendment, 1929.

(g) *General statement.*—Colorado imposes an inheritance tax on the share of each beneficiary. Rates are graduated in accordance with the amount of the share. The rates are less on the widow and direct heirs than on collateral heirs. The estate tax was enacted to take advantage of the full 80 per cent credit allowed by the Federal law. It is specifically provided that this tax may not exceed the difference between 80 per cent of the Federal tax under the act of 1926 and the total inheritance tax credits.

(h) *Connection with Federal tax.*—The inheritance and estate tax, together absorb the full 80 per cent credit allowed by the Federal law of 1926 in all cases. The estate tax would be automatically eliminated by specific provision if the Federal estate tax were abolished.

CONNECTICUT

(a) *Form of tax: Inheritance and estate tax.*—

Inheritance tax levied on distributive share of each beneficiary, valued as of date of death.

Estate tax enacted to secure the benefit of the 80 per cent credit provision of the Federal law.

(b) *Consanguinity.*—Recognized.

(c) *Exemption and rates:*

Inheritance tax.—Widow, husband, lineal descendant, parents, grandparents, etc., $10,000 exemption. Rates 1 per cent graduated up to 4 per cent, the latter rate applying to that portion of net shares in excess of $200,000 (before exemption).

Brother, sister, and their descendants, daughter-in-law, son-in-law, and stepchild, $3,000 exemption. Rates 2 per cent graduated up to 5 per cent, the latter rate applying to that portion of net shares in shares in excess of $200,000 (before exemption).

All others, except charitable, religious, and educational organizations which are exempt, $500 exemption. Rates 5 per cent graduated up to 8 per cent, the latter rate applying to that portion of net shares in excess of $200,000 (before exemption).

Estate tax.—The estate tax is levied on net estates exceeding $100,000 and equals the difference between the total of all other death taxes paid and 80 per cent of the Federal tax under the act of 1926.

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—Does not tax intangibles of nonresidents. Reciprocity provision of prior law repealed in 1929 and intangible personal property of nonresident decedents became nontaxable regardless of whether the State of residence imposed a tax on intangibles of residents of Connecticut. Hence, residents of Connecticut are secured advantage of reciprocity in case of States having reciprocal provisions.

(f) *History.*—First inheritance tax 1889. 1915 new law enacted. 1929 new law enacted. A nonresident decedent made nontaxable. Estate tax enacted 1931.

(g) *General statement.*—Connecticut imposes an inheritance tax at progressive rates on the share of each beneficiary. There is no graduation of rates beyond $200,000. The exemptions are greater and rates less on direct heirs than on collateral heirs and strangers in blood. In fact, the stranger pays approximately 100 per cent greater tax than is paid in case of widow, husband, or lineal descendant. Estate tax enacted to absorb the 80 per cent credit allowed by the Federal law of 1926.

(h) *Connection with Federal tax.*—The inheritance and estate taxes together absorb the full 80 per cent credit allowed by the Federal law of 1926. It is specifically provided that the estate tax shall become void and of no effect in respect of the estate of any person who dies after the effective date of the repeal of the Federal estate tax, the 80 per cent credit provision thereof, or a decision by the Supreme Court of the United States that the Federal tax, or the credit provision thereof, is unconstitutional.

Delaware

(a) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary valued as of date of death.

Estate tax levied on residents' estates so as to secure remainder, if any, of 80 per cent credit allowed by Federal law of 1926.

(b) *Consanguinity.*—Recognized in inheritance tax.

(c) *Exemption and rates:*

Inheritance tax.—

Husband or widow, $20,000 exemption. Rates 1 per cent graduated up to 4 per cent, the latter rate applying to that portion of net shares in excess of $200,000 (before exemption).

Parent, grandparent, child, daughter-in-law, son-in-law, adopted child, lineal descendant, $3,000 exemption. Rates 1 per cent graduated up to 4 per cent, the latter rate applying to that portion of net shares in excess of $200,000 (before exemption).

Brother, sister (whole or half blood) of decedent or of decedent's parent or grandparent or descendant thereof, $1,000 exemption. Rates 2 per cent graduated up to 5 per cent, the latter rate applying to that portion of net shares in excess of $200,000 (before exemption).

All others, except charitable, religious, and educational organizations, etc., which are exempt, no exemption. Rates 5 per cent graduated up to 8 per cent, the latter rate applying to that portion of net shares in excess of $200,000 (before exemption).

Estate tax.—$100,000 exemption allowed by reference to Federal estate tax imposed upon estates of resident decedents dying after February 26, 1926, provided Federal estate tax thereon was not paid prior to April 29, 1927, the effective date of the provision. The tax is equal to 80 per cent of the Federal estate tax of 1926 less the Delaware inheritance tax and any other inheritance and estate taxes paid.

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—No reciprocal provision, but intangible personal property of nonresident decedents is not taxed; therefore, Delaware residents are exempt under reciprocal provisions of other States.

(f) *History.*—First inheritance tax 1869. Present inheritance tax law enacted in 1909. It was amended in 1913 and 1917. Estate tax law enacted to take advantage of Federal credit provision in 1927. Latest amendment, 1931.

(g) *General statement.*—Delaware imposes an inheritance tax at progressive rates on the distributive share of each beneficiary. There is no graduation beyond $200,000 in excess of the exemption. The rates are much less on the widow and husband and direct heirs than on collateral heirs and strangers in blood. The stranger pays over twice the amount of tax that is paid in case of husband, widow, lineal descendant, etc.

(*h*) *Connection with Federal tax.*—The inheritance and estate tax together absorb the full 80 per cent credit allowed by the Federal law of 1926. It appears that the repeal of the Federal estate tax would make the Delaware estate tax ineffective, but that a change in the credit clause of the Federal law might not do so.

District of Columbia

There is no inheritance or estate tax imposed on residents of the District of Columbia other than the Federal estate tax.

Florida

(*a*) *Form of tax: Estate tax.*—Estate tax levied on net estates of resident and nonresident decedents dying after May 16, 1931, valued as of date of death. A like tax is levied retroactively covering the period from November 4, 1930, to May 16, 1931. The law is modeled on the Federal law of 1926. Its purpose is to take advantage of the credit allowed by the Federal law.

(*b*) *Consanguinity.*—Not recognized.

(*c*) *Exemption and rates.*—Same as for Federal estate tax. Exemption to net estate, $100,000. Rates 1 per cent graduated to 20 per cent, the latter rate applying to that portion of net estates in excess of $10,000,000, but total tax may not exceed the credit allowed by the Federal law.

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—Yes.

(*f*) *History.*—Amendment to the Florida constitution to permit a tax equal to the amount of the credit allowed under the laws of the United States adopted at the general elections in November, 1930. Tax statute enacted at the following session of the legislature, effective May 16, 1931. Second enactment May 18, 1931, to cover the period November 4, 1930, to May 16, 1931.

(*g*) *General statement.*—The Florida tax is imposed at the same rates as those of the Federal law of 1926, but the total tax shall not exceed the credit allowed by the laws of the United States. It is levied on the net estate and not on the distributive share.

(*h*) *Connection with the Federal tax.*—The tax absorbs the full Federal credit. It is based on the Federal tax and is governed by the same rules, interpretation, and construction when not otherwise provided. A change in the amount of the Federal credit would only change the amount of the Florida tax. The repeal of the Federal tax or the credit provision thereof would make the Florida tax ineffective.

Georgia

(*a*) *Form of tax: Inheritance and estate.*—

Inheritance tax imposed on property within the State belonging to nonresident decedents. Georgia does not impose any inheritance tax on resident estates.

Estate tax levied on entire net estate of resident decedents, so as to take advantage of 80 per cent credit allowed by Federal law of 1926.

(*b*) *Consanguinity.*—Not recognized.

(*c*) *Exemption and rates:*

Inheritance tax.—No exemption. Rates, 2 per cent of actual value. (Applies only to nonresidents.)

Estate tax.—There is no exemption, as such, but where the net estate is less than $100,000 no tax is imposed. The tax equals 80 per cent of the Federal tax if property is all located in Georgia, and in other cases such proportion thereof as the value of the property in Georgia bears to the value of the entire property.

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—Yes. Intangible personal property exempted from tax where laws of the State of residence at date of death exempted residents of Georgia from transfer or death taxes on similar property.

(*f*) *History.*—First inheritance tax, 1913. Amended 1919, 1921. In 1925 resident estates became subject to estate tax to take advantage of credit provision of Federal estate tax law. In 1926 rates increased to reflect changes made in Federal law. Latest amendment, 1927.

(*g*) *General statement.*—Georgia is distinguished from other States in that it had no inheritance or estate tax (except an inheritance tax on nonresidents) until 1925, when it enacted an estate tax to take advantage of the credit provision of the Federal law. The practical situation is, so far as residents of Georgia are concerned, that they pay merely an estate tax which is equal to the 80 per cent credit allowed by the Federal law, the State by this tax absorbing the Federal credit. Therefore, if there were no Federal credit, residents of Georgia would pay no death tax to the State.

(*h*) *Connection with Federal tax.*—Estate tax based on Federal tax. It would be ineffective if there were no Federal tax.

IDAHO

(*a*) *Form of tax: Inheritance.*—Inheritance tax levied on distributive share of each beneficiary, valued as of date of death.

(*b*) *Consanguinity.*—Recognized.

(*c*) *Exemption and rates:*

Widow or minor child, $10,000 exemption. (Half of community property exempt to widow.) Rates, 1 per cent graduated up to 10 per cent, the latter rate applying to that portion of net shares in excess of $500,000 (before exemption).

Husband, lineal issue, or ancestor, adopted or mutually acknowledged child, or lineal issue thereof,. $4,000 exemption. (Half of community property exempt to husband.) Rates, 1 per cent graduated up to 10 per cent, the latter rate applying to that portion of net shares in excess of $500,000 (before exemption).

Brother, sister, descendant of either, daughter-in-law, son-in-law, $2,000 exemption. Rates, 2 per cent, graduated up to 15 per cent, the latter rate applying to that portion of net shares in excess of $500,000 (before exemption).

Uncle, aunt, or descendant of either, $1,000 exemption. Rates 3 per cent graduated up to 20 per cent, the latter rate applying to that portion of net shares in excess of $200,000 (before exemption).

All others, except charitable, religious, or educational organizations, which are exempt, $500 exemption. Rates 5 per cent graduated up to 20 per cent, the latter rate applying to that portion of net shares in excess of $100,000 (before exemption).

(*d*) *Community property.*—Yes. One-half of community property subject to tax on death of husband or wife.

(*e*) *Reciprocity.*—Yes. Reciprocal exemption of intangible personal property of nonresident decedents, provided State of domicile grants reciprocal exemption to, or does not tax intangibles of residents of Idaho.

(*f*) *History.*—First inheritance tax 1907. Until 1929 maintained practically unbroken record of an unamended law. Complete recodification in 1929. Latest amendment, 1929.

(*g*) *General statement.*—Idaho imposes an inheritance tax on the distributive share of each beneficiary. The rates are graduated in accordance with the amount of such share. There is no graduation beyond $500,000 for the first and second classes of beneficiaries, none beyond $200,000 for third class, and none beyond $100,000 for fourth class.

(*h*) *Connection with Federal tax.*—There is no direct connection with the Federal tax, but the inheritance tax rates of Idaho are sufficiently high to absorb the full 80 per cent credit in most cases except where there are very large transfers to direct heirs.

ILLINOIS

(*a*) *Form of Tax: Inheritance.*—Inheritance tax levied on distributive share of each beneficiary valued at time of death of decedent. Based on former New York inheritance tax law.

(*b*) *Consanguinity.*—Recognized.

(*c*) *Exemption and rates:*

Lineal ancestor, husband, wife, child, adopted or mutually acknowledged child, daughter-in-law, son-in-law, lineal descendants of decedent, $20,000 exemption. Rates 2 per cent graduated up to 14 per cent, the latter rate applying to that portion of net shares in excess of $520,000 (before exemption).

Brother and sister, $10,000 exemption. Rates 2 per cent graduated up to 14 per cent, the latter rate applying to that portion of net shares in excess of $510,000 (before exemption).

(c) *Exemption and rates*—Continued.

Uncle, aunt, niece, nephew, or lineal descendant of same, $500 exemption. Rates, 6 per cent, graduated up to 16 per cent, the latter rate applying to that portion of net shares in excess of $170,500 (before exemption).

All others, except charitable, religious, or educational organizations, etc. which are exempt, $100 exemption. Rates 10 per cent graduated up to 30 per cent, the latter rate applying to that portion of net shares in excess of $250,100 (before exemption):

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—Yes. Does not tax intangible personal property of residents of States which do not tax intangibles of or which extend reciprocity to residents of Illinois.

(f) *History.*—First inheritance tax 1895, amended 1901. Present law, 1909, amended.

(g) *General statement.*—Illinois imposes an inheritance tax at progressive rates on the distributive share of each beneficiary. There is no graduation beyond $520,000 for the first group (see "Exemption and rates," above); $510,000 for the second group, $170,500 for the third group, and $250,100 for the fourth group. The rates are much less on the widow and direct heirs than on collateral heirs and strangers in blood. The stranger pays approximately 300 per cent greater tax than is paid in case of a widow, husband, lineal ascendant, or ancestor. No estate tax is imposed.

(h) *Connection with Federal tax.*—There is no direct connection with the Federal tax, but the inheritance tax rates of Illinois are sufficiently high to absorb the full 80 per cent credit in most cases except where there are very large transfers to direct heirs.

Indiana

(a) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary valued as of date of transfer.

Estate tax enacted to secure the benefit of the 80 per cent credit provision of the Federal law of 1926.

(b) *Consanguinity.*—Recognized.

(c) *Exemption and rates:*

Widow, $15,000 exemption. Rates 1 per cent graduated up to 10 per cent, the latter rate applying to that portion of net shares in excess of $1,500,000 (before exemption).

Minor children, $5,000 exemption. Rates 1 per cent graduated up to 10 per cent, the latter rate applying to that portion of net shares in excess of $1,500,000 (before exemption).

Husband, lineal ancestor, and lineal descendant, $2,000 exemption. Rates 1 per cent graduated up to 10 per cent, the latter rate applying to that portion of net shares in excess of $1,500,000 (before exemption).

Brother, sister, or descendant of either, daughter-in-law, son-in-law, $500 exemption. Rates 5 per cent graduated up to 15 per cent, the latter rate applying to that portion of net shares in excess of $1,000,000 (before exemption).

All others, except charitable, religious, or educational organizations, etc., which are exempt, $100 exemption. Rates 7 per cent graduated up to 20 per cent, the latter rate applying to that portion of net shares in excess of $1,000,000 (before exemption).

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—Yes, to States which exempt, or do not tax, intangibles of residents of Indiana.

(f) *History.*—First inheritance tax 1913. Amended 1915, 1917, 1919, and 1921. Entirely new law enacted 1929. Present law enacted in 1931, when estate tax was added.

(g) *General statement.*—Indiana imposes an inheritance tax on the distributive share of each beneficiary. The rates are graduated in accordance with the amount of such share. There is no graduation beyond $1,500,000. A stranger pays approximately two and one-half times the tax that is paid in case of direct heirs. An estate tax is imposed to absorb the 80 per cent credit allowed by Federal law of 1926.

(h) *Connection with Federal tax.*—The inheritance and estate tax together absorb the full 80 per cent credit allowed by the Federal law. The estate tax would become void and of no effect in case of the repeal of the Federal estate tax or the credit provision thereof.

Iowa

(a) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary valued as of date of death. It was modeled largely after the New York statute.

Estate tax levied on estate so as to secure the excess, if any, of the Federal credit over the inheritance tax.

(b) *Consanguinity.*—Recognized.

(c) *Exemption and rates:*

Inheritance tax.—

Residents of United States: Wife or husband, $40,000 exemption, also statutory distributive share which consists of one-third of real estate in fee and one-third of personalty not necessary for payment of debts. Rates 1 per cent graduated up to 8 per cent, the latter rate applying to that portion of net shares in excess of $300,000 (before exemption).

Children, including those adopted or illegitimate, $15,000 exemption. Rates same as for wife and husband.

Parents, $10,000 exemption. Rates same as for wife and husband.

Other lineal descendants, $5,000 exemption. Rates same as for wife and husband.

Brother, sister, son-in-law, daughter-in-law, step-children, no exemption. Rates 5 per cent graduated to 10 per cent, the latter rate applying to that portion of net shares in excess of $300,000.

All other individuals, no exemption. Rates 10 per cent graduated to 15 per cent, the latter rate applying to that portion of net shares in excess of $200,000.

Charitable, religious, or educational organizations without the State, no exemption. Flat rate of 10 per cent.

Corporations or associations organized for profit, no exemption. Flat rate of 15 per cent.

Charitable, religious, or educational organizations within the State entirely exempt.

Nonresident aliens: Wife, husband, parents, brother, sister, lineal descendant, adopted or illegitimate child—no exemption. Rates, flat rate of 10 per cent.

All other nonresident aliens, no exemption. Rates, flat rate of 20 per cent.

Estate tax.—$100,000 specific exemption. Rates four-fifths of 1 per cent graduated up to 16 per cent, the latter rate applying to that portion of amounts in excess of $10,000,000.

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—Yes. Does not tax intangible personal property of nonresident if State of domicile grants a similar exemption to or does not tax intangibles of residents of Iowa.

(f) *History.*—First inheritance tax, 1896. New law, 1911. Estate tax amendment, 1929. Inheritance tax amendments, 1931.

(g) *General statement.*—Iowa imposes an inheritance tax on the distributive share of each beneficiary, graduated in accordance with the size of such share, except on property on nonresident aliens. For the first class above, the graduation ends at $300,000; for the second class at $200,000. Iowa is is the only State which imposes a discriminatory tax on transfers to nonresident aliens. This tax is at flat rates and is much heavier than on heirs resident in the United States.

(h) *Connection with Federal tax.*—The inheritance and estate tax together absorb the 80 per cent credit allowed under the Federal law. The Iowa estate tax would become void and of no effect if the Federal estate tax law were repealed.

Kansas

(a) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary valued as of date of death.

Estate tax levied on estate so as to secure remainder, if any, of 80 per cent credit allowed by Federal law of 1926.

(b) *Consanguinity.*—Recognized.

(c) *Exemption and rates:*

Inheritance tax.—

Widow, $75,000 exemption. Rates one-half of 1 per cent graduated up to 2½ per cent, the latter rate applying to that portion of net shares in excess of $500,000 (before exemption).

Husband, lineal descendent, lineal ancestor, adopted child, lineal descendant thereof, daughter-in-law, son-in-law, $15,000 exemption. Rates 1 per cent graduated up to 5 per cent, the latter rate applying to that portion of net shares in excess of $500,000 (before exemption).

Brother or sister, $5,000 exemption. Rates 3 per cent graduated up to 12½ per cent, the latter rate applying to that portion of net shares in excess of $500,000 (before exemption).

All others, except religious, charitable, or educational organizations, which are exempt, no exemption, except where share is less than $200, in which case entirely exempt. Rates 5 per cent graduated up to 15 per cent, the latter rate applying to that portion of net shares in excess of $500,000 (before exemption).

Estate tax.—$100,000 exemption. Equals difference between the total of the Kansas inheritance tax and 80 per cent of Federal estate tax under act of 1926.

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—Kansas not reciprocal with any of the States having reciprocal exemptions. Taxes intangible property of nonresident decedents.

(f) *History.*—First inheritance tax, 1909; repealed, 1913; new law, 1915; amended, 1917 and 1919. Estate tax, 1930.

(g) *General statement.*—The basic death tax of Kansas is an inheritance tax levied on the fair market value of the share of each beneficiary as of date of decedent's death. The rates are graduated in accordance with the amount of shares. There is no graduation beyond $500,000. Kansas grants the highest exemption granted by any State, allowing a widow $75,000. The stranger pays from two to seven times the amount of tax paid by a husband, child, lineal issue, or ancestor. On estates in excess of $100,000 an estate tax is imposed based on the Federal estate tax of 1926, equal to the difference between the total of the Kansas inheritance tax and 80 per cent of the Federal estate tax.

(h) *Connection with Federal tax.*—The inheritance and estate tax together absorb the full 80 per cent credit allowed by the Federal law in all cases. It appears the estate tax of Kansas would become ineffective if the Federal estate tax were repealed

Kentucky

(a) *Form of tax: Inheritance tax.*—Inheritance tax levied on distributive share of each beneficiary, valued as of date of death.

(b) *Consanguinity.*—Recognized.

(c) *Exemption and rates:*

Widow, $20,000 exemption. Rates 1 per cent graduated up to 16 per cent, the latter rate applying to that portion of net shares in excess of $10,000,000 (before exemption).

Minor children, $10,000 exemption. Rates 1 per cent graduated up to 16 per cent, the latter rate applying to that portion of net shares in excess of $10,000,000 (before exemption).

Husband, lineal descendant, lineal ancestor, son-in-law, daughter-in-law, $5,000 exemption. Rates 1 per cent graduated up to 16 per cent, the latter rate applying to that portion of net shares in excess of $10,000,000 (before exemption.

Brother, sister, brother or sister in law, uncle, aunt, $2,000 exemption. Rates 2 per cent graduated up to 16 per cent, the latter rate applying to that portion of net shares in excess of $10,000,000 (before exemption).

Niece, nephew, wife or widow of nephew, husband of niece, niece-in-law, or nephew-in-law, charitable, religious, or educational associations outside State, in United States, $500 exemption. Rates 2 per cent graduated up to 16 per cent, the latter rate applying to that portion of net shares in excess of $10,000,000 (before exemption)

All others, except charitable, religious, or educational organizations, within State, which are exempt, $500 exemption. Rates 6 per cent graduated up to 16 per cent, the latter rate applying to that portion of net shares in excess of $500,000 (before exemption).

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—Not reciprocal with any State. Taxes intangible personal property of nonresident decedents.
(f) *History.*—First act imposed in 1904, taxing collaterals only. Amended in 1916 to include direct heirs. In 1924 the State adopted the model law of the National Tax Association. Rates amended in 1926 to take advantage of Federal credit.
(g) *General statement.*—Kentucky imposes an inheritance tax on the distributive share of each beneficiary. The rates are graduated in accordance with the amount of such share. There is no graduation beyond $10,000,000, and, in case of strangers, none after $500,000. A stranger pays approximately two and one-half times the tax paid in case of direct heirs. Nonresident estates are subject to a flat rate tax of 2 per cent without exemption on all tangible personalty within the State.
(h) *Connection with Federal tax.*—The inheritance tax rates of Kentucky are sufficient to absorb the full 80 per cent credit allowed by the Federal law of 1926 in practically all cases.

Louisiana

(a) *Form of tax: Inheritance tax.*—Inheritance tax levied on distributive share of each beneficiary valued as of date of death.[1]
(b) *Consanguinity.*—Recognized.
(c) *Exemption and rates:*

Widow, husband, direct descendants, by blood or affinity, ascendants, and adopted children, $5,000 exemption. Rates of 2 per cent to 3 per cent, the latter rate applying to that portion of net shares in excess of $20,000 (before exemption).

Collaterals, including brother or sister by affinity, $1,000 exemption. Rates 5 per cent to 7 per cent, the latter rate applying to that portion of net shares in excess of $20,000 (before exemption).

All others, except charitable, religious, or educational organizations within State, $500 exemption. Rates 5 per cent to 10 per cent, the latter rate applying to that portion of net shares in excess of $5,000 (before exemption).

(d) *Community property.*—Recognized.
(e) *Reciprocity.*—Not reciprocal with any State. Taxes intangibles of nonresident decedents.
(f) *History.*—First inheritance tax 1828 (on alien nonresidents only). Repealed 1830, another law enacted 1842. New law 1921, amended 1922, 1924.
(g) *General statement.*—Louisiana imposes an inheritance tax on the distributive share of each beneficiary. Only two rates are used in each class, the highest rate being applicable on amounts in excess of $20,000 for relatives, for strangers, $5,000. Collateral heirs pay about twice and strangers about four times the tax paid by direct heirs.
(h) *Connection with Federal tax.*—Louisiana absorbs the full 80 per cent credit allowed by the Federal tax of 1926 only in cases where the estate is less than approximately $400,000 in the case of direct heirs and less than approximately $5,000,000 in the case of strangers. [2]

Maine

(a) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary valued as of date of decedent's death.

The estate tax equals the difference between 80 per cent of the Federal estate tax of 1926 and the total of all other death taxes paid.

(b) *Consanguinity.*—Recognized.
(c) *Exemption and rates:*

Inheritance tax.—

Widow, husband, parent, child, $10,000 exemption. Rates graduated 1 to 2 per cent, the latter rate applying to that portion of net shares in excess of $100,000 (before exemption).

Lineal descendant, lineal ancestor, daughter-in-law, son-in-law, $500 exemption. Rates graduated 1 to 2 per cent, the latter rate applying to that portion of net shares in excess of $100,000 (before exemption).

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[1] Effective July 27, 1932, Louisiana imposed an additional estate tax for the purpose of absorbing the full Federal credit for State death taxes paid.
[2] See note 1.

(c) *Exemption and rates*—Continued.

Inheritance tax—Continued.

Brother, sister, uncle, aunt, nephew, niece, or cousin, $500 exemption. Rates graduated 4 to 5 per cent, the latter rate applying to that portion of net shares in excess of $100,000 (before exemption).

All others, except charitable, religious, or educational organizations within State which are exempt, $500 exemption. Rates graduated 5 to 7 per cent, the latter rate applying to that portion of net shares in excess of $100,000.

Estate tax.—In addition to the inheritance tax, there is imposed an estate tax on resident estates in excess of $100,000. The tax is the difference between 80 per cent of the Federal tax under the act of 1926 and the total of all other death taxes paid by the estate.

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—Yes. Does not tax intangibles of States which do not tax intangibles of Maine residents.

(*f*) *History.*—First inheritance tax 1893, modeled largerly after the New York law. Present table of rates 1909. Estate-tax provision 1927.

(*g*) *General statement.*—Maine imposes an inheritance tax on the share of each beneficiary. Rates are graduated in accordance with the amount of such share. Tax on strangers and collaterals is much heavier than on widow, etc. The estate tax was enacted to take advantage of the credit clause of the Federal law.

(*h*) *Connection with Federal tax.*—The inheritance and estate tax together absorb the full 80 per cent credit allowed by the Federal law. The estate tax by specific provision becomes void and of no effect in respect of persons who die subsequent to the effective date of the repeal of the Federal estate tax of 1926 or the 80 per cent credit provision thereof.

Maryland

(*a*) *Form of tax: Estate and inheritance.*—

Inheritance tax levied on distributive shares of collateral relatives and strangers, only.

Estate tax levied on estates of residents in excess of $100,000 so as to take advantage of 80 per cent credit provision of Federal law of 1926.

(*b*) *Consanguinity.*—Direct relatives entirely exempt. Collateral relatives taxed at flat rate.

(*c*) *Exemption and rates:*

Inheritance tax.—

Widow, parents, husband, child, lineal descendants, entirely exempt.

All others, except counties or municipalities of the State, which are exempt, no exemption, except where estate does not exceed $500, in which case it is exempt. Rate 5 per cent flat.

Estate tax.—The estate tax is levied only on estates in excess of $100,000. The tax is equal to the difference between all death taxes paid to States and 80 per cent of the Federal tax under the act of 1926.

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—Yes. Does not tax intangibles of residents of those States which do not tax intangibles of, or extend reciprocity to, residents of Maryland.

(*f*) *History.*—First inheritance tax (on collaterals) 1844. New law 1929, practically same as old law. Estate tax enacted 1929.

(*g*) *General statement.*—The law of Maryland is distinctive in that direct heirs are entirely exempt from the inheritance tax, and in that the tax is applied at a flat rate of 5 per cent on collaterals, strangers, and charitable, religious, and educational organizations. The estate tax was enacted to absorb the 80 per cent credit allowed by the Federal law of 1926.

(*h*) *Connection with Federal tax.*—The inheritance tax and the estate tax together absorb the 80 per cent credit allowed by the Federal law. By specific provision, the estate tax becomes void and of no effect in respect to the estate of persons who die subsequent to the effective date of the repeal of the Federal estate tax or the credit provisions thereof.

Massachusetts

(*a*) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary valued as of date of death (if the estate transferred vests immediately).

Estate tax enacted in order to secure benefit of 80 per cent credit allowed by Federal law of 1926.

(*b*) *Consanguinity.*—Recognized by inheritance tax.

(*c*) *Exemptions and rates:*

Inheritance tax.—

Widow husband, parents—child, grandchild, adopted child, adoptive parent, $10,000 exemption, except to grandchild, $1,000 (on shares in excess of exemption tax computed on entire amount). Rates graduated 1 to 7 per cent, the latter rate applying to that portion of net shares in excess of $1,000,000.

Lineal descendant, or ancestor, except those above, daughter-in-law, son-in-law, etc., $1,000 exemption (on shares in excess of exemption, tax computed on entire amount). Rates 1 per cent graduated to 9 per cent, the latter rate applying to that portion of net shares in excess of $1,000,000.

Brother, sister (including half blood), nephew, niece, step-child, step-parent, $1,000 exemption (on shares in excess of exemption, tax computed on entire amount). Rates 3 to 12 per cent, the latter rate applying to that portion of net shares in excess of $1,000,000.

All others, except charitable, religious, or educational organizations which are exempt, $1,000 exemption (on shares in excess of exemption, tax computed on entire amount). Rates 5 to 12 per cent, the latter rate applying to that portion of net shares in excess of $1,000,000.

Estate tax.—The estate tax is levied on net estates exceeding $100,000, and equals the difference between the total of all death taxes paid and 80 per cent of the Federal tax under the act of 1926.

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—Does not tax intangibles of nonresidents. Therefore, residents of Massachusetts are exempt from taxation on intangibles by those States having reciprocal provisions.

(*f*) *History.*—Eighteen hundred and ninety-one first inheritance tax law. Nineteen hundred and twelve, law made to conform to model law of National Tax Association. Nineteen hundred and twenty-six, estate tax enacted which is in addition to inheritance tax. Inheritance tax amended 1929, 1930, 1931.

(*g*) *General statement.*—Massachusetts imposes an inheritance tax on the share of each beneficiary. The rates are graduated in accordance with the amount of the share. The tax on collaterals and strangers is from two to three times the tax on direct heirs. The estate tax was enacted to absorb the 80 per cent credit allowed by the Federal law of 1926.

(*h*) *Connection with Federal tax.*—The inheritance and estate tax together absorb the full 80 per cent credit allowed by the Federal law. The estate tax equals the difference between 80 per cent of the Federal tax under the 1926 act and the total of all death taxes paid. It is specifically provided that the tax shall become void and of no effect in respect of the estate of any person who dies after the effective date of the repeal of the Federal estate tax, or the 80 per cent credit provision thereof.

Michigan

(*a*) *Form of tax*: *Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary, valued as of date of death, if it can be determined; if not, as of the time when it can be determined. Closely follows New York law as it existed prior to 1892, and New York judicial constructions adopted.

The estate tax was enacted to secure benefit of 80 per cent credit allowed by Federal law of 1926.

(*b*) *Consanguinity.*—Recognized in inheritance tax.

(c) *Exemptions and rates:*

Inheritance tax.—

Widow or husband, $30,000 exemption. Rates 1 per cent graduated to 8 per cent, the latter rate applying to that portion of net shares in excess of $750,000 (before exemption).

Parents, grandparents, lineal descendants, brother, sister, daughter-in-law, son-in-law, $5,000 exemption. Rates graduated 1 to 8 per cent, the latter rate applying to that portion of net shares in excess of $750,000 (before exemption).

All others, except charitable, religious, or educational organizations incorporated in State, which are exempt, no exemption. Rates graduated 5 to 15 per cent, the latter rate applying to that portion of net shares in excess of $500,000.

Estate tax.—Levied on net estates in excess of $100,000. Equals difference between 80 per cent of Federal estate tax under 1926 act and total of all death taxes paid.

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—Yes. Does not tax intangibles of residents of States which extend reciprocity to residents of Michigan.

(f) *History.*—First law, 1893, unconstitutional; next law, 1899, basis of present law. Present tables of rates, etc., 1923. Estate tax amendment 1929.

(g) *General statement.*—Michigan imposes an inheritance tax on the share of each beneficiary. The law is distinctive in that it taxes brothers and sisters at the same rates as lineal descendants. The tax on strangers is heavier than the tax on the former. The estate tax was enacted on the basis of the Federal law of 1926.

(h) *Connection with Federal tax.*—The inheritance and estate tax together absorb the full 80 per cent credit allowed by the Federal law. By specific provision, the estate tax is to continue, regardless of the repeal of, or changes in, the Federal estate tax law of 1926.

Minnesota

(a) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary, valued as of date of death.

Estate tax enacted to secure benefit of the 80 per cent credit provision of the Federal law of 1926.

(b) *Consanguinity.*—Recognized in inheritance tax.

(c) *Exemption and rates:*

Inheritance tax.—

Widow, lineal issue, adopted child, $10,000 exemption. Rates graduated 1 to 4 per cent, the latter rate applying to that portion of net shares in excess of $100,000 (before exemption).

Husband, lineal ancestor, mutually acknowledged child, or lineal descendant thereof, $10,000 exemption, except to lineal ancestor, $3,000. Rates graduated 1½ to 6 per cent, the latter rate applying to that portion of net shares in excess of $100,000 (before exemption).

Brother, sister, or descendant of either, daughter-in-law, son-in-law, $1,000 exemption. Rates graduated 3 to 12 per cent, the latter rate applying to that portion of net shares in excess of $100,000 (before exemption).

Uncle, aunt, or descendant of either, $250 exemption. Rates graduated 4 to 16 per cent, the latter rate applying to that portion of net shares in excess of $100,000 (before exemption).

All others, except charitable, religious, or educational organizations within the State, which are exempt, $100 exemption. Rates graduated 5 to 20 per cent, the latter rate applying to that portion of net shares in excess of $100,000 (before exemption).

Estate tax.—The estate tax is levied on net estates exceeding $100,000, and equals the difference between the total of all other death taxes paid and 80 per cent of the Federal tax under the act of 1926.

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—Not reciprocal with any State. Taxes intangibles of nonresidents.

(*f*) *History.*—First constitutional tax 1905. Amendment in 1911 provided progressive rates. Estate tax enacted 1931.

(*g*) *General statement.*—Minnesota imposes an inheritance tax on the share of each beneficiary. Rates are graduated in accordance with the amount of the share. Graduation ends at $100,000 in all cases. The rates are much heavier on collaterals and strangers than on direct heirs, the tax on strangers being about five times the tax on direct heirs. Estate tax enacted to absorb the 80 per cent credit allowed by the Federal law of 1926.

(*h*) *Connection with Federal tax.*—The inheritance and estate taxes together absorb the full 80 per cent credit allowed by the Federal law. It is specifically provided that the estate tax shall become void and of no effect in respect of the estate of any person who dies after the effective date of the repeal of the Federal estate tax, or the 80 per cent credit provision thereof.

Mississippi

(*a*) *Form of tax: Estate tax.*—Mississippi imposes an estate tax on the net estate in excess of $100,000. It is equal to 80 per cent of the Federal estate tax under the act of 1926, and applies to resident and nonresident estates. Modeled on the Federal law.

(*b*) *Consanguinity.*—Not recognized.

(*c*) *Exemptions and rate.*—$100,000 exemption. Rates 80 per cent of the Federal estate tax rates under act of 1926.

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—Yes. Does not tax intangibles of residents of those States which extend reciprocity to residents of Mississippi.

(*f*) *History.*—First inheritance tax law in 1918. Nineteen hundred and twenty-four, estate tax enacted in lieu of inheritance tax. Amended in 1928 to make rates equal to 80 per cent of the Federal estate tax of 1926.

(*g*) *General statement.*—Imposes an estate tax on net estate in lieu of inheritance tax on each share. Modeled on the Federal estate tax law, and adopts, as far as practicable, Federal regulations.

(*h*) *Connection with Federal law.*—The Mississippi estate tax remains in force, by specific provision, so long as the United States Government imposes an estate tax, and becomes void with the repeal of the Federal tax.

Missouri

(*a*) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary, valued as of date of decedent's death, except transfers in case of powers of appointment, where property is valued as of date of transfer.

Estate tax enacted to secure benefit of the 80 per cent provision of the Federal law of 1926.

(*b*) *Consanguinity.*—Recognized by inheritance tax.

(*c*) *Exemptions and rates:*

Inheritance tax.—

Widow or husband, $20,000 exemption (in addition to marital rights). Rates 1 per cent to 6 per cent, the latter rate applying to that portion of net shares in excess of $420,000 (before exemption).

Lineal descendants, physically or mentally incapacitated, $15,000 exemption. Rates 1 to 6 per cent, the latter rate applying to that portion of net shares in excess of $415,000 (before exemption).

Other lineal descendants (including adopted and illegitimate children), lineal ancestors, $5,000 exemption. Rates 1 to 6 per cent, the latter rate applying to that portion of net shares in excess of $405,000 (before exemption).

Son-in-law, daughter-in-law, brother, sister, or descendant thereof, $500 exemption. Rates 3 to 18 per cent, the latter rate applying to that portion of net shares in excess of $400,500 (before exemption).

Uncle, aunt, or descendant of either, $250 exemption. Rates 3 to 18 per cent, the latter rate applying to that portion of net shares in excess of $400,250 (before exemption).

(*c*) *Exemptions and rates*—Continued.

Inheritance tax—Continued.

Brother or sister of grandparent or descendant of either, $100 exemption. Rates 4 to 24 per cent, the latter rate applying to that portion of net shares in excess of $400,100 (before exemption).

All others, except charitable, religious, and educational organizations, etc., which are exempt, no exemption (except when estate is less than $100). Rates 5 to 30 per cent, the latter rate applying to that portion of net shares in excess of $400,000.

Estate tax.—$100,000 exemption. Tax equals the difference between 80 per cent of the Federal estate tax under the act of 1926 and the total of all death taxes paid.

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—Yes. Does not tax intangibles of States which do not tax intangibles of, or which extend reciprocity to, residents of Missouri.

(*f*) *History.*—First inheritance tax 1895. Present table of rates 1917, exemptions 1919. Estate tax amendment 1927.

(*g*) *General statement.*—Missouri imposes an inheritance tax on the share of each beneficiary. Rates are graduated in accordance with the value of such share. The tax on collateral heirs is about three times that on direct heirs; and the tax on strangers is about five times that on direct heirs. An estate tax is also imposed to absorb the 80 per cent credit allowed by the Federal law of 1926.

(*h*) *Connection with Federal tax.*—The inheritance tax alone more than absorbs the 80 per cent credit of the Federal estate tax in the case of strangers and collaterals; in the case of direct heirs it does not. The estate tax, however, with the inheritance, absorbs the credit, thus making the tax on direct heirs much greater than it would be in the absence of the Federal estate tax. It would appear that the estate tax would be ineffective if the Federal estate tax was repealed.

MONTANA

(*a*) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary, valued as of date of decedent's death.

The estate tax is imposed on net estates of residents and nonresidents in excess of $1,000,000, and was enacted to secure the benefit of the 80 per cent credit provision of the Federal law of 1926.

(*b*) *Consanguinity.*—Recognized by inheritance tax.

(*c*) *Exemptions and rates:*

Inheritance tax.—

Widow, husband, lineal issue, lineal ancestor, adopted or mutually acknowledged child and issue, $17,500 exemption to widow; $5,000 exemption to husband; $2,000 exemption to others of class. Rates graduated 1 to 4 per cent, the latter rate applying to that portion of net shares in excess of $100,000 (before exemption).

Brother, sister, or descendant, daughter-in-law, son-in-law, $500 exemption. Rates 2 per cent graduated to 8 per cent, the latter rate applying to that portion of net shares in excess of $100,000 (before exemption).

Uncle, aunt, first cousin, no exemption. Rates graduated 3 to 12 per cent, the latter rate applying to that portion of net shares in excess of $100,000.

All others, except charitable, religious, or educational organizations, etc., within State, no exemption. Rates graduated 4 to 16 per cent, the latter rate applying to that portion of net shares in excess of $100,000.

Estate tax.—The tax is imposed only on net estates in excess of $1,000,000. Rates graduated 6⅖ to 16 per cent, the latter rate applying to that portion of net estates in excess of $10,000,000.

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—No. Taxes intangibles of nonresidents.

(*f*) *History.*—First inheritance tax 1897. New law 1923. Estate tax amendment 1927.

(g) *General statement.*—Montana imposes an inheritance tax on the share of each beneficiary. Rates are graduated in accordance with the amount of the share. The tax on collaterals is twice the tax on direct heirs, and the tax on strangers four times that on direct heirs. The estate tax was enacted to take up the credit allowed by the Federal law. It is specifically provided that this tax shall not exceed the difference between 80 per cent of the Federal tax under the act of 1926, and the total death taxes paid to the States.

(h) *Connection with Federal tax.*—The inheritance tax and estate tax together absorb the full 80 per cent credit allowed by the Federal law in all cases. The inheritance tax rates in the case of strangers are sufficiently high to absorb the full 80 per cent credit without the application of the estate tax. The estate tax is incorporated in the law of Montana, but it appears that it would become ineffective with the repeal of the Federal law.

NEBRASKA

(a) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary, valued as of date of decedent's death.

Estate tax on resident estates enacted to secure benefit of 80 per cent credit clause of Federal law of 1926.

(b) *Consanguinity.*—Recognized by inheritance tax.

(c) *Exemptions and rates:*

Inheritance tax.—

Widow, husband, lineal descendant, parents, brother, sister, daughter-in-law, son-in-law, adopted or mutually acknowledged child, $10,000 exemption, plus statutory right, in case of widow and husband. $10,000 exemption to others of class. Rates, flat 1 per cent on net share (before exemption).

Uncle, aunt, niece, nephew, or lineal descendant of foregoing, $2,000 exemption. Rates, flat 4 per cent on net share (before exemption).

All others, except charitable, religious, or educational organizations, no exemption, unless net estate less than $500, then entirely exempt. Rates graduated 4 per cent to 12 per cent, the latter rate applying to that portion of net shares in excess of $50,000.

Estate tax.—$100,000 exemption. Tax equals difference between 80 per cent of Federal estate tax under act of 1926 and total of all other death taxes paid.

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—Yes.

(f) *History.*—First inheritance tax 1901, modeled on Illinois and Iowa statutes. Amendment of 1923 doubled the rate of the tax. Estate tax amendment 1929.

(g) *General statement.*—Nebraska imposes an inheritance tax on the share of each beneficiary. On direct and collateral heirs flat rates are imposed; on strangers graduated rates, which are four to twelve times higher than on direct and collateral heirs. The estate tax is the difference between 80 per cent of the Federal estate tax under the act of 1926 and the total of all other death taxes paid.

(h) *Connection with Federal tax:*

The inheritance and estate tax together absorb the 80 per cent credit of the Federal law. The total tax can not exceed the difference between 80 per cent of the Federal estate tax under the act of 1926 and all other death taxes paid. In case of change in Federal estate tax rates, the Nebraska estate tax is modified accordingly. It would probably be ineffective in case of the repeal of Federal estate tax. The following quotation from the Nebraska law is interesting:

"Sec. 7. This act is not a commitment of the legislature to the principle of the coercive features of the Federal estate tax. It is accepted in order to protect the temporary interests of the people of the State of Nebraska."

NEVADA

There is no inheritance or estate tax imposed by the State of Nevada. Its inheritance tax was repealed in 1925. Thus, the Federal estate tax is the only death tax applicable to decedents resident in that State.

New Hampshire

(a) *Form of tax: Inheritance and estate.*—

Inheritance tax imposed on distributive share of collateral heirs and strangers in blood, valued as of decedent's death.

Estate tax enacted to secure the benefit of the 80 per cent credit provision of the Federal law of 1926.

(b) *Consanguinity.*—Recognized to the extent of exempting direct heirs.

(c) *Exemptions and rates:*

Inheritance tax.—

Widow, husband, lineal descendant, adopted child and lineal descendant, parents, daughter-in-law, son-in-law, no tax imposed.

All others, except charitable, religious, and educational organizations, etc., which are exempt, no exemption. Flat tax of 5 per cent.

Estate tax.—The estate tax is levied on net estates exceeding $100,000, and equals the difference between the total of all other death taxes paid and 80 per cent of the Federal tax under the act of 1926.

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—Yes. Does not tax intangibles of States which have no inheritance tax, or which do not tax intangibles of, or extend reciprocity to, residents of New Hampshire.

(f) *History.*—First collateral inheritance tax, 1878. (Held unconstitutional.) First valid inheritance tax, 1905. Direct inheritance tax, 1919. (Unconstitutional.) Collateral inheritance tax, 1925. Reciprocity amendment, 1927. Estate tax enacted, 1931.

(g) *General statement.*—New Hampshire imposes an inheritance tax on the net shares of collaterals and strangers at a flat rate of 5 per cent. Estate tax enacted to absorb the 80 per cent credit allowed by the Federal law.

(h) *Connection with Federal tax.*—The inheritance and estate taxes together absorb the full 80 per cent credit allowed by the Federal law of 1926. It is specifically provided that the estate tax shall become void and of no effect in respect of the estate of any person who dies after the effective date of the repeal of the Federal estate tax or the 80 per cent credit provision thereof.

New Jersey

(a) *Form of tax: Inheritance.*—

Inheritance tax levied on distributive share of each beneficiary, valued as of date of decedent's death.

No estate tax imposed.

(b) *Consanguinity.*—Recognized.

(c) *Exemption and rates:*

Widow, husband, lineal descendants, parents, $5,000 exemption. Rates graduated 1 per cent to 16 per cent, the latter rate applying to that portion of net shares in excess of $3,700,000 (before exemption).

Brother, sister, daughter-in-law, son-in-law, no exemption, except where amount is less than $500, then entirely exempt. Rates graduated 5 per cent to 16 per cent, the latter rate applying to that portion of net shares in excess of $2,200,000.

Charitable and religious institutions, etc., no exemption, except where amount is less than $500, then entirely exempt. Flat rate of 5 per cent.

All others, except transfers for use of political subdivision of State for public purpose, which are exempt, no exemption, except where amount is less than $500, then entirely exempt. Rates, graduated 8 per cent to maximum of 16 per cent, the latter rate applying to that portion of net shares in excess of $1,700,000.

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—Does not tax intangibles of nonresidents; therefore, residents of New Jersey are exempted from taxation on intangibles located in other States which have reciprocal provisions.

(f) *History.*—First inheritance tax (collateral) 1892. New law 1909, now in force, as amended. Rates materially increased 1926.

(g) *General statement.*—New Jersey imposes an inheritance tax on the share of each beneficiary. Rates are graduated in accordance with the amount of such share, except in the case of charitable, religious, and educational institutions, in which event a flat rate of 5 per cent is applied. The tax on collaterals and strangers is heavier than the tax on direct heirs. No estate tax is imposed.

(*h*) *Connection with Federal tax.*—The inheritance tax is sufficiently high to absorb the full 80 per cent credit of the Federal law in practically all cases. The higher rates became effective July 1, 1926, apparently for the purpose of absorbing the 80 per cent credit provided for in the Federal revenue act of 1926.

New Mexico

(*a*) *Form of tax: Inheritance.*—Inheritance tax levied on distributive share of each beneficiary, valued as of date of appraisal as specified by law.
(*b*) *Consanguinity.*—Recognized.
(*c*) *Exemption and rates:*

Widow, husband, lineal descendant, parents, $10,000 exemption on entire estate, except when part of estate goes to collaterals or strangers in blood the exemption is proportionate. Community property is exempt from tax on death of wife; one-half is taxable on death of husband.

Rates, 1 per cent flat rate on net share of inheritance, 2½ per cent when transfer was in contemplation of death.

Daughter-in-law, son-in-law, brother, sister, etc., exemption $10,000, except when part of estate goes to collaterals or strangers in blood the exemption is proportionate. Rates, flat 5 per cent on net share of inheritance, 8 per cent when transfer was in contemplation of death.

Collaterals, strangers in blood, corporations, etc., $500 exemption. Rates, flat 5 per cent on net share of inheritance, 8 per cent where transfer was in contemplation of death.

Works of art, etc., to institutions within State, exempt.

(*d*) *Community property.*—Recognized.
(*e*) *Reciprocity.*—Yes. Does not tax intangibles of those States which extend reciprocity to residents of New Mexico.
(*f*) *History.*—First inheritance tax, 1919. New law, 1921. Amendment, 1929, to exempt from taxation intangible personal property of nonresidents of States which provide similar exemptions to residents of New Mexico.
(*g*) *General statement.*—New Mexico imposes an inheritance tax on the share of each beneficiary. It imposes an additional tax where the transfer was in contemplation of death. The tax is much heavier on collaterals and strangers than on direct heirs.
(*h*) *Connection with Federal tax.*—The tax does not absorb the 80 per cent credit of the Federal law, and no estate tax is imposed.

New York

(*a*) *Form of tax: Estate.*—Estate tax levied on entire net estate, and not on individual shares, valued as of date of death, but taxes paid prorated among beneficiaries.
(*b*) *Consanguinity.*—Not recognized except by exemption.
(*c*) *Exemption and rates:*

Widow, $20,000; husband, $20,000; lineal ancestor, lineal descendant, brother, sister, daughter-in-law, son-in-law, etc., $5,000. Rates, graduated four-fifths of 1 per cent to 16 per cent, the latter rate applying to that portion of net estates in excess of $10,000,000 (before exemption).

All others, no exemption. Rates four-fifths of 1 per cent graduated to 16 per cent, the latter rate applying to that portion of net estates in excess of $10,000,000.

Note.—Net estates of less than $5,000 are not taxable. Exemption applies to first bracket of $150,000 only.

(*d*) *Community property.*—Not recognized.
(*e*) *Reciprocity.*—Yes. Does not tax intangible personal property of nonresidents if the State of residence extends similar treatment to intangibles of residents of the State of New York.
(*f*) *History.*—First transfer (inheritance) tax 1885. Repeatedly amended. First estate tax, 1925. An estate tax was substituted for the transfer and estate taxes in 1930 (effective September 1, 1930).
(*g*) *General statement.*—New York imposes an estate tax on the net estate of decedents, effective September 1, 1930. Before 1930 New York imposed an inheritance (transfer) tax and estate tax. The rates are graduated in accordance with value of net estate.
(*h*) *Connection with Federal tax.*—New York absorbs the full 80 per cent credit allowed by the Federal law of 1926. The estate tax would not be affected by the repeal of the Federal estate tax or the credit clause thereof.

North Carolina

(*a*) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary, valued as of date of decedent's death.

Estate tax enacted to secure benefit of 80 per cent credit provision of Federal law of 1926.

(*b*) *Consanguinity.*—Recognized in inheritance tax.

(*c*) *Exemptions and rates:*

Inheritance tax.—

Widow, \$10,000 exemption. Rates, 1 per cent graduated to 10 per cent, the latter rate applying to that portion of net shares in excess of \$3,010,000 (before exemption).

Minor child (under 21), \$5,000 exemption. Rates, 1 per cent graduated to 10 per cent, the latter rate applying to that portion of net shares in excess of \$3,005,000 (before exemption).

Husband, lineal issue (including stepchild and adopted child), lineal ancestor, \$2,000 exemption. Rates, 1 per cent graduated to 10 per cent, the latter rate applying to that portion of net shares in excess of \$3,002,000 (before exemption).

Brother, sister, and descendants, uncle or aunt, no exemption. Rates, 3 per cent graduated to 23 per cent, the latter rate applying to that portion of net shares in excess of \$3,000,000.

All others, except charitable, religious, and educational organizations, which are exempt, no exemption. Rates, 8 per cent graduated to 25 per cent, the latter rate applying to that portion of net shares in excess of \$3,000,000.

Estate tax.—\$100,000 exemption. Rates, tax equals difference between 80 per cent of Federal estate tax under act of 1926, and the North Carolina inheritance tax.

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—Yes. Does not tax intangibles of residents of States which do not tax intangibles of, or extend reciprocity to, residents of North Carolina.

(*f*) *History.*—First inheritance tax, 1847. New law, 1897; important amendments 1923. Estate tax amendment, 1927. Inheritance tax amendments, 1931.

(*g*) *General statement.*—North Carolina imposes an inheritance tax on the share of each beneficiary. Rates are graduated in accordance with the amount of the share. The rates are very much heavier on collateral heirs and strangers than on direct heirs. It enacted an estate tax to take advantage of the 80 per cent credit clause of Federal law of 1926.

(*h*) *Connection with Federal tax.*—In the case of collateral heirs and strangers, the inheritance tax alone more than absorbs the 80 per cent credit of the Federal law, and in the case of direct heirs, the inheritance tax and estate tax, together, absorb the 80 per cent credit. It appears that the estate tax would become ineffective by the repeal of the Federal law.

North Dakota

(*a*) *Form of tax: Estate.*—Estate tax levied on entire estate of residents and nonresidents at progressive rates, valued as of date of decedent's death.

(*b*) *Consanguinity.*—Not recognized except by exemptions.

(*c*) *Exemption and rates*:

\$20,000 exemption to widow and husband. \$5,000 exemption to minor child. \$3,000 exemption to lineal descendant or lineal ancestor, adopted child, stepchild, or lineal descendant of adopted or stepchild. All others, no exemption.

Rates 1 per cent graduated to 7 per cent, the latter rate applying to that portion of net estates in excess of \$1,500,000 (after exemption, if any).

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—Yes.

(*f*) *History.*—First inheritance tax, 1903. New inheritance tax law, 1913. New estate tax law, 1927; superseding inheritance tax.

(*g*) *General statement.*—North Dakota imposes an estate tax on net estates of residents and nonresidents. Rates are graduated in accordance with the amount of such estate. The tax does not absorb the 80 per cent credit allowed by the Federal law of 1926 except in the lower brackets.

(*h*) *Connection with Federal estate tax.*—There is no connection with Federal law.

Ohio

(a) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary, valued as of date of decedent's death.

Estate tax imposed to secure benefit of 80 per cent credit provision of Federal law of 1926.

(b) *Consanguinity.*—Recognized in inheritance tax.

(c) *Exemptions and rates:*

Inheritance tax.—

Widow or minor child, $5,000 exemption, plus 1 year's allowance to widow or child under 15, not exceeding $3,000. Rates 1 per cent graduated to 4 per cent, the latter rate applying to that portion of net shares in excess of $200,000 (before exemption).

Husband, parent, lineal descendant, and adopted child, $3,500 exemption. Rates, 1 per cent graduated to 4 per cent, the latter rate applying to that portion of net shares in excess of $200,000 (before exemption).

Brother, sister, niece, nephew, daughter-in-law, son-in-law, mutually acknowledged child, $500 exemption. Rates, 5 per cent graduated to 8 per cent, the latter rate applying to that portion of net shares in excess of $200,000 (before exemption).

All others, except charitable, religious, and educational organizations, which are exempt, no exemption. Rates, 7 per cent graduated to 10 per cent, the latter rate applying to that portion of net shares in excess of $200,000.

Estate tax.—$100,000 exemption. Rates, tax equals difference between 80 per cent of the Federal tax and all other death taxes paid.

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—Yes. Does not tax intangibles of nonresidents if State of residence extends similar treatment to intangibles of residents of Ohio.

(f) *History.*—First inheritance tax, 1893. New law, 1919. Estate tax amendment, 1927.

(g) *General statement.*—Ohio imposes an inheritance tax on the share of each beneficiary. Rates are graduated in accordance with the value of such share. The tax on collaterals and strangers is heavier than the tax on direct heirs. An estate tax is imposed to secure the benefit of the 80 per cent credit clause of the Federal law of 1926.

(h) *Connection with Federal tax.*—The inheritance and estate tax together absorb the full 80 per cent credit of the Federal law. Under the wording of the Ohio law, it appears that the estate tax would become ineffective by the repeal of the Federal estate tax, but not ineffective with a change in the credit provision thereof.

Oklahoma

(a) *Form of tax: Inheritance.*—Inheritance tax levied on distributive share of each beneficiary, valued as of date of decedent's death.

(b) *Consanguinity.*—Recognized.

(c) *Exemption and rates:*

Widow, husband, parents, lineal descendants: $15,000 exemption to widow; $10,000 exemption to child; $5,000 exemption to others of class. Rates graduated 1 per cent to 16 per cent, the latter rate applying to that portion of net shares in excess of $10,000,000 (before exemption).

Brother, sister, daughter-in-law, son-in-law, $1,000 exemption. Rates graduated 1 per cent to 16 per cent, the latter rate applying to that portion of net shares in excess of $10,000,000 (before exemption).

All others, except charitable, religious, and educational organizations within State, which are exempt, $500 exemption. Rates graduated 6 per cent to 16 per cent, the latter rate applying to that portion of net shares in excess of $10,000,000 (before exemption).

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—No. Taxes intangible property of nonresidents.

(f) *History.*—First inheritance tax, 1908. New law, 1915. Amendment, 1927, providing for present rates.

(g) *General statement.*—Oklahoma imposes an inheritance tax on the share of each beneficiary. Rates are graduated in accordance with the amount of each share and are higher on shares of distant relatives than on near relatives.

(*h*) *Connection with Federal tax.*—Although Oklahoma has enacted no legislation to take advantage of the 80 per cent credit clause of the Federal law of 1926, the inheritance tax is sufficient in most cases to absorb the full credit allowed. Repeal of or change in Federal law would have no effect on inheritance tax of Oklahoma.

Oregon

(*a*) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of collateral heirs and strangers in blood, valued as of date of decedent's death.

Estate tax levied on entire net estates of residents and nonresidents.

(*b*) *Consanguinity.*—Recognized in inheritance tax.

(*c*) *Exemptions and rates:*

Inheritance tax.—

Widow, husband, lineal descendants, parents, and grandparents, etc., not taxed.

Brother, sister, uncle, aunt, nephew, niece, or lineal descendant thereof, $1,000 exemption. Rates graduated 1 per cent to 15 per cent, the latter rate applying to that portion of net shares in excess of $50,000 (before exemption).

All others, except charitable, religious, or educational organizations which are exempt, no exemption. Rates graduated 2 per cent to 25 per cent, the latter rate applying to that portion of net shares in excess of $50,000.

Estate tax.—$10,000 exemption. Rates graduated 1 per cent to 10 per cent, the latter rate applying to that portion of net estates in excess of $1,000,000.

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—Yes. Does not tax intangibles of residents of States which exempt intangibles of, or extend reciprocity to, residents of Oregon.

(*f*) *History.*—First inheritance tax, 1903. Estate tax, 1919. Reciprocity amendment, 1927.

(*g*) *General statement.*—Oregon imposes an inheritance tax on the share of each collateral and stranger, and an estate tax on the net estate. The estate tax is the only death tax imposed on direct heirs. The same property which is subject to the inheritance tax is subject to the estate tax, including property of nonresidents. The inheritance tax rates and estate tax rates are graduated, and the former are much higher on strangers than on collaterals.

(*h*) *Connection with Federal tax.*—The inheritance and estate taxes are sufficient in most cases to absorb the full 80 per cent credit allowed by the Federal law of 1926, except in case of very large estates going to direct heirs. The repeal of or change in the Federal law would not affect the Oregon death taxes.

Pennsylvania

(*a*) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary valued as of date of decedent's death.

Estate tax on residents and nonresidents levied to take advantage of credit allowed by Federal law of 1926.

(*b*) *Consanguinity.*—Recognized by inheritance tax.

(*c*) *Exemption and rates:*

Inheritance tax.—

Widow, husband, lineal descendants, parents, etc., no exemption. Rate, flat 2 per cent.

All others, except charitable, religious, or educational organizations, which are exempt, no exemption. Rate, flat 10 per cent.

Estate tax.—$100,000 exemption. Rates: The estate tax is equal to the difference between 80 per cent of the Federal tax under act of 1926 and the total of all other death taxes paid to Pennsylvania and any other State or Territory.

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—Yes. Does not tax intangibles of residents of States which do not tax intangibles of, or extend reciprocity to, residents of Pennsylvania.

(*f*) *History.*—First inheritance tax 1826 (first in United States). New law 1917, present rates effective 1921. Estate tax amendments 1925 and 1927.

(*g*) *General statement.*—Pennsylvania imposes an inheritance tax on the share of each beneficiary at flat rates. The rate on collaterals and strangers is the same, and is five times the rate on direct heirs. The estate tax was enacted to take advantage of the 80 per cent credit clause of the Federal law of 1926.

(*h*) *Connection with Federal tax.*—The inheritance and estate taxes together absorb the 80 per cent credit allowed by the Federal law. Though there is no specific provision for repeal of the estate tax in case of repeal of the Federal estate tax or credit provision thereof, yet inasmuch as it is based on the difference between the credit allowed, or which may be allowed by the Federal law, and the total of all other death taxes paid, it would become ineffective if the Federal law were repealed or ceased to allow a credit for such taxes.

Rhode Island

(*a*) *Form of tax: Inheritance, estate, and additional estate.*—

Inheritance tax levied on distributive share of each beneficiary valued as of date of decedent's death.

Estate tax levied on resident and nonresident estates in excess of $10,000 at flat rate of 1 per cent.

Additional estate tax levied on resident and nonresident estates in excess of $250,000 at graduated rates; and if the additional estate tax, together with the inheritance and estate tax, does not equal 80 per cent of the Federal tax under the act of 1926, then the additional estate tax is increased until the whole 80 per cent credit is absorbed.

(*b*) *Consanguinity.*—Recognized by inheritance tax.

(*c*) *Exemption and rates:*

Inheritance tax.—

Widow, husband, lineal descendant, parent, grandparent, brother, sister, nephew, niece, daughter-in-law, son-in-law, etc., $25,000 exemption. Rates, graduated one-half of 1 per cent to 3 per cent, the latter rate applying to that portion of net shares in excess of $1,000,000 (before exemption).

All others, except organizations exempt under the law, $1,000 exemption. Rates graduated 5 per cent to 8 per cent, the latter rate applying to that portion of net shares in excess of $1,000,000

Estate tax.—$10,000 exemption. Rates, flat 1 per cent.

Additional estate tax.—

$250,000 exemption. Rates graduated 1.4 per cent to 14.92 per cent, the latter rate applying to that portion of estates in excess of $10,000,000.

In addition the additional estates tax is increased, if the inheritance, estate, and additional estate tax together are less than 80 per cent of the Federal estate tax, in which case the increase equals the difference between 80 per cent of the Federal tax under the act of 1926, and the total of the inheritance, estate, and additional estate taxes.

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—Does not tax intangibles of nonresidents; therefore, residents of Rhode Island obtain the benefits of reciprocity from those States having reciprocal provisions.

(*f*) *History.*—First inheritance tax 1916. Estate tax rate increased and additional estate tax imposed 1926. New enactment 1929 practically same as old law.

(*g*) *General statement.*—Rhode Island imposes an inheritance tax on the share of each beneficiary. Rates are graduated in accordance with the va'ue of the share. The rates on strangers are much higher than the rates on direct and collateral heirs. The State also imposes an estate tax at a flat rate of 1 per cent on estates over $10,000 and an additional estate tax, at graduated rates, on the large estates in order to absorb the 80 per cent credit allowed by the Federal law.

(*h*) *Connection with Federal tax.*—The inheritance, estate, and additional estate taxes together absorb the fu l 80 per cent credit allowed by the Federal law of 1926. They are a part of the statute and would remain effective in spite of the repeal of or change in the Federal law, except in regard to the provision providing that the total of the three taxes shall not be less than the 80 per cent credit allowed by the Federal law.

South Carolina

(a) *Form of tax: Inheritance.*—Inheritance tax levied on distributive share of each beneficiary, valued as of date of death.

(b) *Consanguinity.*—Recognized.

(c) *Exemption and rates:*

Widow husband, child, grandchild, parent: $10,000 exemption to widow or husband; $7,500 exemption to minor child; $5,000 exemption to child or parent; $500 exemption to grandchild. Rates, graduated 1 per cent to 6 per cent, the latter rate applying to that portion of net shares in excess of $300,000 (after exemption).

Lineal descendants and ancestors (other than mentioned above) brother, sister, uncle, aunt, nephew, niece, daughter-in-law, son-in-law, $500 exemption. Rates 2 per cent graduated to 7 per cent, the latter rate applying to that portion of net shares in excess of $300,500 (before exemption).

All others, except charitable, religious, or educational organizations, which are exempt, $200 exemption. Rates graduated 4 per cent to 14 per cent, the latter rate applying to that portion of net shares in excess of $300,200 (before exemption).

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—Yes. Does not tax intangibles of those States which do not tax intangibles of, or extend reciprocity to, residents of South Carolina.

(f) *History.*—First inheritance tax 1922. Extensive amendments 1924, 1925, 1928. Reciprocity amendment 1929.

(g) *General statement.*—South Carolina imposes an inheritance tax on the share of each beneficiary. Rates are graduated in accordance with the amount of the share. The rates are less on direct heirs than on collaterals and strangers. No estate tax is imposed.

(h) *Connection with Federal tax.*—The inheritance tax does not absorb the 80 per cent credit allowed by the Federal law in the case of the larger estates. Changes in the Federal law will not affect the death taxes of this State.

South Dakota

(a) *Form of tax: Inheritance.*—Inheritance tax levied on distributive share of each beneficiary, valued as of date of death.

(b) *Consanguinity.*—Recognized.

(c) *Exemption and rates:*

Widow, and lineal issue, $10,000 exemption. Rates, graduated 1 to 4 per cent, the latter rate applying to that portion of net shares in excess of $100,000 (before exemption).

Husband, lineal ancestor, adopted or mutually acknowledged child, $10,000 exemption to husband, adopted or mutually acknowledged child. $3,000 exemption to lineal ancestors. Rates, graduated 2 to 8 per cent, the latter rate applying to that portion of net shares in excess of $100,000 (before exemption).

Brother, sister, and descendants, daughter-in-law, son-in-law, $500 exemption. Rates, graduated 3 to 12 per cent, the latter rate applying to that portion of net shares in excess of $100,000 (before exemption).

Uncle, aunt, or descendants, $200 exemption. Rates, graduated 4 to 16 per cent, the latter rate applying to that portion of net shares in excess of $100,000 (before exemption).

All others, except charitable, religious, and educational organizations, etc., within State which are exempt, $100 exemption. Rates, graduated 5 to 20 per cent, the latter rate applying to that portion of net shares in excess of $100,000 (before exemption).

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—No. Taxes intangibles of nonresidents, and has no reciprocal provision.

(f) *History.*—First inheritance tax, 1905. Rates changed, 1919. Amendment 1923 and 1925.

(g) *General statement.*—South Dakota imposes an inheritance tax on the share of each beneficiary. Rates are graduated in accordance with the amount of the share. The rate on collaterals is three times, and the rate on strangers five times, that on the widow and lineal issue.

(h) *Connection with Federal tax.*—No estate tax is imposed, and no legislation has been enacted to take advantage of the 80 per cent credit allowed by the Federal law. The inheritance tax on uncles and aunts and their descendants, and on strangers, absorbs the 80 per cent credit, but the inheritance tax on other heirs does not except in the case of the smaller estates.

Tennessee

(*a*) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary, valued as of date of death.

Estate tax levied on resident estates to secure benefit of 80 per cent credit provision of the Federal law of 1926.

(*b*) *Consanguinity.*—Recognized by inheritance tax.

(*c*) *Exemption and rates:*

Inheritance tax.—

Widow, husband, lineal descendants, and ancestors, etc., $10,000 exemption. Rates graduated 1 to 5 per cent, the latter rate applying to that portion of net shares in excess of $500,000 (before exemption).

All others, except charitable, religious, and educational organizations, etc., which are exempt, $1,000 exemption. Rates graduated 5 to 10 per cent, the latter rate applying to that portion of net shares in excess of $250,000 (before exemption).

Estate tax.—

$100,000 exemption. Rates, tax equals the difference between 80 per cent of the Federal estate tax under act of 1926, and the total of all other death taxes paid.

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—Does not tax intangibles of nonresidents; therefore, residents of Tennessee obtain the benefits of reciprocity from those States having such provisions.

(*f*) *History.*—First inheritance tax 1891. New law, 1919, present rates effective. Estate tax amendment, 1929.

(*g*) *General statement.*—Tennessee imposes an inheritance tax on the share of each beneficiary. Rates are graduated in accordance with the amount of the share. Collaterals and strangers are taxed at the same rates, which are from two to five times the rate on direct heirs.

(*h*) *Connection with Federal tax.*—The inheritance and estate taxes together absorb the full 80 per cent credit allowed by the Federal law. It is specifically provided that the estate tax shall become "void and of no effect" in case of repeal of the Federal estate tax or the credit provision thereof. In case of a change in the amount of the credit allowed by the Federal law the Tennessee estate tax apparently would still be effective.

Texas

(*a*) *Form of tax: Inheritance.*—

Inheritance tax levied on distributive share of each beneficiary valued as of date of death.

(*b*) *Consanguinity.*—Recognized.

(*c*) *Exemption and rates:*

Widow, husband, lineal descendants, and ascendants, daughter-in-law, son-in-law, gifts to United States for use in Texas, etc., $25,000 exemption. Rates graduated 1 to 6 per cent, the latter rate applying to that portion of net shares in excess of $1,000,000 (before exemption).

Brother, sister, or descendant thereof, $10,000 exemption. Rates, graduated 3 to 10 per cent, the latter rate applying to that portion of net shares in excess of $1,000,000 (before exemption).

Uncle, aunt, or descendants thereof, $1,000 exemption. Rates graduated 4 to 15 per cent, the latter rate applying to that portion of net shares in excess of $1,000,000 (before exemption).

All others, except charitable, religious, and educational organizations, which are exempt, $500 exemption. Rates graduated 5 to 20 per cent, the latter rate applying to that portion of net shares in excess of $1,000,000 (before exemption).

(*d*) *Community property.*—Recognized.

(*e*) *Reciprocity.*—Yes. Does not tax intangibles of nonresidents if State of residence exempts intangibles of, or extends reciprocity to, residents of Texas; provided the State of residence has a death tax.

(*f*) *History.*—First inheritance tax 1907. New law 1923. Reciprocity amendment 1929.

(*g*) *General statement.*—Texas imposes an inheritance tax on the share of each beneficiary. Rates are graduated in accordance with the value of the share. The rates are much higher on collaterals and strangers than on direct heirs.

(*h*) *Connection with Federal tax.*—No estate tax is imposed and no legislation has been enacted to take advantage of the 80 per cent credit allowed by the Federal law of 1926. However, in the case of collaterals and strangers the inheritance-tax rates are sufficient to absorb the full 80 per cent credit, in most cases. In the case of direct heirs, on shares in excess of about $600,000, the inheritance tax does not absorb the 80 per cent credit. The repeal of or change in the Federal law would not affect the death taxes of Texas.

UTAH

(*a*) *Form of tax: Estate.*—Estate tax levied on the entire estate of residents of Utah, and not on the share of each beneficiary.

(*b*) *Consanguinity.*—Not recognized.

(*c*) *Exemption and rates.*—$10,000 exemption. Rates, graduated 3 to 5 per cent, the latter rate applying to that portion of net estates in excess of $25,000 (before exemption).

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—No. Taxes intangibles of nonresidents and does not have reciprocal provisions.

(*f*) *History.*—First inheritance tax, 1901. Progressive rates, 1915. Amendments, 1917 and 1919.

(*g*) *General statement.*—Utah imposes an estate (or joint inheritance) tax on the entire net estate, and not on the share of each beneficiary. The rates are graduated in accordance with the value of the net estate. They are the same on direct heirs, collaterals, or strangers in blood.

(*h*) *Connection with Federal tax.*—Utah has enacted no legislation to take advantage of the 80 per cent credit allowed by the Federal law; and the rates are not sufficient to absorb the 80 per cent credit allowed thereby. The repeal of or change in this latter law would not affect the death taxes of Utah.

VERMONT

(*a*) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary, valued as of one year after death, or as of date of distribution.

Estate tax levied on resident estates in excess of $100,000 in order to take advantage of 80 per cent credit provision of Federal law of 1926.

(*b*) *Consanguinity.*—Recognized by inheritance tax.

(*c*) *Exemption and rates:*

Inheritance tax.—

Widow, husband, parent, lineal descendent, daughter-in-law, son-in-law, etc., $10,000 exemption. Rates graduated 1 to 5 per cent, the latter rate applying to that portion of net shares in excess of $250,000 (before exemption).

All others, except charitable, religious, or educational organizations, which are exempt, no exemption. Rate, 5 per cent flat.

Estate tax.—

$100,000 exemption. Rates, tax equals the difference between 80 per cent of the Federal estate tax under act of 1926 and the total of all other death taxes paid.

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—Does not tax intangibles of nonresidents; therefore, residents of Vermont obtain the benefit of reciprocity from those States having reciprocal provisions.

(*f*) *History.*—First inheritance tax 1896 (collateral). Direct heirs taxed 1917. Estate tax amendment 1927.

(*g*) *General statement.*—Vermont imposes an inheritance tax on the share of each beneficiary. The rates are graduated in the case of direct heirs in accordance with the value of the share. Collaterals and strangers are taxed at a flat rate. The estate tax was enacted to take advantage of the 80 per cent credit allowed by the Federal law.

(*h*) *Connection with Federal tax.*—The inheritance and estate taxes together absorb the 80 per cent credit allowed by the Federal law of 1926. It is specifically provided that the estate tax shall become void and of no effect if the Federal estate tax, or the 80 per cent credit provision thereof, shall be repealed.

VIRGINIA

(*a*) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary valued as of date of decedent's death, except contingent inheritances, which are valued as of date when beneficiary comes into possession and enjoyment.

Estate tax levied on net estate of resident decedents, equal to the difference between 80 per cent of the Federal estate tax under 1926 act and the total of all death taxes paid.

(b) *Consanguinity.*—Recognized by inheritance tax.

(c) *Exemption and rates:*

Inheritance tax.—

Widow, husband, lineal ancestors and descendants, etc., $10,000 exemption. Rates graduated 1 to 5 per cent, the latter rate applying to that portion of net shares in excess of $1,000,000 (before exemption).

Brother, sister, nephew, niece, etc., $4,000 exemption. Rates 2 to 10 per cent, the latter rate applying to that portion of net shares in excess of $500,000 (before exemption).

All others, except charitable, religious, or educational organizations, which are exempt, $1,000 exemption. Rates graduated 5 to 15 per cent, the latter rate applying to that portion of net shares in excess of $500,000.

Estate tax.—

$100,000 exemption. Rates, tax equals the difference between 80 per cent of the Federal estate tax under the act of 1926 and the total of all other death taxes paid.

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—Does not tax intangibles of nonresidents; therefore, Virginia residents obtain the benefit of reciprocity from those States having reciprocal provisions.

(f) *History.*—First inheritance tax 1843–44. Reenacted after abolishment, 1896. Estate tax amendment, 1926; intangibles made nontaxable 1928, effective 1929.

(g) *General statement.*—Virginia imposes an inheritance tax on the share of each beneficiary. The rates are graduated in accordance with the value of the share. The rates on collaterals and strangers are much higher than the rates on direct heirs. Estate tax enacted to absorb the 80 per cent credit allowed by the Federal law of 1926.

(h) *Connection with Federal tax.*—The inheritance and estate taxes together absorb the full 80 per cent credit allowed by the Federal law. It is specifically provided that in case of a change in the credit provisions of the Federal revenue act of 1926, the Virginia statute shall be so construed as to take advantage of any credit which may be allowed by the Federal law. It would appear that if the Federal credit provisions were repealed the Virginia estate tax would become ineffective.

Washington

(a) *Form of tax: Inheritance and estate tax.*—Inheritance tax levied on distributive share of each beneficiary, valued as of date of death.

(b) *Consanguinity.*—Recognized.

(c) *Exemption and rates:*

Inheritance tax.—

Widow, husband, parent, lineal descendant, daughter-in-law, son-in-law, etc., $10,000 exemption to widow, husband, or parent; $5,000 exemption to lineal descendant, daughter-in-law, son-in-law, etc. Rates graduated 1 to 5 per cent, the latter rate applying to that portion of net shares in excess of $200,000 (before exemption).

Brother, sister, uncle, aunt, nephew, or niece, $5,000 exemption to brothers and sisters. No exemption to others of class. Rates graduated 3 to 12 per cent, the latter rate applying to that portion of net shares in excess of $200,000.

All others, except charitable, religious, or educational organizations, which are exempt, no exemption. Rates graduated 10 to 25 per cent, the latter rate applying to that portion of net shares in excess of $200,000.

Estate tax.—The estate tax is levied on all estates subject to the Federal estate tax (over $100,000 net) and is equal to the difference between the 80 per cent credit allowed by the Federal law of 1926 and the inheritance tax payable to the State of Washington.

(d) *Community property.*—Recognized.

(e) *Reciprocity.*—Yes. Does not tax intangibles of nonresidents if State of residence exempts intangibles of or extends reciprocity to residents of Washington.

(f) *History.*—First inheritance tax, 1901. Important amendments, 1917, 1919, 1921, 1923. Reciprocity and other amendments, 1929. Estate tax enacted, 1931.

(*g*) *General statement.*—Washington imposes an inheritance tax on the share of each beneficiary. Rates are graduated in accordance with the value of the share. They are much higher on collaterals and strangers than on direct heirs, the rate on strangers being from five to ten times that on direct heirs. Estate tax enacted to take advantage of the 80 per cent credit provision whenever the inheritance tax is less than that credit.

(*h*) *Connection with Federal tax:*

The inheritance tax on strangers is sufficient to absorb the 80 per cent credit allowed by the Federal law, while the tax on collaterals is sufficient to do so except on amounts in excess of about $7,000,000.

The estate tax will absorb the 80 per cent credit of the Federal law in all cases where the inheritance tax is less than the amount of that credit. Apparently this tax would become inoperative if the amount of the Federal credit were changed or the Federal law repealed.

West Virginia

(*a*) *Form of tax: Inheritance.*—Inheritance tax levied on the distributive share of each beneficiary, valued as of date of death.

(*b*) *Consanguinity.*—Recognized.

(*c*) *Exemption and rates:*

Widow, husband, child, parent, etc., $25,000 exemption to widow; $15,000 exemption to others of class. Rates, graduated 2 to 10 per cent, the latter rate applying to that portion of net shares in excess of $500,000 (before exemption).

Brother and sister, no exemption. Rates, graduated 4 to 10 per cent, the latter rate applying to that portion of net shares in excess of $500,000.

All other blood relatives, no exemption. Rates, graduated 7 to 10 per cent, the latter rate applying to that portion of net shares in excess of $500,000.

All others, except charitable, religious, or educational organizations etc., within State which are exempt, no exemption. Rates, graduated, 9 to 10 per cent, the latter rate applying to that portion of net shares in excess of $500,000.

(*d*) *Community property.*—Not recognized.

(*e*) *Reciprocity.*—Yes. Does not tax intangibles of nonresidents if State of residence exempts intangibles of or extends reciprocity to residents of West Virginia.

(*f*) *History.*—First inheritance tax, 1887. Amendment taxing direct heirs, 1907; progressive rates, 1909. Reciprocity amendment and rates changed, 1929. Exemptions increased, 1931.

(*g*) *General statement.*—West Virginia imposes an inheritance tax on the share of each beneficiary. The rates are graduated in accordance with the value of the share. The tax on direct heirs is much less than the tax on collaterals and strangers on amounts up to $500,000. On amounts in excess of $500,000, all classes of beneficiaries are taxed at the same rate.

No estate tax is imposed.

(*h*) *Connection with Federal tax.*—The inheritance tax does not absorb the 80 per cent credit of the Federal law in case of the larger estates.

Wisconsin

(*a*) *Form of tax: Inheritance and estate.*—

Inheritance tax levied on distributive share of each beneficiary, valued as of date of death.

Estate tax enacted to secure the benefit of the 80 per cent credit provision of the Federal law of 1926.

(*b*) *Consanguinity.*—Recognized.

(*c*) *Exemption and rates:*[1]

Inheritance tax.—

Widow, husband, lineal issue, or ancestor, etc., $15,000 exemption to widow; $2,000 exemption to others of class. Rates, graduated 2 to 10 per cent, the latter rate applying to that portion of net shares in excess of $500,000 (before exemption).

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[1] In no case, however, shall the tax on each share exceed 15 per cent of the property transferred.

(c) *Exemption and rates.*—Continued.

Inheritance tax.—Continued.

Brother, sister and descendants, daughter-in-law, son-in-law, etc., $500 exemption. Rates, graduated 4 to 20 per cent, the latter rate applying to that portion of net shares in excess of $500,000 (before exemption).

Uncle, aunt, and descendants, $250 exemption. Rates, graduated 6 to 30 per cent, the latter rate applying to that portion of net shares in excess of $500,000 (before exemption).

All others, except charitable, religious, or educational organizations, etc., within the State, which are exempt, $100 exemption. Rates, graduated 8 to 40 per cent, the latter rate applying to that portion of net shares in excess of $500,000 (before exemption.)

Estate tax.—An estate tax is levied on all resident estates exceeding $100,000 in value in the amount by which the 80 per cent credit allowed by the Federal law exceeds the total of all estate, inheritance, legacy, and succession taxes paid to any State or Territory, including the Wisconsin inheritance tax.

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—Yes. Does not tax intangibles of nonresidents if State of residence exempts residents of Wisconsin from such tax.

(f) *History.*—First inheritance tax, 1899, unconstitutional. Present law, 1903, as amended. Reciprocity and other amendments, 1929. Estate tax enacted, 1931.

(g) *General statement:*

Wisconsin imposes an inheritance tax on the share of each beneficiary. Rates are graduated in accordance with the value of the share. The tax on direct heirs is much less than the tax on collaterals and strangers in blood. In the case of the latter, the tax is four times the tax on direct heirs.

Estate tax enacted to absorb the 80 per cent credit allowed by the Federal law of 1926.

(h) *Connection with Federal tax.*—The inheritance and estate taxes together absorb the full 80 per cent credit allowed by the Federal law. It is specifically provided that the estate tax shall become void and of no effect in respect of the estate of any person who dies after the effective date of the repeal of the Federal estate tax or the 80 per cent credit provision thereof.

Wyoming

(a) *Form of tax: Inheritance.*—Inheritance tax levied on distributive share of each beneficiary valued as of date of death.

(b) *Consanguinity.*—Recognized.

(c) *Exemption and rates:*

Widow, husband, parent, child, brother, sister, etc., $10,000 exemption. Rates, flat rate of 2 per cent on net share in excess of exemption.

Grandparent, grandchild, half-brother, half-sister, $5,000 exemption. Rates, flat rate of 4 per cent on net shares in excess of the exemption.

All others, except charitable, religious, and educational organizations, which are exempt, no exemption. Rates, flat rate of 6 per cent on net share.

(d) *Community property.*—Not recognized.

(e) *Reciprocity.*—Yes. Does not tax intangibles of nonresidents if State of residence exempts residents of Wyoming from such tax.

(f) *History.*—First inheritance tax, 1903; new law, 1921; new law, 1923. Reciprocal amendment, 1929.

(g) *General statement.*—Wyoming imposes an inheritance tax on the share of each beneficiary at a flat rate. Direct heirs and brothers and sisters are taxed at the same rate and grandparents and children at a higher rate than parents and children. No estate tax is imposed.

(h) *Connection with Federal tax.*—Wyoming has not enacted legislation to take advantage of the credit allowed by the Federal law. The inheritance tax rate is low and the tax does not absorb the Federal credit except in case of the smaller estates.

EXHIBIT K

Present status of State death taxes (as of July 1, 1932)

PART I.—RATES OF TAX

State	Inheritance taxes						Community property state	Estate taxes	
	Application of tax	Résumé of rates on—				Amount beyond which there is no graduation in rates		Application of tax	Rates of tax (applied to net estate)
		Surviving spouse and children	Brothers and sisters	Uncles and aunts	Strangers				
		Per cent	*Per cent*	*Per cent*	*Per cent*				
Alabama	No inheritance tax imposed						No	Residents and nonresidents	80 per cent of Federal tax under revenue act of 1926.
Arizona	Direct and collateral heirs	1–5	2–10	3–15	5–25	$500,000	Yes	No estate tax imposed	
Arkansas	do	1–10	2–20	4–40	4–40	1,000,000	No	do	
California	do	[1]1–10	3–12	4–12	5–12	500,000	Yes	Residents and nonresidents	Difference between 80 per cent of Federal tax under 1926 act and California inheritance tax.
Colorado	do	2–7.5	3–10	4–14	7–16	500,000	No	Residents only	Difference between 80 per cent of Federal tax under 1926 act and total of all other death taxes.
Connecticut	do	1–4	2–5	5–8	5–8	200,000	No	do	Do.
Delaware	do	1–4	2–5	2–5	5–8	200,000	No	do	Do.
District of Columbia	No death tax imposed						No	No death tax imposed	
Florida	No inheritance tax imposed						No	Residents and nonresidents	1 to 20 per cent, but tax limited to amount of Federal credit under 1926 act.
Georgia	Nonresidents only	2	2	2	2	Flat rate.	No	Residents only	80 per cent of Federal tax under 1926 act on property taxable in Georgia.
Idaho	Direct and collateral heirs	1–10	2–15	3–20	5–20	500,000	Yes	No estate tax imposed	
Illinois	do	2–14	2–14	6–16	10–30	500,000	No	do	
Indiana	do	1–10	5–15	7–20	7–20	1,500,000	No	Residents only	Difference between 80 per cent of Federal tax under 1926 act and total of all other death taxes.
Iowa	do	1–8	5–10	10–15	10–15	300,000	No	Residents and nonresidents	Do.
Kansas	do	[2] 1–5	3–12½	5–15	5–15	500,000	No	do	Difference between 80 per cent of Federal tax under 1926 act and Kansas inheritance tax.
Kentucky	do	1–16	2–16	2–16	6–16	10,000,000	No	No estate tax imposed	
Louisiana	do	2–3	5–7	5–7	5–10	20,000	Yes	Residents and nonresidents	Difference between 80 per cent of Federal tax under 1926 act and total of all other death taxes.[3]
Maine	do	1–2	4–5	4–5	5–7	100,000	No	Residents only	Do.
Maryland	Collateral heirs only		5	5	5	Flat rate.	No	do	Do.
Massachusetts	Direct and collateral heirs	1–7	3–12	5–12	5–12	1,000,000	No	Residents and nonresidents	Do.

Michigan	do	1–8	1–8	5–15	5–15	750,000	No	Residents only	Do.
Minnesota	do	[4] 1–4	3–12	4–16	5–20	100,000	No	do	Do.
Mississippi	No inheritance tax imposed						No	Residents and nonresidents	80 per cent of Federal tax under revenue act of 1926.
Missouri	Direct and collateral heirs	1–6	3–18	3–18	5–30	400,000	No	Residents only	Difference between 80 per cent of Federal tax under 1926 act and total of all other death taxes.
Montana	do	1–4	2–8	3–12	4–16	100,000	No	Residents and nonresidents	Do.
Nebraska	do	1	1	4	4–12	50,000	No	Residents only	Do.
Nevada	No death tax imposed						Yes	No death tax imposed	
New Hampshire	Collateral heirs only		5	5	5	Flat rate.	No	Residents only	Do.
New Jersey	Direct and collateral heirs	1–16	5–16	8–16	8–16	3,700,000	No	No estate tax imposed	
New Mexico	do	1	5	5	5	Flat rate.	Yes	do	
New York	No inheritance tax imposed						No	Residents and nonresidents	0.8 to 16 per cent (equal to 80 per cent of Federal rates under 1926 act).
North Carolina	Direct and collateral heirs	1–10	3–23	3–23	8–25	3,000,000	No	do	Difference between 80 per cent of Federal tax under 1926 act and North Carolina inheritance tax.
North Dakota	No inheritance tax imposed						No	do	1 to 7 per cent.
Ohio	Direct and collateral heirs	1–4	5–8	7–10	7–10	200,000	No	Residents only	Difference between 80 per cent of Federal tax under 1926 act and total of all other death taxes.
Oklahoma	do	1–16	1–16	6–16	6–16	10,000,000	No	No estate tax imposed	
Oregon	Collateral heirs only		1–15	1–15	2–25	50,000	No	Residents and nonresidents	1 to 10 per cent.
Pennsylvania	Direct and collateral heirs	2	10	10	10	Flat rate.	No	do	Difference between 80 per cent of Federal tax under 1926 act and total of all other death taxes.
Rhode Island	do	0.5–3	0.5–3	5–8	5–8	1,000,000	No	do	Estate tax 1 per cent. Additional estate tax, 1.4 to 14.92 per cent, but total tax not less than 80 per cent of Federal tax under 1926 act.
South Carolina	do	1–6	2–7	2–7	4–14	300,000	No	No estate tax imposed	
South Dakota	do	[5] 1–4	3–12	4–16	5–20	100,000	No	do	
Tennessee	do	1–5	5–10	5–10	5–10	500,000	No	Residents only	Difference between 80 per cent of Federal tax under 1926 act and total of all other death taxes.
Texas	do	1–6	3–10	4–15	5–20	1,000,000	Yes	No estate tax imposed	
Utah	No inheritance tax imposed						No	Residents and nonresidents	3 to 5 per cent.
Vermont	Direct and collateral heirs	1–5	5	5	5	250,000	No	Residents only	Difference between 80 per cent of Federal tax under 1926 act and total of all other death taxes.
Virginia	do	1–5	2–10	5–15	5–15	1,000,000	No	do	Do.
Washington	do	1–5	3–12	3–12	10–25	200,000	Yes	Residents and nonresidents	Do.
West Virginia	do	2–10	4–10	7–10	9–10	500,000	No	No estate tax imposed	
Wisconsin	do	2–10	4–20	6–30	8–40	500,000	No	Residents only	Difference between 80 per cent of Federal tax under 1926 act and total of all other death taxes.
Wyoming	do	2	2	6	6	Flat rate.	No	No estate tax imposed	

[1] Widow, 4 per cent to 8 per cent.
[2] Widow, 0.5 per cent to 2½ per cent.
[3] Louisiana estate tax effective July 27, 1932.
[4] Husband, 1½ per cent to 6 per cent.
[5] Husband, 2 per cent to 8 per cent.

Present status of State death taxes (as of July 1, 1932)—Continued

PART II.—EXEMPTIONS

State	Under inheritance taxes					Under estate taxes
	Widow	Child (adult)	Brother or sister	Uncle or aunt	Stranger	
Alabama						Estate tax not applicable to net estates of $100,000 or less.
Arizona	$10,000	$2,000	$500	$500	$100	
Arkansas	6,000	2,000	2,000	0	0	
California	50,000	10,000	5,000	1,000	500	Do.
Colorado	20,000	10,000	2,000	0	0	Estate tax not applicable to net estates of $1,000,000 or less.
Connecticut	10,000	10,000	3,000	500	500	Estate tax not applicable to net estates of $100,000 or less.
Delaware	20,000	3,000	1,000	1,000	0	Do.
District of Columbia						
Florida						$100,000 exemption against entire net estate, allowed to residents only.
Georgia	[1] 0	[1] 0	[1] 0	[1] 0	[1] 0	Estate tax not applicable to net estates of $100,000 or less
Idaho	10,000	4,000	2,000	1,000	500	
Illinois	20,000	20,000	10,000	500	100	
Indiana	15,000	2,000	500	100	100	Do.
Iowa	[2] 40,000	15,000	0	0	0	Do.
Kansas	75,000	15,000	5,000	0	0	Do.
Kentucky	20,000	5,000	2,000	2,000	500	
Louisiana	5,000	5,000	1,000	1,000	500	Estate tax not applicable to net estates of $100,000 or less. [2a]
Maine	10,000	10,000	500	500	500	Do.
Maryland	Not taxed.	Not taxed.	0	0	0	Do.
Massachusetts	10,000	10,000	1,000	1,000	1,000	Do.
Michigan	30,000	5,000	5,000	0	0	Do.
Minnesota	10,000	10,000	1,000	250	100	Do.
Mississippi						$100,000 exemption against entire net estate.
Missouri	[2] 20,000	5,000	500	250	0	Estate tax not applicable to net estates of $100,000 or less.
Montana	17,500	2,000	500	0	0	Estate tax not applicable to net estates of $1,000,000 or less.
Nebraska	[2] 10,000	10,000	10,000	2,000	0	Estate tax not applicable to net estates of $100,000 or less.
Nevada						
New Hampshire	Not taxed.	Not taxed.	0	0	0	Do.
New Jersey	5,000	5,000	0	0	0	
New Mexico	(3)	(3)	(3)	(3)	(3)	
New York						Variable exemption; [4] net estates of $2,000 or less, after deducting exemptions, not taxed.
North Carolina	10,000	2,000	0	0	0	Estate tax not applicable to net estates of $100,000 or less.
North Dakota	20,000	3,000	0	0	0	Variable exemption. [5]
Ohio	5,000	3,500	500	0	0	Estate tax not applicable to net estates of $100,000 or less.
Oklahoma	15,000	10,000	1,000	500	500	
Oregon	Not taxed.	Not taxed.	1,000	1,000	0	$10,000 exemption against entire net estate.
Pennsylvania	0	0	0	0	0	Estate tax not applicable to net estates of $100,000 or less.
Rhode Island	25,000	25,000	25,000	1,000	1,000	Estate tax: $10,000 exemption against entire net estate. Additional estate tax: Not applicable to net estates of $250,000 or less.

South Carolina	10,000	5,000	500	500	200	
South Dakota	10,000	10,000	500	200	100	
Tennessee	10,000	10,000	1,000	1,000	1,000	Estate tax not applicable to net estates of $100,000 or less.
Texas	25,000	25,000	10,000	1,000	500	
Utah						$10,000 exemption against entire net estate.
Vermont	10,000	10,000	0	0	0	Estate tax not applicable to net estates of $100,000 or less.
Virginia	10,000	10,000	4,000	1,000	1,000	Do
Washington	10,000	5,000	5,000	0	0	Do.
West Virginia	25,000	15,000	0	0	0	
Wisconsin	15,000	2,000	500	250	100	Estate tax not applicable to net estates of $100,000 or less.
Wyoming	10,000	10,000	10,000	0	0	

[1] Georgia inheritance tax applies to nonresidents only.
[2] Plus marital rights.
[2a] Louisiana estate tax effective as of July 27, 1932.
[3] In New Mexico there is a $10,000 exemption against the entire net estate when it passes to the widow, children, brothers and sisters, and certain others, and $500 where it passes to uncles and aunts, strangers, and certain others. Where the estate passes to both groups, a proportionate exemption is allowed.
[4] Property passing to widow exempt up to $20,000; to children and brothers and sisters up to $5,000 in each case.
[5] Property passing to widow exempt up to $10,000; minor child, up to $5,000, and other lineal issue, up to $2,000, in each case; brothers and sisters, up to $250 in each case.

EXHIBIT M

State death tax receipts [1]

State	1924	1925	1926	1927	1928	1929	1930
Alabama	(2)	----------	----------	----------	----------	----------	----------
Arizona	$40,742	$130,673	$115,935	$140,394	$126,975	$80,197	$283,549
Arkansas	310,461	324,669	342,199	149,988	350,873	312,217	282,608
California	6,463,326	6,423,141	7,420,167	8,460,954	10,967,705	13,180,226	11,647,011
Colorado	884,161	911,211	876,009	674,685	869,408	919,984	900,379
Connecticut	1,960,628	2,872,813	2,506,930	2,601,558	3,010,653	3,578,648	3,606,646
Delaware	86,155	86,033	140,785	190,575	621,706	2,576,275	1,852,975
Florida	(2)	----------	----------	----------	----------	----------	----------
Georgia	338,259	333,100	160,771	193,599	602,762	696,991	359,478
Idaho	15,037	15,292	22,229	12,702	30,938	31,202	35,580
Illinois	5,255,034	5,085,951	6,967,083	5,617,288	9,256,532	9,820,879	16,091,509
Indiana	889,829	1,127,230	1,043,469	1,312,214	1,278,486	1,213,050	1,450,555
Iowa	1,006,510	1,076,294	1,233,889	1,116,477	1,091,024	1,105,383	1,233,657
Kansas	373,898	576,028	480,963	875,923	457,459	595,631	684,224
Kentucky	[3] 393,000	387,503	689,549	667,394	734,311	1,011,143	1,024,438
Louisiana	804,039	445,403	576,631	599,294	658,206	698,232	688,706
Maine	552,105	1,372,656	687,898	799,556	1,693,270	922,034	1,010,179
Maryland	755,127	934,878	902,547	800,528	947,048	882,276	1,415,594
Massachusetts	6,489,174	5,920,307	6,511,303	10,751,893	10,336,739	12,082,312	14,337,188
Michigan	3,813,187	2,608,631	2,338,930	2,031,090	2,553,871	3,324,566	5,420,201
Minnesota	902,854	1,116,196	1,022,112	1,278,414	1,389,581	1,554,103	1,529,477
Mississippi	279,941	237,121	218,262	168,709	133,867	64,772	41,719
Missouri	1,193,722	1,165,500	1,901,306	1,960,553	3,056,262	2,729,625	3,841,046
Montana	165,845	193,892	1,029,070	535,951	654,370	154,444	212,529
Nebraska	181,880	[3] 300,000	[3] 249,000	[3] 318,000	[3] 350,000	(4)	[4] 19,732
Nevada	5,308	[3] 1,500	(5)	----------	----------	----------	----------
New Hampshire	361,213	284,391	339,368	357,396	419,273	384,734	480,292
New Jersey	7,010,026	5,519,716	7,199,550	11,407,663	11,394,556	7,536,279	15,766,175
New Mexico	17,383	[3] 19,000	[3] 21,000	24,889	25,698	36,811	65,621
New York	19,439,902	23,584,767	22,222,748	24,478,953	35,566,274	47,221,127	50,487,214
North Carolina	511,125	765,437	840,788	824,541	710,621	922,172	1,195,528
North Dakota	73,478	85,938	92,208	102,411	54,751	36,369	31,062
Ohio	3,352,068	5,392,021	5,687,138	6,488,777	6,343,759	2,969,498	2,999,065
Oklahoma	161,517	96,176	293,494	209,493	282,559	413,988	187,162
Oregon	414,973	500,671	616,902	440,437	700,213	544,454	1,230,038
Pennsylvania	12,437,894	12,757,713	14,070,597	17,429,642	17,160,872	17,526,066	26,844,095
Rhode Island	363,993	428,469	412,107	600,535	688,365	4,661,412	6,155,263
South Carolina	3,880	463,832	257,199	356,368	146,192	355,030	260,141
South Dakota	198,975	[3] 200,000	[3] 200,000	[3] 200,000	[3] 200,000	192,948	192,529
Tennessee	509,592	299,705	624,458	516,047	425,375	534,217	340,657
Texas	145,215	587,546	1,013,645	1,394,891	978,937	1,247,093	782,068
Utah	339,151	338,297	337,464	301,868	301,868	268,918	381,354
Vermont	196,335	[3] 200,000	[3] 200,000	315,565	[3] 350,000	501,649	507,465
Virginia	628,538	620,282	769,874	841,732	768,932	923,589	1,096,337
Washington	664,383	443,399	533,065	662,797	697,856	679,606	543,223
West Virginia	765,144	876,655	802,732	1,027,734	667,457	1,277,602	750,769
Wisconsin	2,902,203	3,016,123	2,035,213	2,928,336	3,404,151	2,721,720	2,461,673
Wyoming	61,881	44,881	45,818	22,758	139,519	102,355	67,530
Total	83,697,091	91,171,041	96,052,403	112,190,562	132,599,274	148,591,827	180,794,241

[1] Figures for 1924–1928, inclusive, prepared by Joint Committee on Internal Revenue Taxation. Figures for 1929 and 1930 from Financial Statistics of States (Bureau of the Census).
[2] No tax until 1931.
[3] Denotes estimated receipts.
[4] Nebraska collections are by counties, no State report being made.
[5] Tax repealed.

i-	Takes up 80 per cent credit?	Rates graduated
		A
Arizona		
Arkans		
Califor	Yes	Based on Federal r
Colorad	Yes	do
Connec	Yes	do
Delawa	Yes	do
Idaho		
Illinois		
Indiana		
Iowa	Yes	Based on Federal r
Kansas	Yes	do
Kentuc	Yes	do
Louisia		
Maine		
Massac	Yes	Based on Federal r
Michig	Yes	do
Minnes	Yes	do
Missou	Yes	do
Monta	Yes	do
Nebras	Yes	do
New Je	Yes	do
New M		
North		
Ohio	Yes	Based on Federal r
Oklaho	Yes	do
Pennsy		
Rhode	Yes	Based on Federal r
South (	Yes	do
South I		
Tennes		
Texas	Yes	Based on Federal r
Vermor		
Virgini	Yes	Based on Federal r
Washin	Yes	do
West V	Yes	do
Wiscon		
Wyomi	Yes	Based on Federal r
Maryla	Yes	Based on Federal r
New H	Yes	do
Oregon	No	1 to 10 per cent
Georgia	Yes	Based on Federal r
Alabam	Yes	Based on Federal r
Florida	Yes	do
Mississ	Yes	do
New Y	Yes	do
North I	No	1 to 10 per cent
Utah	No	3 to 5 per cent
Nevada		

[1] Rl

EXHIBIT L

Features of State death taxes (grouped by form of tax)

State	Basic date of valuation	Property previously taxed exempt within	Time within which gift is presumed to be made in contemplation of death	Dower and curtesy taxable?	Community property taxable?	Residents taxed?	Nonresidents taxed?	Takes up 80 per cent credit?	Rates graduated from	Ineffective on repeal of Federal law?	Ineffective on repeal of 80 per cent credit clause?	Death taxes of States and Territories allowed as credit against estate tax
INHERITANCE TAXES (DIRECT AND COLLATERAL)						ADDITIONAL ESTATE TAXES						
Arizona	Transfer	No exemption	6 years	Dower and curtesy abolished	One-half							
Arkansas	Death	do	No presumption	Dower, over $6,000; curtesy, over $5,000								
California	do	5 years	do	Do not exist	One-half							
Colorado	do	5-year tax credit	2 years	Dower and curtesy abolished		Yes	Yes	Yes	Based on Federal rates	Yes	Doubtful	California only.
Connecticut	do	No provision	1 year	Yes		Yes	No	Yes	do	Yes	Yes	All.
Delaware	do	do	2 years	Yes		Yes	No	Yes	do	Yes	Yes	Do.
Idaho	do	4 years	No presumption	Dower and curtesy abolished	One-half	Yes	No	Yes	do	Yes	Doubtful	Do.
Illinois	do	No provision	do	Yes								
Indiana	Transfer	do	2 years	Dower and curtesy abolished								
Iowa	Death	2 years	No presumption	No		Yes	No	Yes	Based on Federal rates	Yes	Yes	All.
Kansas	do	No provision	90 days	Dower and curtesy abolished		Yes	Yes	Yes	do	Yes	Yes	Do.
Kentucky	do	2 years	3 years	Yes		Yes	Yes	Yes	do	Yes	Doubtful	Kansas only.
Louisiana	do	No provision	1 year	Do not exist	One-half							
Maine	do	do	Not taxed	Dower and curtesy abolished								
Massachusetts	do	do	6 months	No		Yes	No	Yes	Based on Federal rates	Yes	Yes	All.
Michigan	do	do	2 years	Yes		Yes	Yes	Yes	do	Yes	Yes	Do.
Minnesota	do	do	No presumption	Dower and curtesy abolished		Yes	No	Yes	do	No	No	Do.
Missouri	do	do	2 years	Dower, not taxed; curtesy, abolished		Yes	No	Yes	do	Yes	Yes	Do.
Montana	do	10-year tax credit to widow	do	Dower, taxed; curtesy, not allowed		Yes	No	Yes	do	Yes	Doubtful	Do.
Nebraska	do	No provision	No presumption	Dower and curtesy abolished		Yes	Yes	Yes	do	Yes	No	Do.
New Jersey	do	do	2 years	No		Yes	No	Yes	do	Yes	Doubtful	Do.
New Mexico	Appraisal	do	1 year	Dower and curtesy abolished	One-half							
North Carolina	Death	2 years	3 years	Yes		Yes	Yes	Yes	Based on Federal rates	Yes	Doubtful	North Carolina only.
Ohio	do	No provision	2 years	No		Yes	No	Yes	do	Yes	No	All.
Oklahoma	do	do	No presumption	Dower and curtesy abolished								
Pennsylvania	do	do	1 year	do		Yes	Yes	Yes	Based on Federal rates	Yes	No	All.
Rhode Island	do	do	2 years	Yes		Yes	Yes	Yes	do	Yes	Doubtful	Rhode Island only.[1]
South Carolina	do	do	5 years	Dower, not taxed; curtesy, not allowed								
South Dakota	do	do	No presumption	Dower and curtesy abolished								
Tennessee	do	5 years	2 years	Yes		Yes	No	Yes	Based on Federal rates	Yes	No	All.
Texas	do	do	Not taxed	Do not exist	One-half							
Vermont	1 year after death	No provision	No presumption	Dower and curtesy abolished		Yes	No	Yes	Based on Federal rates	Yes	No	All.
Virginia	Death	do	1 year	No		Yes	No	Yes	do	Yes	No	Do.
Washington	do	5 years	2 years	Dower and curtesy abolished	One-half	Yes	Yes	Yes	do	Yes	Yes	Do.
West Virginia	do	No provision	3 years	Yes								
Wisconsin	do	6-year tax credit to widow's child	2 years	Yes		Yes	No	Yes	Based on Federal rates	Yes	Yes	All.
Wyoming	do	No provision	6 months	Dower and curtesy abolished								
INHERITANCE TAXES (COLLATERAL ONLY)												
Maryland	Death	No provision	No presumption	No		Yes	No	Yes	Based on Federal rates	Yes	No	All
New Hampshire	do	do	do	Yes		Yes	No	Yes	do	Yes	Yes	Do.
Oregon	do	1 year	do	Yes		Yes	Yes	No	1 to 10 per cent	No	No	None.
INHERITANCE TAXES (NONRESIDENTS ONLY)												
Georgia	Death	No provision	2 years	Dower, taxed; curtesy, not allowed		Yes	No	Yes	Based on Federal rates	Yes	Doubtful	None.
ESTATE TAX ONLY												
Alabama	Death	5 years	2 years	Yes		Yes	No	Yes	Based on Federal rates	Yes	Yes	None.
Florida	do	do	do	Curtesy abolished; dower taxed		Yes	Yes	Yes	do	Yes	Yes	Do.
Mississippi	do	2 years	do	Dower and curtesy abolished		Yes	Yes	Yes	do	Yes	No	Do.
New York	do	5 years	do	Dower not taxed; curtesy taxed		Yes	Yes	Yes	do	No	No	All.
North Dakota	do	5-year tax credit	do	Dower and curtesy abolished		Yes	Yes	No	1 to 10 per cent	No	No	None.
Utah	do	No provision	3 years	Do not exist		Yes	Yes	No	3 to 5 per cent	No	No	Do.
NO DEATH TAXES OF ANY FORM												
Nevada												

[1] Rhode Island has a proration provision for property located outside the State.

EXHIBIT N

TOTAL TAXES, BY STATES, ON CERTAIN ESTATES

NOTE.—(1) In all estates except in community property States, distribution to widow and four children is assumed to be 40 per cent to widow and 15 per cent to each child. Children are assumed to be minors.
(2) In community property States, one-half the net estate is assumed to be community property and nontaxable where there is a widow. The distribution in the case of a widow and four children is 50 per cent (all the community property) to the widow and 12½ per cent to each minor child.

(1) Total tax on $50,000 net estate (as of July 1, 1932)

State	Distribution to beneficiaries			State	Distribution to beneficiaries		
	All to widow and 4 children	All to widow	All to stranger in blood		All to widow and 4 children	All to widow	All to stranger in blood
Alabama	0	0	0	Nevada [1]	0	0	0
Arizona [1]	$170	$150	$3,745	New Hampshire	0	0	$2,500
Arkansas	470	1,360	6,080	New Jersey	$250	$450	4,000
California [1]	0	0	3,725	New Mexico [1]	150	150	3,960
Colorado	0	600	6,025	New York	80	240	400
Connecticut	650	650	2,725	North Carolina	200	550	4,650
Delaware	180	300	2,750	North Dakota	100	325	625
Florida	0	0	0	Ohio	250	700	3,750
Georgia	0	0	0	Oklahoma	50	600	3,220
Idaho [1]	0	150	3,700	Oregon	525	525	8,625
Illinois	0	600	5,588	Pennsylvania	1,000	1,000	5,000
Indiana	150	600	3,493	Rhode Island	400	525	2,850
Iowa	0	100	5,000	South Carolina	100	600	2,784
Kansas	0	0	3,125	South Dakota	150	750	4,245
Kentucky	0	550	3,470	Tennessee	525	525	2,450
Louisiana [1]	100	450	4,725	Texas [1]	0	0	2,475
Maine	100	400	400	Utah	1,700	1,700	1,700
Maryland	0	0	2,500	Vermont	100	650	2,500
Massachusetts	200	750	3,150	Virginia	100	400	2,950
Michigan	100	200	2,500	Washington [1]	50	150	5,000
Minnesota	100	850	4,745	West Virginia	0	500	4,500
Mississippi	0	0	0	Wisconsin	540	1,200	5,992
Missouri	100	400	4,500	Wyoming	200	800	3,000
Montana	245	575	3,000				
Nebraska	100	400	4,300	Average 48 States [2]	190	446	3,259

[1] Denotes community property State.
[2] There is no Federal tax on a net estate of $50,000 or less.

(2) Total tax on $200,000 net estate (as of July 1, 1932)

State	Distribution to beneficiaries: All to widow and 4 children			All to widow			All to stranger in blood		
	State tax	Federal tax	Total tax	State tax	Federal tax	Total tax	State tax	Federal tax	Total tax
Alabama	$1, 200	$8, 300	$9, 500	$1, 200	$8, 300	$9, 500	$1, 200	$8, 300	$9, 500
Arizona [1]	920	1, 500	2, 420	2, 150	1, 500	3, 650	31, 245	8, 300	39, 545
Arkansas	5, 520	8, 300	13, 820	10, 930	8, 300	19, 230	44, 840	8, 300	53, 140
California [1]	40	1, 500	1, 540	2, 000	1, 500	3, 500	21, 725	8, 300	30, 025
Colorado	3, 000	8, 300	11, 300	9, 000	8, 300	17, 300	27, 025	8, 300	35, 325
Connecticut	4, 650	8, 300	12, 950	4, 650	8, 300	12, 950	12, 725	8, 300	21, 025
Delaware	1, 980	8, 300	10, 280	4, 300	8, 300	12, 600	12, 750	8, 300	21, 050
Florida	1, 200	8, 300	9, 500	1, 200	8, 300	9, 500	1, 200	8, 300	9, 500
Georgia	1, 200	8, 300	9, 500	1, 200	8, 300	9, 500	1, 200	8, 300	9, 500
Idaho [1]	600	1, 500	2, 100	1, 950	1, 500	3, 450	31, 150	8, 300	39, 450
Illinois	2, 192	8, 300	10, 492	6, 782	8, 300	15, 082	35, 576	8, 300	43, 876
Indiana	2, 700	8, 300	11, 000	5, 100	8, 300	13, 400	16, 993	8, 300	25, 293
Iowa	1, 650	8, 300	9, 950	6, 250	8, 300	14, 550	22, 000	8, 300	30, 300
Kansas	625	8, 875	9, 500	1, 625	8, 300	9, 925	20, 625	8, 300	28, 925
Kentucky	2, 445	8, 300	10, 745	6, 038	8, 300	14, 338	20, 434	8, 300	28, 734
Louisiana [1]	1, 800	1, 500	3, 300	2, 700	1, 500	4, 200	19, 725	8, 300	28, 025
Maine	1, 846	8, 300	10, 146	3, 794	8, 300	12, 094	13, 944	8, 300	22, 244
Maryland	1, 200	8, 300	9, 500	1, 200	8, 300	9, 500	9, 985	8, 300	18, 285
Massachusetts	3, 341	8, 300	11, 641	6, 738	8, 300	15, 038	15, 126	8, 300	23, 426
Michigan	1, 800	8, 300	10, 100	3, 200	8, 300	11, 500	17, 500	8, 300	25, 800
Minnesota	3, 150	8, 300	11, 450	6, 350	8, 300	14, 650	32, 245	8, 300	40, 545
Mississippi	1, 200	8, 300	9, 500	1, 200	8, 300	9, 500	1, 200	8, 300	9, 500
Missouri	2, 393	8, 300	10, 693	5, 788	8, 300	14, 088	32, 940	8, 300	41, 240
Montana	2, 795	8, 300	11, 095	6, 075	8, 300	14, 375	25, 000	8, 300	33, 300
Nebraska	1, 497	8, 300	9, 797	1, 897	8, 300	10, 197	22, 297	8, 300	30, 597
Nevada [1]	0	1, 500	1, 500	0	1, 500	1, 500	0	9, 500	9, 500
New Hampshire	1, 200	8, 300	9, 500	1, 200	8, 300	9, 500	10, 000	8, 300	18, 300
New Jersey	2, 050	8, 300	10, 350	4, 950	8, 300	13, 250	16, 000	8, 300	24, 300
New Mexico [1]	900	1, 500	3, 400	900	1, 500	2, 400	15, 936	8, 300	24, 236
New York	1, 680	8, 300	9, 980	1, 840	8, 300	10, 140	2, 000	8, 300	10, 300
North Carolina	2, 350	8, 300	10, 650	5, 850	8, 300	14, 150	23, 150	8, 300	31, 450
North Dakota	3, 125	8, 300	11, 425	3, 625	8, 300	11, 925	4, 125	8, 300	12, 425
Ohio	2, 494	8, 300	10, 794	4, 451	8, 300	12, 751	16, 729	8, 300	25 029
Oklahoma	2, 493	8, 300	10, 793	6, 088	8, 300	14, 388	17, 190	8, 300	25, 490
Oregon	4, 525	8, 300	12, 825	4, 525	8, 300	12, 825	50, 050	8, 300	58, 350
Pennsylvania	4, 000	8, 300	12, 300	4, 000	8, 300	12, 300	20, 000	8, 300	28, 300
Rhode Island	2, 425	8, 300	10, 725	3, 525	8, 300	11, 825	13, 350	8, 300	21, 650
South Carolina	2, 291	8, 300	10, 591	6, 585	8, 300	14, 885	17, 678	8, 300	25, 978
South Dakota	3, 050	8, 300	11, 350	6, 250	8, 300	14, 550	31, 745	8, 300	40, 045
Tennessee	4, 525	8, 300	12, 825	4, 525	8, 300	12, 825	12, 950	8, 300	21, 250
Texas [1]	0	1, 500	1, 500	1, 250	1, 500	2, 750	9, 960	8, 300	18, 260
Utah	9, 200	8, 300	17, 500	9, 200	8, 300	17, 500	9, 200	8, 300	17, 500
Vermont	2, 842	8, 300	11, 142	6, 638	8, 300	14, 938	9, 985	8, 300	18, 285
Virginia	1, 800	8, 300	10, 100	4, 400	8, 300	12, 700	19, 414	8, 300	27, 714
Washington [1]	800	1, 500	2, 300	1, 300	1, 500	2, 800	28, 500	8, 300	36, 800
West Virginia	3, 200	8, 300	11, 500	8, 000	8, 300	16, 300	18, 750	8, 300	27, 050
Wisconsin	5, 640	8, 300	13, 940	12, 200	8, 300	20, 500	30, 000	8, 300	38, 300
Wyoming	2, 994	8, 300	11, 294	3, 725	8, 300	12, 025	11, 982	8, 300	20, 282
Average	2, 386	7, 178	9, 564	4, 341	7, 166	11, 507	18, 320	8, 325	26, 645

[1] Denotes community property State.

(3) Total tax on $1,000,000 net estate (as of July 1, 1932)

State	Distribution to beneficiaries								
	All to widow and 4 children			All to widow			All to stranger in blood		
	State tax	Federal tax	Total tax	State tax	Federal tax	Total tax	State tax	Federal tax	Total tax
Alabama	$33, 200	$84, 300	$117, 500	$33, 200	$84, 300	$117, 500	$33, 200	$84, 300	$117, 500
Arizona [1]	12, 920	32, 500	45, 420	18, 150	32, 500	50, 650	216, 245	84, 300	300, 545
Arkansas	56, 590	84, 300	140, 890	89, 750	84, 300	174, 050	360, 600	84, 300	444, 900
California [1]	17, 040	32, 500	49, 540	31, 000	32, 500	63, 500	117, 725	84, 300	202, 025
Colorado	48, 200	84, 300	132, 500	69, 000	84, 300	153, 300	149, 025	84, 300	233, 325
Connecticut	36, 650	84, 300	120, 950	36, 650	84, 300	120, 950	76, 725	84, 300	161, 025
Delaware	33, 200	84, 300	117, 500	36, 300	84, 300	120, 600	76, 750	84, 300	161, 050
Florida	33, 200	84, 300	117, 500	33, 200	84, 300	117, 500	33, 200	84, 300	117, 500
Georgia	33, 200	84, 300	117, 500	33, 200	84, 300	117, 500	33, 200	84, 300	117, 500
Idaho [1]	12, 000	32, 500	44, 500	27, 550	32, 500	60, 050	191, 050	84, 300	275, 450
Illinois	40, 269	84, 300	124, 569	102, 038	84, 300	186, 338	270, 080	84, 300	354, 380
Indiana	33, 200	84, 300	117, 500	52, 100	84, 300	136, 400	127, 993	84, 300	212, 293
Iowa	40, 050	84, 300	124, 350	68, 450	84, 300	152, 750	142, 000	84, 300	226, 300
Kansas	20, 225	97, 275	117, 500	19, 750	97, 750	117, 500	133, 125	84, 300	217, 425
Kentucky	31, 719	85, 781	117, 500	52, 469	84, 300	136, 769	140, 142	84, 300	224, 442
Louisiana [1]	13, 800	32, 500	46, 300	14, 700	32, 500	47, 200	99, 725	84, 300	184, 025
Maine	33, 200	84, 300	117, 500	33, 200	84, 300	117, 500	68, 719	84, 300	153, 019
Maryland	33, 200	84, 300	117, 500	33, 200	84, 300	117, 500	49, 585	84, 300	133, 885
Massachusetts	34, 885	84, 300	119, 185	49, 502	84, 300	133, 802	90, 136	84, 300	174, 486
Michigan	33, 200	84, 300	117, 500	49, 200	84, 300	133, 500	122, 500	84, 300	206, 800
Minnesota	33, 200	84, 300	117, 500	38, 350	84, 300	122, 650	192, 245	84, 300	276, 545
Mississippi	33, 200	84, 300	117, 500	33, 200	84, 300	117, 500	33, 200	84, 300	117, 500
Missouri	33, 200	84, 300	117, 500	51, 151	84, 300	135, 451	260, 510	84, 300	344, 810
Montana	30, 995	86, 505	117, 500	38, 075	84, 300	122, 375	153, 000	84, 300	237, 300
Nebraska	33, 200	84, 300	117, 500	33, 200	84, 300	117, 500	117, 184	84, 300	201, 484
Nevada [1]	0	42, 500	42, 500	0	42, 500	42, 500	0	117, 500	117, 500
New Hampshire	33, 200	84, 300	117, 500	33, 200	84, 300	117, 500	50, 000	84, 300	134, 300
New Jersey	27, 750	89, 750	117, 500	60, 950	84, 300	145, 250	82, 000	84, 300	166, 300
New Mexico [1]	4, 823	37, 677	42, 500	4, 823	37, 677	42, 500	49, 560	84, 300	133, 860
New York	33, 680	84, 300	117, 980	33, 840	84, 300	118, 140	34, 000	84, 300	118, 300
North Carolina	33, 200	84, 300	117, 500	50, 650	84, 300	134, 950	152, 150	84, 300	236, 450
North Dakota	33, 125	84, 375	117, 500	34, 125	84, 300	118, 425	35, 125	84, 300	119, 425
Ohio	33, 200	84, 300	117, 500	36, 368	84, 300	120, 668	95, 920	84, 300	180, 220
Oklahoma	30, 250	87, 250	117, 500	40, 835	84, 300	125, 135	96, 390	84, 500	180, 690
Oregon	52, 525	84, 300	136, 825	52, 525	84, 300	136, 825	296, 050	84, 300	380, 350
Pennsylvania	33, 200	84, 300	117, 500	33, 200	84, 300	117, 500	100, 000	84, 300	184, 300
Rhode Island	33, 200	84, 300	117, 500	33, 200	84, 300	117, 500	76, 850	84, 300	161, 150
South Carolina	33, 912	84, 300	118, 212	53, 002	84, 300	137, 302	128, 010	84, 300	212, 310
South Dakota	31, 250	86, 250	117, 500	38, 250	84, 300	122, 550	191, 745	84, 300	276, 045
Tennessee	38, 525	84, 300	122, 825	38, 525	84, 300	122, 825	92, 450	84, 300	176, 750
Texas [1]	2, 000	40, 500	42, 500	16, 250	32, 500	48, 750	131, 375	84, 300	215, 675
Utah	49, 200	84, 300	133, 500	49, 200	84, 300	133, 500	49, 200	84, 300	123, 500
Vermont	34, 385	84, 300	118, 685	45, 735	84, 300	130, 035	49, 585	84, 300	123, 885
Virginia	33, 200	84, 300	117, 500	33, 400	84, 300	117, 700	130, 450	84, 300	214, 750
Washington [1]	27, 900	32, 500	60, 400	19, 500	32, 500	52, 000	228, 500	84, 300	312, 800
West Virginia	40, 800	84, 300	125, 100	73, 000	84, 300	157, 300	97, 250	84, 300	181, 550
Wisconsin	62, 040	84, 300	146, 340	86, 200	84, 300	170, 500	150, 000	84, 300	234, 300
Wyoming	18, 627	98, 873	117, 500	19, 412	98, 088	117, 500	59, 502	84, 300	143, 802
Average	31, 746	75, 351	107, 097	40, 891	76, 550	117, 441	118, 001	84, 992	202, 993

[1] Denotes community-property State.

(4) Total tax on $10,000,000 net estate as of July 1, 1932

State	Distribution to beneficiaries								
	All to widow and four children			All to widow			All to stranger in blood		
	State tax	Federal tax	Total tax	State tax	Federal tax	Total tax	State tax	Federal tax	Total tax
Alabama	$1,067,600	$2,026,900	$3,094,500	$1,067,600	$2,026,900	$3,094,500	$1,067,600	$2,026,900	$3,094,500
Arizona [1]	222,920	926,580	1,149,500	243,150	906,350	1,149,500	2,466,245	2,006,900	4,493,145
Arkansas	899,550	2,194,950	3,094,500	979,750	2,114,750	3,094,500	3,920,600	2,066,900	5,947,500
California [1]	837,040	757,900	1,594,940	391,600	757,900	1,149,500	1,197,725	2,026,900	3,224,625
Colorado	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,589,025	2,026,900	3,615,925
Connecticut	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500
Delaware	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500
Florida	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500
Georgia	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500
Idaho [1]	409,000	757,900	1,166,900	477,250	757,900	1,235,150	1,991,150	2,026,900	4,018,050
Illinois	1,178,634	2,026,900	3,205,534	1,325,834	2,026,900	3,352,734	2,892,500	2,026,900	4,919,400
Indiana	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,927,993	2,026,900	3,954,893
Iowa	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,492,000	2,026,900	3,518,900
Kansas	314,750	2,779,750	3,094,500	216,808	2,877,692	3,094,500	1,429,745	2,026,900	3,456,645
Kentucky	634,006	2,460,494	3,094,500	1,083,015	2,026,900	3,109,915	1,538,766	2,026,900	3,565,666
Louisiana [1]	148,800	1,000,700	1,149,500	149,700	999,800	1,149,500	999,725	2,094,775	3,094,500
Maine	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500
Maryland	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500
Massachusetts	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,174,150	2,026,900	3,201,050
Michigan	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,472,500	2,026,900	3,499,400
Minnesota	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,992,245	2,026,900	4,019,145
Mississippi	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500
Missouri	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	2,882.930	2,026,900	4,909,830
Montana	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,593,000	2,026,900	3,619,900
Nebraska	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,166,092	2,026,900	3,192,992
Nevada [1]	0	1,149,500	1,149,500	0	1,149,500	1,149,500	0	3,094,500	3,094,500
New Hampshire	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500
New Jersey	894,750	2,199,750	3,094,500	1,410,950	2,026,900	3,437,850	1,498,000	2,026,900	2,524,900
New Mexico [1]	45,460	1,104,040	1,149,500	45,460	1,104,040	1,149,500	456,053	2,638,447	3,094,500
New York	1,068,080	2,026,900	3,094,980	1,068,240	2,026,900	3,095,140	1,068,400	2,026,900	3,095,300
North Carolina	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	2,342,150	2,026,900	4,369,050
North Dakota	657,325	2,437,175	3,094,500	658,725	2,435,775	3,094,500	660,125	2,434,375	3,094,500
Ohio	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500
Oklahoma	552,441	2,542,059	3,094,500	1,034,028	2,060,472	3,094,500	1,145,651	2,026,900	3,172,551
Oregon	952,525	2,141,975	3,094,500	952,525	2,141,975	3,094,500	3,381,400	2,026,900	5,408,300
Pennsylvania	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500
Rhode Island	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500	1,067,600	2,026,900	3,094,500
South Carolina	519,180	2,575,320	3,094,500	559,906	2,534,594	3,094,500	1,350,806	2,026,900	3,377,706
South Dakota	391,250	2,703,250	3,094,500	398,250	2,696,250	3,094,500	1,991,745	2,026,900	4,018,645

Tennessee	488, 525	2, 605, 975	3, 094, 500	488, 525	2, 605, 975	3, 094, 500	992, 450	2, 102, 050	3, 094, 500
Texas [1]	225, 000	924, 500	1, 149, 500	281, 250	868, 250	1, 149, 500	1, 931, 375	2, 026, 900	3, 958, 275
Utah	499, 200	2, 595, 300	3, 094, 500	499, 200	2, 595, 300	3, 094, 500	499, 200	2, 595, 300	3, 094, 500
Vermont	1, 067, 600	2, 026, 900	3, 094, 500	1, 067, 600	2, 026, 900	3, 094, 500	1, 067, 600	2, 026, 900	3, 094, 500
Virginia	1, 067, 600	2, 026, 900	3, 094, 500	1, 067, 600	2, 026, 900	3, 094, 500	1, 440, 415	2, 026, 900	3, 467, 315
Washington [1]	391, 600	757, 900	1, 149, 500	391, 600	757, 900	1, 149, 500	2, 478, 500	2, 026, 900	4, 505, 400
West Virginia	1, 067, 600	2, 026, 900	3, 094, 500	1, 067, 600	2, 026, 900	3, 094, 500	1, 067, 600	2, 026, 900	3, 094, 500
Wisconsin	1, 067, 600	2, 026, 900	3, 094, 500	1, 067, 600	2, 026, 900	3, 094, 500	1, 500, 000	2, 026, 900	3, 526, 900
Wyoming	175, 403	2, 919, 097	3, 094, 500	195, 882	2, 898, 618	3, 094, 500	566, 377	2, 528, 123	3, 094, 500
Average	817, 980	1, 964, 319	2, 782, 299	846, 026	1, 938, 959	2, 784, 985	1, 457, 821	2, 095, 635	3, 553, 456

[1] Denotes community property State.

EXHIBIT O

Chart No. 1

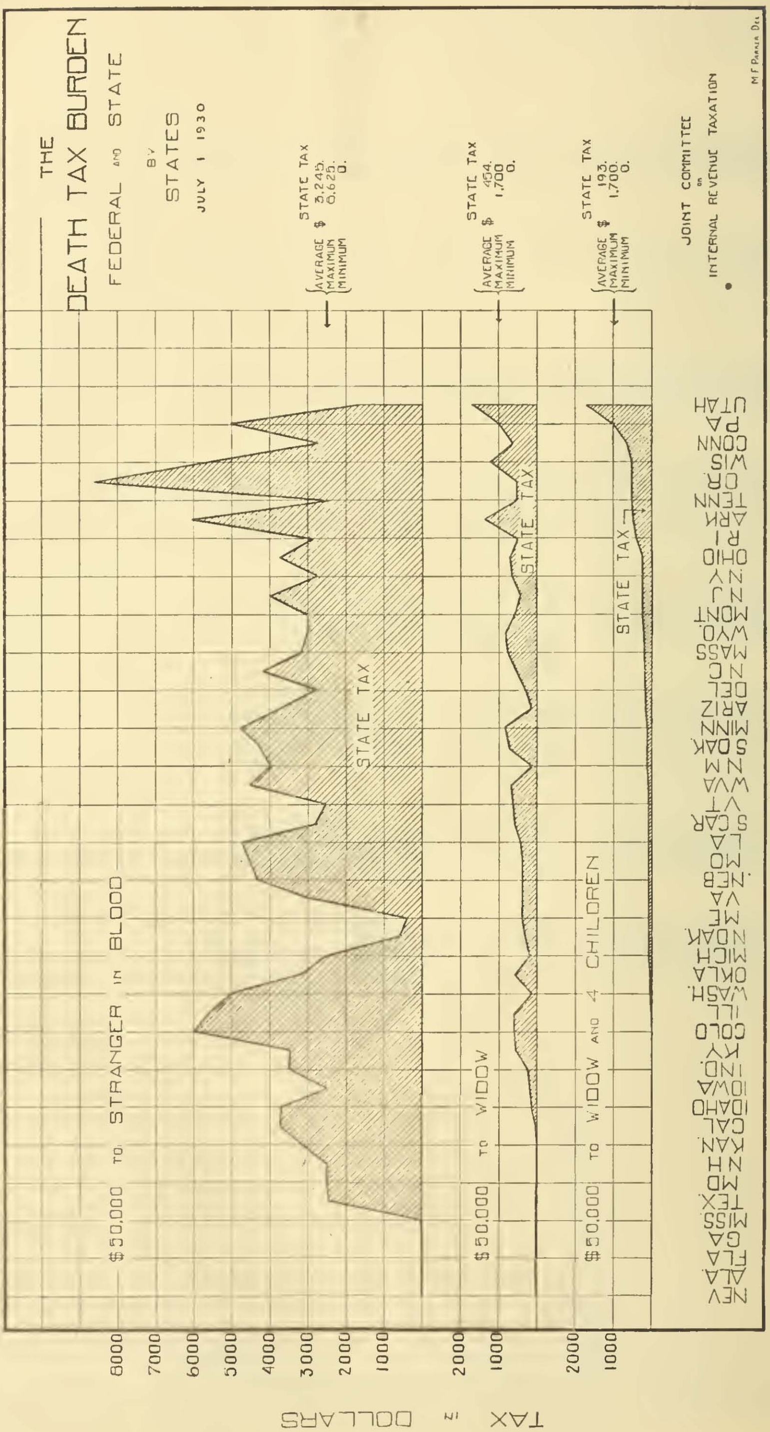


EXHIBIT O

Chart No. 2

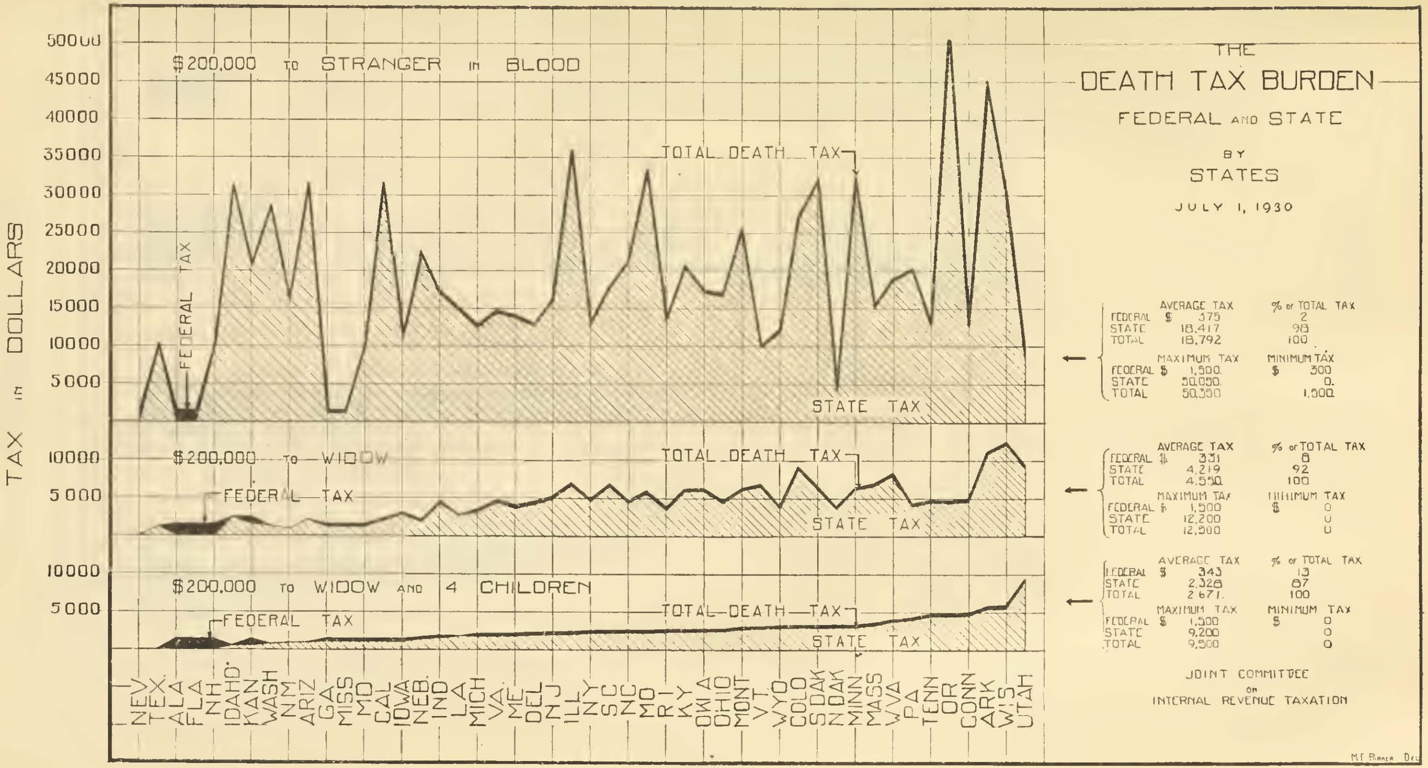


EXHIBIT O
CHART NO. 3

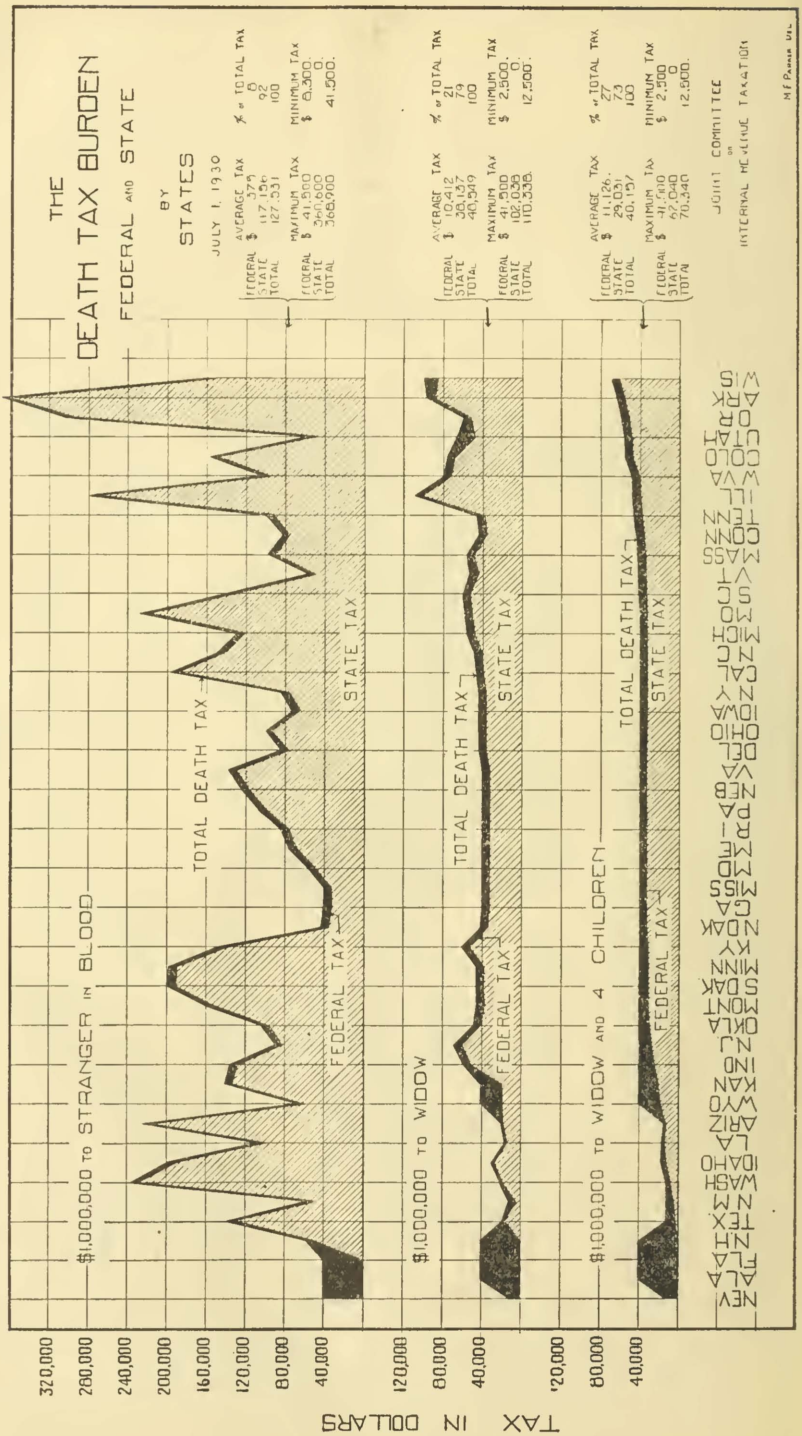
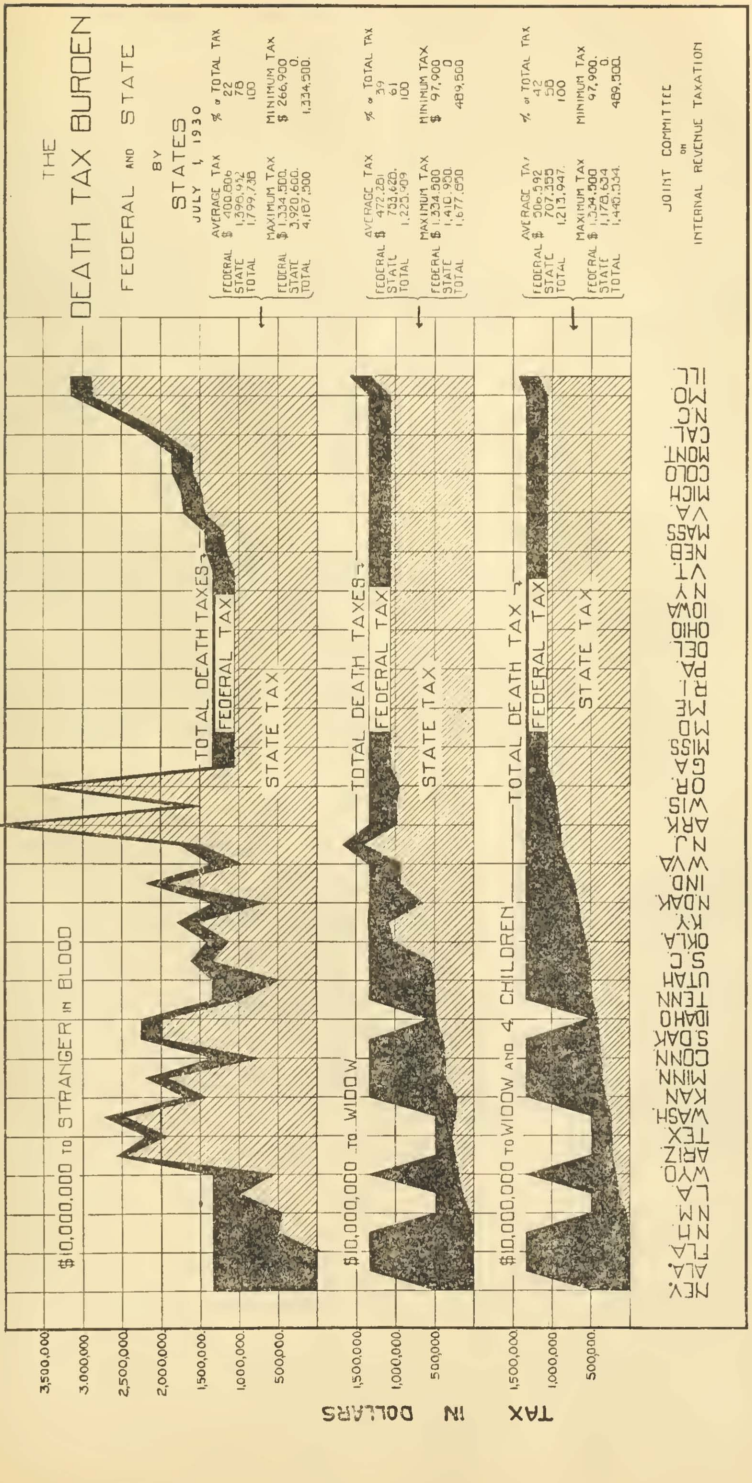


EXHIBIT O
CHART NO. 4



Summary of revenue receipts from taxes [1]—Continued

EXHIBIT P

Summary of revenue receipts from taxes [1]

1927

Source	Federal [2]	State	Cities of over 30,000	All other civil divisions	Grand total
General property taxes		$370, 435, 000	$1, 888, 705, 000	[3] $2,380, 000, 000	$4, 639, 140, 000
Income tax	$2, 219, 952, 000	54, 959, 000			2, 274, 911, 000
Death taxes	100, 340, 000	112, 191, 000			212, 531, 000
Bank or corporation tax		75, 649, 000			75, 649, 000
All other special taxes	545, 391, 000	65, 387, 000	64, 457, 000	[3] 70, 000, 000	745, 235, 000
Subtotal, special taxes	2, 865, 683, 000	308, 186, 000	64, 457, 000	70, 000, 000	3, 308, 326, 000
Poll taxes		3, 426, 000	5, 238, 000	[3] 6, 000, 000	14, 664, 000
Licenses		679, 324, 000	88, 941, 000	[3] 80, 000, 000	848, 265, 000
Grand total	2, 865, 683, 000	1, 361, 371, 000	2, 047, 341, 000	2, 536, 000, 000	8, 810, 395, 000

1922

Source	Federal [2]	State	Cities of over 30,000	All other civil divisions	Grand total
General property taxes		$348, 291, 000	$1, 337, 784, 000	$1, 817, 650, 000	$3, 503, 725, 000
Income tax	$2, 086, 918, 000	29, 230, 000			2, 116, 248, 000
Death taxes	139, 419, 000	70, 503, 000			209, 922, 000
Bank or corporation tax		63, 832, 000			63, 832, 000
All other special taxes	971, 114, 000	36, 874, 000	41, 091, 000	[3] 45, 000, 000	1, 094, 079, 000
Subtotal, special taxes	3, 197, 451, 000	200, 539, 000	41, 091, 000	45, 000, 000	3, 484, 081, 000
Poll taxes		8, 323, 000	4, 156, 000	[3] 5, 000, 000	17, 479, 000
Licenses		305, 367, 000	58, 077, 000	[3] 50, 000, 000	413, 444, 000
Grand total	3, 197, 451, 000	862, 520, 000	1, 441, 108, 000	1, 917, 650, 000	7, 418, 729, 000

1915

Source	Federal [2]	State	Cities of over 30,000	All other civil divisions	Grand total
General property taxes		$185, 876, 000	$570, 831, 000	[3] $993, 293, 000	[3]$1,750,000, 000
Income tax	$80, 202, 000	446, 000			80, 648, 000
Death taxes		28, 784, 000			28, 784, 000
Bank or corporation tax		33, 108, 000			33, 108, 000
All other special taxes	335, 479, 000	20, 979, 000	12, 598, 000	[3] 15, 000, 000	384, 056, 000
Subtotal, special taxes	415, 681, 000	83, 317, 000	12, 598, 000	15, 000, 000	526, 596, 000
Poll taxes		3, 198, 000	1, 792, 000	[3] 2, 500, 000	7, 490, 000
Licenses		93, 152, 000	56, 751, 000	[3] 45, 000, 000	194, 903, 000
Grand total	415, 681, 000	365, 543, 000	641, 972, 000	1, 055, 793, 000	2, 478, 989, 000

[1] Does not include revenue from customs, interest, escheats, earnings of departments, etc. Figures from Department of Commerce, except inheritance taxes, which are result of special investigation and are slightly higher than department figures.
[2] Fiscal year.
[3] Estimated by Joint Committee on Internal Revenue Taxation.

EXHIBIT Q

Relation between death taxes and total taxes, Federal, State, and aggregate in United States

Year	Federal revenue from taxes [1]	Federal revenue from death taxes	Per cent	State revenue from taxes [2]	State revenue from death taxes [3]	Per cent	Estimated total tax in United States [4]	Total death taxes	Per cent
1915	$415, 681, 000	0	0	$365, 543, 000	$28, 784, 000	7. 9	$2, 478, 089, 000	$28, 784, 000	1. 2
1916	512, 723, 000	0	0	363, 969, 000	30, 748, 000	8. 4			
1917	809, 394, 000	$6, 077, 000	0. 8	409, 865, 000	40, 038, 000	9. 8			
1918	3, 698, 956, 000	47, 453, 000	1. 3	459, 774, 000	41, 432, 000	9. 0			
1919	3, 850, 150, 000	82, 030, 000	2. 1	527, 819, 000	47, 889, 000	9. 0			
1920	5, 407, 580, 000	103, 636, 000	1. 9	[5] 700, 000, 000	64, 647, 000	9. 2			
1921	4, 595, 000, 000	154, 043, 000	3. 4	[5] 730, 000, 000	65, 703, 000	9. 0			
1922	3, 197, 451, 000	139, 419, 000	4. 4	858, 063, 000	70, 503, 000	8. 2	7, 418, 729, 000	209, 922, 000	2. 8
1923	2, 621, 745, 000	126, 705, 000	4. 8	916, 692, 000	75, 193, 000	8. 2			
1924	2, 796, 179, 000	102, 967, 000	3. 7	1, 017, 370, 000	83, 697, 000	8. 2			
1925	2, 584, 140, 000	101, 422, 000	3. 9	1, 107, 370, 000	91, 171, 000	8. 2			
1926	2, 836, 000, 000	116, 041, 000	4. 1	1, 264, 285, 000	96, 052, 000	7. 6			
1927	2, 865, 683, 000	100, 340, 000	3. 5	1, 355, 127, 000	112, 191, 000	8. 3	8, 810, 395, 000	212, 531, 000	2. 4
1928	2, 790, 536, 000	60, 087, 000	2. 2	1, 507, 219, 000	132, 599, 000	8. 8			
1929	2, 939, 054, 000	61, 897, 000	2. 1	1, 611, 961, 000	148, 592, 000	9. 2			
1930	3, 040, 145, 000	64, 770, 000	2. 1	1, 780, 340, 000	180, 794, 000	10. 1			
1931	2, 428, 228, 000	48, 078, 000	1. 9						

[1] Fiscal year.
[2] Furnished by Division of Statistics of States and Cities, Department of Commerce.
[3] From Exhibit M, prepared by Joint Committee on Internal Revenue Taxation and from Report of National Committee on Inheritance Taxation (Nov. 10, 1925).
[4] From "Summary of Revenue from Taxes," Exhibit P.
[5] Estimated by Joint Committee on Internal Revenue Taxation.

EXHIBIT R

Comparison of taxes, United States and United Kingdom

Fiscal year	United States			United Kingdom [1]		
	Total Federal and State taxes	Federal and State death taxes	Per cent	All inland revenue taxes	Death taxes	Per cent
1916–17	$1, 219, 259, 000	$46, 115, 000	3. 8	$1, 946, 575, 000	$155, 960, 000	8. 0
1917–18	4, 158, 730, 000	88, 885, 000	2. 1	2, 524, 080, 000	158, 675, 000	6. 3
1918–19	4, 377, 969, 000	129, 919, 000	2. 9	3, 118, 370, 000	154, 000, 000	4. 9
1919–20	6, 107, 580, 000	168, 283, 000	2. 8	3, 587, 755, 000	213, 800, 000	5. 9
1920–21	5, 325, 000, 000	219, 746, 000	4. 1	3, 455, 770, 000	235, 905, 000	6. 8
1921–22	4, 055, 514, 000	209, 922, 000	5. 2	2, 593, 645, 000	262, 605, 000	10. 1
1922–23	3, 538, 437, 000	201, 898, 000	5. 7	2, 397, 520, 000	282, 475, 000	11. 8
1923–24	3, 813, 639, 000	186, 664, 000	4. 9	2, 183, 585, 000	287, 785, 000	13. 2
1924–25	3, 691, 510, 000	192, 593, 000	5. 2	2, 211, 750, 000	294, 585, 000	13. 3
1925–26	4, 100, 285, 000	212, 093, 000	5. 2	2, 137, 040, 000	306, 650, 000	14. 3
1926–27	4, 220, 810, 000	212, 531, 000	5. 0	1, 990, 240, 000	337, 160, 000	16. 9
1927–28	4, 297, 755, 000	192, 686, 000	4. 5	2, 099, 331, 000	384, 923, 000	18. 3
1928–29	4, 551, 015, 000	210, 489, 000	4. 6	2, 037, 444, 000	404, 673, 000	19. 8
1929–30	4, 820, 484, 000	245, 564, 000	5. 0	2, 011, 011, 000	395, 529, 000	19. 6
1930–31				2, 150, 192, 000	415, 464, 000	19. 3

[1] For comparative purposes 1 English pound has been computed as equal to 5 dollars.

EXHIBIT S

Summary of Federal estate tax returns

FEDERAL TAXES PAID (BEFORE CREDIT)

Period	0 to $1,000,000	$1,000,000 to $10,000,000	Over $10,000,000	Total
Sept. 9, 1916–Jan. 15, 1922	$106, 369, 612	$151, 662, 563	$93, 106, 148	$351, 138, 323
Jan. 16, 1922–Dec. 31, 1922	22, 922, 040	51, 963, 870	40, 953, 043	115, 838, 953
Calendar year:				
1923	22, 182, 473	40, 586, 314	5, 321, 479	68, 090, 266
1924	21, 967, 309	31, 147, 390	12, 785, 351	65, 900, 050
1925	28, 334, 612	42, 866, 105	25, 729, 434	96, 930, 151
1926	28, 228, 488	54, 551, 555	55, 276, 499	138, 056, 542
1927	26, 665, 590	56, 696, 341	17, 169, 745	100, 531, 676
1928	25, 967, 588	64, 559, 875	44, 486, 096	135, 013, 559
Total 1916–1928	282, 637, 712	494, 034, 013	294, 827, 795	1, 071, 499, 520
Total 1916–1922	106, 369, 612	151, 662, 563	93, 106, 148	351, 138, 323
Total 1922–1928	176, 268, 100	342, 371, 450	201, 721, 647	720, 361, 197

NET TAXABLE ESTATE (AFTER EXEMPTION)

Period	0 to $1,000,000	$1,000,000 to $10,000,000	Over $10,000,000	Total
Sept. 9, 1916–Jan. 15, 1922	$3, 345, 381, 727	$609, 870, 039	$452, 421, 765	$5, 407, 673, 531
Jan. 16, 1922–Dec. 31, 1922	909, 685, 885	527, 978, 982	183, 116, 171	1, 620, 781, 038
Calendar year:				
1923	899, 759, 572	422, 772, 120	24, 559, 916	1, 347, 091, 608
1924	863, 415, 273	330, 675, 354	67, 511, 405	1, 261, 602, 032
1925	1, 027, 886, 962	470, 560, 026	122, 561, 338	1, 621, 008, 326
1926	1, 103, 353, 166	576, 991, 661	271, 624, 539	1, 951, 969, 366
1927	950, 236, 365	680, 071, 121	105, 532, 743	1, 735, 840, 229
1928	896, 048, 103	799, 090, 080	248, 290, 478	1, 943, 428, 661
Total 1916–1928	9, 995, 767, 053	5, 418, 009, 383	1, 475, 618, 355	16, 889, 394, 791
Total 1916–1922	3, 345, 381, 727	1, 609, 870, 039	452, 421, 765	5, 407, 673, 531
Total 1922–1928	6, 650, 385, 326	3, 808, 139, 344	1, 023, 196, 590	11, 481, 721, 260

SPECIFIC EXEMPTION

Period	0 to $1,000,000	$1,000,000 to $10,000,000	Over $10,000,000	Total
Sept. 9, 1916–Jan. 15, 1922	$1, 789, 450, 000	$38, 750, 000	$1, 150, 000	$1, 829, 350, 000
Jan. 16, 1922–Dec. 31, 1922	465, 150, 000	12, 050, 000	500, 000	477, 700, 000
Calendar year:				
1923	469, 050, 000	9, 800, 000	50, 000	478, 900, 000
1924	458, 250, 000	8, 250, 000	250, 000	466, 750, 000
1925	519, 900, 000	11, 900, 000	300, 000	532, 100, 000
1926	529, 350, 000	14, 400, 000	600, 000	544, 350, 000
1927	567, 610, 000	27, 650, 000	650, 000	595, 910, 000
1928	562, 800, 000	34, 400, 000	800, 000	598, 000, 000
Total 1916–1928	5, 361, 560, 000	157, 200, 000	4, 300, 000	5, 523, 060, 000
Total 1916–1922	1, 789, 450, 000	38, 750, 000	1, 150, 000	1, 829, 350, 000
Total 1922–1928	3, 572, 110, 000	118, 450, 000	3, 150, 000	3, 693, 710, 000

GROSS ESTATE

Period	0 to $1,000,000	$1,000,000 to $10,000,000	Over $10,000,000	Total
Sept. 9, 1916–Jan. 15, 1922	$5, 850, 847, 491	$1, 930, 685, 413	$566, 637, 695	$8, 348, 170, 599
Jan. 16, 1922–Dec. 31, 1922	1, 682, 547, 109	690, 902, 124	291, 937, 380	2, 665, 386, 613
Calendar year:				
1923	1, 690, 442, 041	509, 485, 893	28, 636, 631	2, 228, 564, 565
1924	1, 632, 509, 439	407, 250, 719	72, 163, 685	2, 111, 923, 843
1925	1, 985, 621, 476	569, 186, 298	135, 164, 602	2, 689, 972, 376
1926	2, 038, 739, 877	754, 192, 046	357, 731, 615	3, 150, 663, 538
1927	1, 885, 336, 848	837, 078, 321	128, 569, 586	2, 850, 984, 755
1928	1, 846, 467, 129	1, 003, 371, 067	331, 880, 866	3, 181, 719, 062
Total 1916–1928	18, 612, 511, 410	6, 702, 151, 881	1, 912, 722, 060	27, 227, 385, 351
Total 1916–1922	5, 859, 847, 491	1, 930, 685, 413	566, 637, 695	8, 348, 170, 599
Total 1922–1928	12, 761, 663, 919	4, 771, 466, 468	1, 346, 084, 365	18, 879, 214, 752

Summary of Federal estate tax returns—Continued

REAL ESTATE

Period	0 to $1,000,000	$1,000,000 to $10,000,000	Over $10,000,000	Total
Sept. 9, 1916–Jan. 15, 1922	$490, 444, 536	$93, 626, 770	$34, 029, 213	$618, 100, 519
Calendar year:				
1923	441, 999, 729	72, 964, 174		514, 963, 903
1924	419, 620, 162	50, 020, 162	3, 198, 514	472, 839, 605
1925	479, 715, 192	61, 230, 879	13, 584, 215	554, 530, 286
1926	472, 128, 674	88, 844, 651	6, 725, 332	567, 698, 657
1927	386, 231, 566	94, 820, 110	1, 267, 554	482, 319, 230
1928	373, 335, 510	115, 038, 185	33, 748, 436	522, 122, 131
Total	3, 063, 476, 136	576, 544, 931	92, 553, 264	3, 732, 574, 331

INVESTMENTS IN BONDS AND STOCKS, FEDERAL GOVERNMENT BONDS WHOLLY TAX-EXEMPT

Jan. 16–Dec. 31, 1922	$6, 078, 764	$15, 527, 757	$8, 433, 189	$30, 039, 710
Calendar year:				
1923	9, 137, 504	11, 468, 918	5, 071, 125	25, 677, 547
1924	12, 028, 286	9, 274, 460	13, 126, 255	34, 429, 001
1925	14, 751, 036	21, 451, 782	2, 381, 192	38, 584, 010
1926	14, 151, 000	28, 797, 430	23, 353, 359	66, 301, 789
1927	17, 472, 677	25, 317, 988	2, 192, 651	44, 983, 316
1928	17, 720, 550	27, 227, 926	12, 400, 676	57, 349, 152
Total	91, 339, 817	39, 066, 261	66, 958, 447	297, 364, 525

INVESTMENTS IN BONDS AND STOCKS PARTIALLY TAX-EXEMPT

Jan. 16–Dec. 31, 1922	$74, 861, 208	$30, 411, 817	$6, 356, 690	$111, 629, 715
Calendar year:				
1923	66, 260, 888	11, 776, 767		78, 037, 655
1924	63, 887, 563	13, 256, 738	1, 701, 093	78, 845, 394
1925	73, 543, 648	16, 639, 650	3, 149, 315	93, 332, 613
1926	61, 548, 732	13, 683, 614	3, 616, 514	78, 848, 860
1927	51, 358, 569	11, 290, 979	1, 782, 542	64, 432, 090
1928	38, 096, 154	7, 720, 400	250, 605	46, 067, 159
Total	429, 556, 762	104, 779, 965	16, 856, 759	551, 193, 486

STATE AND MUNICIPAL BONDS WHOLLY TAX EXEMPT

Jan. 16–Dec. 31, 1922	$28, 027, 524	$33, 399, 571	$9, 681, 658	$71, 108, 753
Calendar year:				
1923	37, 555, 344	38, 916, 304	1, 537, 455	78, 009, 103
1924	31, 587, 104	36, 399, 065	2, 889, 934	70, 876, 103
1925	44, 526, 667	44, 167, 458	851, 834	89, 545, 959
1926	46, 004, 311	61, 952, 437	33, 113, 024	141, 069, 772
1927	54, 954, 428	53, 245, 918	4, 627, 663	112, 828, 009
1928	51, 495, 647	67, 676, 871	14, 654, 303	133, 826, 821
Total	294, 151, 025	335, 757, 624	67, 355, 871	697, 264, 520

INVESTMENTS IN BONDS AND STOCKS, FEDERAL GOVERNMENT BONDS, ALL OTHER BONDS

Jan. 16–Dec. 31, 1922	$109, 887, 391	$59, 916, 555	$31, 089, 190	$200, 893, 136
Calendar year:				
1923	128, 473, 942	41, 751, 327	31, 550	170, 256, 819
1924	122, 051, 565	22, 674, 526	2, 169, 574	146, 895, 665
1925	154, 871, 905	45, 133, 407	23, 558, 698	223, 564, 010
1926	167, 244, 995	50, 127, 368	27, 824, 889	245, 197, 252
1927	160, 003, 125	52, 196, 346	4, 410, 876	216, 610, 347
1928	155, 900, 044	49, 198, 127	17, 679, 485	222, 777, 656
Total	998, 432, 967	320, 997, 656	106, 764, 262	1, 426, 194, 885

Summary of Federal estate tax returns—Continued

CAPITAL STOCK OF CORPORATIONS

Period	0 to $1,000,000	$1,000,000 to $10,000,000	Over $10,000,000	Total
Jan. 16–Dec. 31, 1922	$494, 038, 194	$305, 082, 816	$136, 642, 048	$935, 763, 058
Calendar year:				
1923	496, 501, 718	221, 645, 961	20, 835, 928	738, 983, 607
1924	467, 831, 142	185, 005, 943	45, 030, 184	697, 867, 269
1925	607, 061, 519	259, 322, 491	67, 657, 654	934, 041, 664
1926	642, 659, 340	373, 848, 186	207, 584, 346	1, 224, 091, 872
1927	647, 730, 938	432, 608, 620	84, 356, 690	1, 164, 696, 248
1928	688, 291, 003	538, 549, 743	213, 054, 663	1, 439, 895, 409
Total	4, 044, 113, 854	2, 316, 063, 760	775, 161, 513	7, 135, 339, 127

MORTGAGES, NOTES, CASH, INSURANCE, ETC.

Period	0 to $1,000,000	$1,000,000 to $10,000,000	Over $10,000,000	Total
Jan. 16–Dec. 31, 1922	$281, 682, 785	$69, 476, 276	$18, 625, 054	$743, 784, 115
Calendar year:				
1923	298, 983, 490	94, 680, 328	963, 102	394, 626, 920
1924	296, 847, 538	30, 795, 535	3, 005, 026	330, 648, 099
1925	349, 813, 862	43, 799, 565	6, 399, 675	400, 013, 102
1926	359, 633, 267	64, 854, 395	10, 352, 174	434, 839, 836
1927	318, 962, 443	66, 893, 705	2, 863, 688	388, 719, 836
1928	322, 424, 311	83, 644, 470	18, 739, 302	424, 808, 083
Total	2, 228, 347, 696	454, 144, 274	60, 948, 021	2, 743, 439, 991

JOINTLY OWNED AND OTHER MISCELLANEOUS PROPERTY

Period	0 to $1,000,000	$1,000,000 to $10,000,000	Over $10,000,000	Total
Jan. 16–Dec. 31, 1922	$117, 572, 829	$60, 602, 673	$30, 692, 402	$208, 867, 904
Calendar year:				
1923	122, 489, 301	50, 043, 541	197, 471	172, 730, 313
1924	127, 644, 396	36, 165, 562	302, 896	164, 112, 854
1925	148, 148, 526	36, 505, 492	11, 979, 451	196, 633, 469
1926	162, 244, 345	48, 741, 253	19, 500, 397	230, 485, 995
1927	142, 842, 907	53, 796, 430	14, 450, 304	211, 089, 731
1928	104, 684, 486	63, 961, 791	18, 094, 012	186, 740, 289
Total	925, 626, 880	349, 816, 742	95, 216, 933	1, 370, 660, 555

TRANSFERS MADE WITHIN TWO YEARS PRIOR TO DATE OF DEATH

Period	0 to $1,000,000	$1,000,000 to $10,000,000	Over $10,000,000	Total
Jan. 16–Dec. 31, 1922	$47, 929, 491	$14, 797, 473	$9, 351, 486	$72, 078, 450
Calendar year:				
1923	49, 517, 219	6, 679, 312		56, 196, 531
1924	45, 504, 818	10, 987, 532	740, 209	57, 232, 559
1925	53, 439, 001	20, 661, 223		74, 100, 224
1926	60, 857, 079	13, 208, 657	9, 143, 519	83, 209, 255
1927	56, 088, 283	31, 709, 381	188, 643	87, 986, 307
1928	52, 081, 281	26, 055, 801	3, 259, 384	81, 396, 466
Total	365, 417, 172	124, 099, 379	22, 683, 241	512, 199, 792

POWER OF APPOINTMENT OR GENERAL POWER OF DEED, MADE IN CONTEMPLATION OF DEATH

Period	0 to $1,000,000	$1,000,000 to $10,000,000	Over $10,000,000	Total
Jan. 16–Dec. 31, 1922	$9, 729, 653	$2, 457, 645	$7, 036, 450	$19, 223, 748
Calendar year:				
1923	10, 392, 313	2, 257, 101		12, 649, 414
1924	8, 570, 957	1, 681, 878		10, 252, 835
1925	13, 721, 797	4, 087, 469	5, 543, 607	23, 352, 873
1926	9, 748, 217	1, 923, 374		11, 671, 591
1927	13, 129, 498	7, 666, 277		20, 795, 775
1928	9, 964, 363	7, 994, 765		17, 959, 128
Total	275, 256, 798	28, 068, 509	12, 580, 057	115, 905, 364

Summary of Federal estate tax returns—Continued

PROPERTY FROM AN ESTATE TAXED WITHIN FIVE YEARS, VALUE AT DATE OF DEATH OF PRESENT DECEDENT

Period	0 to $1,000,000	$1,000,000 to $10,000,000	Over $10,000,000	Total
Jan. 16–Dec. 31, 1922	$22, 294, 734	$5, 602, 771		$27, 897, 505
Calendar year:				
1923	29, 130, 593	4, 077, 338		33, 207, 931
1924	36, 935, 141	10, 989, 318		47, 924, 459
1925	46, 028, 323	16, 186, 882		62, 215, 205
1926	42, 519, 917	8, 210, 681	16, 518, 061	67, 248, 659
1927	36, 562, 324	7, 532, 567	12, 428, 975	56, 523, 866
1928	32, 473, 780	16, 302, 988		48, 776, 768
Total	245, 944, 812	68, 902, 545	28, 947, 036	343, 794, 393

CREDIT FOR STATE TAXES PAID

1922–1924				
1925	$3, 238, 072	$5, 208, 445	$2, 260, 539	$10, 707, 056
1926	7, 097, 099	13, 334, 173	16, 301, 118	36, 732, 390
1927	16, 126, 812	31, 602, 886	11, 870, 754	59, 600, 452
1928	18, 420, 959	43, 708, 023	32, 323, 342	94, 452, 324
Total	44, 882, 942	93, 853, 527	62, 755, 753	201, 492, 222

EXHIBIT T

Summary of taxable estate tax returns of resident decedents for the 7-year period, 1922 to 1928, inclusive

Gross estate	Size of net estate after exemption			
	0 to $1,000,000	$1,000,000 to $10,000,000	Over $10,000,000	Total
Real estate	$3, 063, 476, 136	$576, 544, 931	$92, 553, 264	$3, 732, 574, 331
Government bonds, exempt	91, 339, 817	139, 066, 261	66, 958, 447	297, 264, 525
Government bonds, partially exempt	429, 556, 762	104, 779, 965	16, 856, 759	551, 193, 486
State and municipal bonds	294, 151, 025	335, 757, 624	67, 355, 871	697, 264, 520
All other bonds	998, 432, 967	320, 997, 656	106, 764, 262	1, 426, 194, 885
Corporate stock	4, 044, 113, 854	2, 316, 063, 760	775, 161, 513	7, 135, 339, 127
Mortgages, notes, cash, insurance	2, 228, 347, 696	454, 144, 274	60, 948, 021	2, 743, 439, 991
Jointly owned property, etc	925, 626, 880	349, 816, 742	95, 216, 933	1, 370, 660, 555
Transfers within 2 years of death	365, 417, 172	124, 099, 379	22, 683, 241	512, 199, 792
Power of appointment, etc	75, 256, 798	28, 068, 509	12, 580, 057	115, 905, 364
Property taxed within 5 years	245, 944, 812	68, 902, 545	28, 947, 036	343, 794, 393
Total gross estate	12, 761, 663, 919	4, 818, 241, 646	1, 346, 025, 404	18, 925, 930, 969
Deductions allowed	2, 539, 168, 593	891, 652, 302	319, 678, 814	3, 750, 499, 709
Specific exemption	3, 572, 110, 000	118, 450, 000	3, 150, 000	3, 693, 710, 000
Total deductions	6, 111, 278, 593	1, 010, 102, 302	322, 828, 814	7, 444, 209, 709
Net taxable estate	6, 650, 385, 326	3, 808, 139, 344	1, 023, 196, 590	11, 481, 721, 260
Tax at Federal rates	176, 268, 100	342, 371, 450	201, 721, 647	720, 361, 197
Credit for State taxes	44, 882, 942	93, 853, 527	62, 755, 753	201, 492, 222
Net Federal tax	131, 385, 158	248, 517, 923	138, 965, 894	518, 868, 975
Number of returns	60, 855	1, 757	47	62, 659

EXHIBIT U

LETTER SUBMITTING PLAN FOR TAXATION OF DEPRECIATED ESTATES

Congress of the United States,
Joint Committee on Internal Revenue Taxation,
Washington, February 2, 1931.

Hon. Willis C. Hawley,
Chairman Joint Committee on Internal Revenue Taxation,
House of Representatives, Washington, D. C.

My Dear Mr. Chairman: Under certain circumstances our Federal estate-tax law imposes taxes so unjust and so unreasonable that the failure on the part of Congress to correct the situation would appear likely to result ultimately in a strong reaction against the tax as a whole.

The unjust and unreasonable taxes, referred to above, occur in cases where there is a large decrease in value between the date of the decedent's death and the date when the tax is paid. The law provides for the payment of the tax one year after death. Extensions of time for payment can be given but must bear 6 per cent interest after the 1-year period.

The amount of the estate tax as well as the rate imposed under the present law is entirely dependent upon the facts existing at the date of the decedent's death. If the tax could be paid in kind no inequity would result from a sudden decline in value between the date of death and the date of payment of the tax. For instance, if a man had 30,000,000 sheep and the estate-tax rate was 20 per cent, then the tax would be 6,000,000 sheep and the decedent's estate would have 24,000,000 sheep to distribute to the heirs, no matter at what time the distribution was made. The trouble comes when we reduce property to money value and collect the tax in money on the basis of the value at date of death. Suppose the sheep were worth $1 each at the time of the decedent's death. The value of the estate in such a case would be $30,000,000 and the tax at the rate assumed, would be $6,000,000. Now, if the price of sheep falls to 20 cents each at the date of payment of tax, the total value of the estate shrinks to $6,000,000, and under our system the tax, in spite of this situation, still remains at $6,000,000. The result is, therefore, that in such a case the estate would be entirely confiscated by the Government.

At first sight it might be thought that such a decrease in value would practically never occur. This is not the case. During the stock market collapse in October, 1929, values in some cases decreased to as great an extent as are indicated by the above example. I have also examined certain actual cases which have been supplied by the estate tax division of the Bureau of Internal Revenue, and, while I find no examples quite as severe as the above, I do find a number of cases where the shrinkage in stock values has exceeded 60 per cent. It is my thought that Congress never really intended to deprive the heirs of a fair portion of the estate. The maximum rate of 20 per cent in the case of estates over $10,000,000 would indicate that there is some foundation for such a belief.

It appears that the situation complained of could be remedied in a fairly simple manner by providing that the estate tax rate should be determined as at present according to the value of the net estate at the date of death and by further providing that such rate should be applied for the purpose of ascertaining the amount of the tax to the net value of the estate one year after death. A hypothetical example will probably bring this out more clearly.

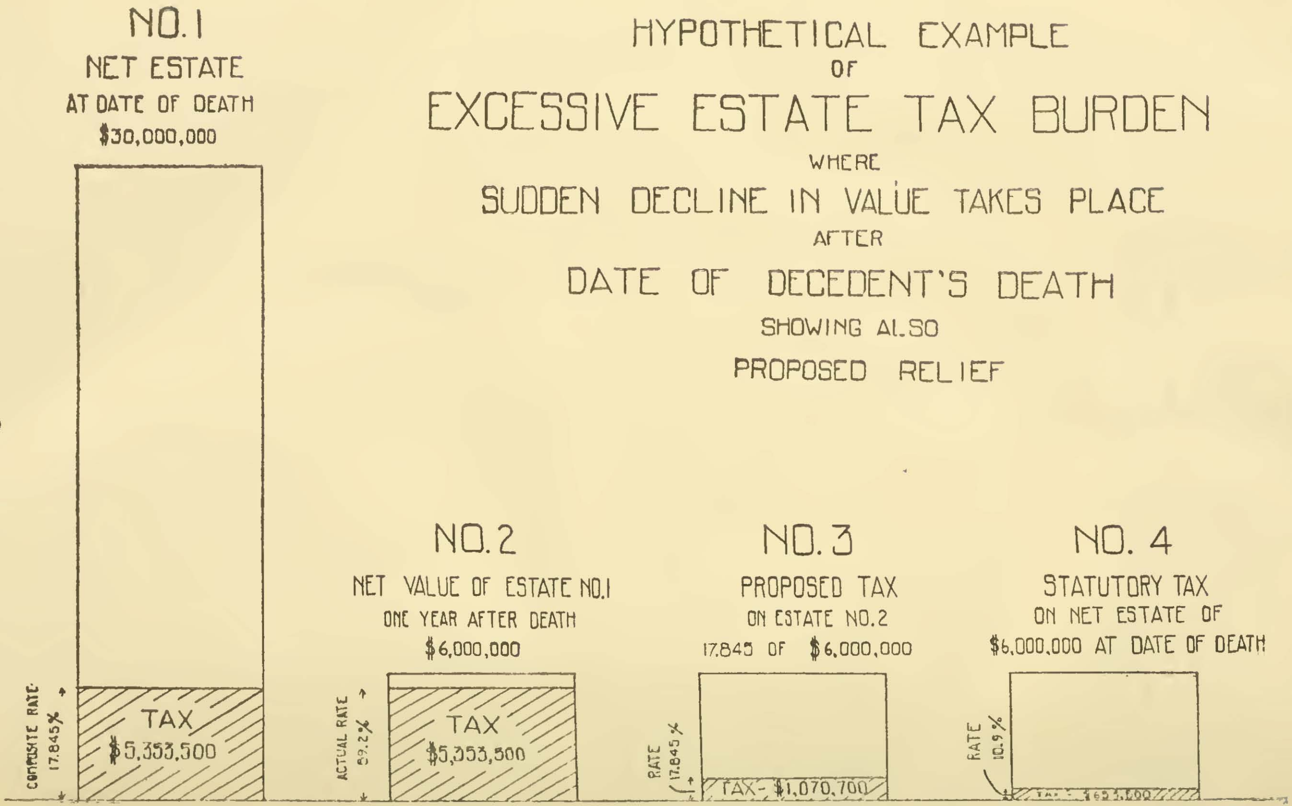
Suppose a man died in September, 1929, and his net taxable estate at that date amounted to $30,000,000. The tax on such an estate would be $5,353,500, which represents a composite rate of 17.845 per cent. Now, suppose that one year after death, namely, in September, 1930, the net value of the estate is $6,000,000. Under our present system the tax would be $5,353,500 as before and this tax would consume more than 89 per cent of the estate leaving only $646,500 for distribution among the heirs. My proposition is that in such a case we should apply the composite rate of 17.845 per cent to the $6,000,000, giving us an estate tax of $1,070,700. It should be noted that this tax is considerably more than the tax on a net estate of $6,000,000 which remained at such constant value both at date of death and at date of payment of tax. In this last-named case the tax would only amount to $653,500. The suggestion, therefore, does not give nearly as much relief as might be contended for since the first estate would pay a tax of $1,070,700 on an estate of $6,000,000 valued one year after death, while the second estate would pay a tax of $653,500 on an estate of $6,000,000 valued one year after death. There is appended a diagram which graphically depicts the facts brought out in this hypothetical case.

The situation in respect to the payment of the estate tax by the administrators or executors of the estates of persons dying shortly before the stock market crash of October 1, 1929, is now becoming critical. The date of payment in these cases was during the summer and fall of 1930, and, therefore, it is only by extensions of time granted by the commissioner that the impending tax, which will take the major portion of these estates, is for the time being averted.

I would respectfully recommend that the situation, briefly described above, receive the consideration of the joint committee at the first opportunity.

Very respectfully,

(Signed) L. H. Parker,
Chief of Staff.



NOTE.—The above computations are made upon the basis of the estate tax imposed by the Revenue Act of 1926.