The Assessing and Collecting of Personal Property Taxes in Estates of Deceased Persons in Cook County, Illinois

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Many intricate legal problems have arisen in connection with assessing and collecting personal property taxes in estates of deceased persons in Cook County. For example: Is there a duty on the personal representative to file a personal property tax schedule which the deceased should have filed in his lifetime? What is the liability of the personal representative for personal property tax? Where should the tax be assessed? Must a claim be filed against the estate for personal property tax?

In order to arrive at definite conclusions in regard to this subject it is necessary to consider both the early and present provisions of the Revenue Act of Illinois, as well as the early and the more recent decisions.

Cahill's Illinois Revised Statutes of 1931 reads as follows:

Personal property shall be listed in the following manner: . . . The property of a person for whose benefit it is held in trust, by the trustee; of the estate of a deceased person, by the executor or administrator.  

Listing on behalf of others to be done separately. Persons required to list property on behalf of others, shall list it in the same place in which they are required to list their own; but they shall list it separately from their own, specifying in each case the name of the person, estate, company or corporation to whom it belongs.

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2 Ch. 120, par. 6.

3 Ibid., par. 20.
PERSONAL PROPERTY TAXES IN ESTATES

If any real or personal property shall be omitted in the assessment of any year or number of years, or the tax thereon, for which such property was liable, from any cause has not been paid, or if any such property, by reason of defective description or assessment thereof, shall fail to pay taxes for any year or years, in either case the same, when discovered, shall be listed and assessed by the assessor and placed on the assessment and tax books. The arrearages of tax which might have been assessed, with ten per cent. interest thereon, from the time the same ought to have been paid, shall be charged against such property by the county clerk. It shall be the duty of county clerks to add uncollected personal property tax to the tax of any subsequent year, whenever they may find the person owing such uncollected tax assessed for any subsequent year.4

If the tax or assessment on property liable to taxation is prevented from being collected for any year or years, by reason of any erroneous proceeding or other cause, the amount of such tax or assessment which such property should have paid may be added to the tax on such property for any subsequent year, in separate columns designating the year or years.5

No such charge for tax and interest for previous years, as provided for in the preceding section, shall be made against any property prior to the date of ownership of the person owning such property at the time the liability for such omitted tax was first ascertained: Provided, that the owner of property, if known, assessed under this and the preceding section, shall be notified by the assessor or clerk, as the case may require.6

In McClellan, Executor v. The Board of Review of Jo Daviess County,7 the Supreme Court of Illinois construed the aforementioned paragraph 6 of Chapter 120. This was an appeal by George W. McClellan, Executor of the last will and testament of Robert H. McClellan, deceased, from the decision of the Board of Review of Jo Daviess County upon the certificate of the Auditor

4 Ibid., par. 291.
5 Ibid., par. 292.
6 Ibid., par. 293.
7 200 Ill. 116.
of Public Accounts under the provisions of section 35 of the Revenue Act of 1898.

It appeared from the certificate of the clerk of the Board of Review and the accompanying exhibits that Caroline L. McClellan, a former wife of Robert H. McClellan, died testate at Galena, Jo Daviess County, February 14, 1876; that her will was admitted to probate July 10, 1877, and letters testamentary were issued by the Probate Court of said County to said Robert H. McClellan on July 18, 1877; that Caroline L. McClellan, deceased, left her surviving three children, George W. McClellan, Mary McClellan and Robert Sanford McClellan, for whom she made the following provision in her will:

Fourth—The residue of my estate to be divided equally, share and share alike, amongst my surviving children, and to be paid to them upon their, respectively, reaching their majority. But should any of my children, by reason of bad habits, or otherwise, be unfit, in the judgment of my executor, to manage or control their property, then in such case the share of such child shall be invested for his or her benefit and the income thereof only paid such child till such time as he or she shall be fit to take care of property.

Robert H. McClellan was named in the will as executor without bond and given the following direction as to the manner in which he should administer the estate:

No appraiser shall be appointed to appraise my estate. I authorize my executor to sell such portions of my estate as he may deem best, and to make such investment of all moneys belonging to my estate as he shall deem best for the same. He shall not be required to inventory my estate, but shall take the same and hold and manage my estate, and all property and moneys belonging thereto, as in his judgment shall appear best. My said executor shall not be required to make any report to the county or probate court, but shall pay over to my children the share of each, according to the terms of this will, after deducting all proper charges and costs. It is my will that no money shall be paid to my children before their majority, excepting so much
as my executor may deem proper or necessary for the education and support of my said children. And provided, also, that in case any one of my said children should require any of his money to go into business, and my executor should deem it safe and best, he may, in such case, advance a portion of such child's money for that purpose.

The trust created in this will was accepted by Robert H. McClellan and he continued to act as executor of the will of said Caroline L. McClellan, deceased, until the time of his death, which occurred at Galena, July 23, 1902.

On April 11, 1899, Robert H. McClellan made his will, which after making provision for Clara D. McClellan, his then wife, contained the following provision:

THIRD—As I hold in trust all the money and property which belonged to the deceased mother of my children, George W. McClellan, Mary McClellan and Robert Sanford McClellan, and the accumulations thereof since her death, and which was devise to my children by their said mother, and in which, by an ante-nuptial contract, I had no interest, and whereas the amount of such fund, with the accumulated interest, now amounts to $120,000, as near as I can estimate the same, making the sum of $40,000, due on said fund to each one of my said children, and which I owe to them and hold in trust for them; and I hereby acknowledge that I owe my said children said sum of $120,000, the same being the money devised to them by their said mother and the interest on the same. The money was loaned by me for the use and benefit of my said children and an account thereof kept by me. A portion of this fund now stands loaned by me, as trustee, and the rest in my own name. This trust fund is a sacred fund and trust, and must be first paid out of my estate. I have kept this fund loaned out for the benefit of my said children, as I could invest and manage it better for them than they could do themselves.

The estate of Caroline L. McClellan, deceased, had not been settled by Robert H. McClellan at the time of his death and the trust fund in his hands had not at that
time been distributed by him among the children of Caroline L. McClellan, deceased.

The will of Robert H. McClellan, deceased, was admitted to probate by the Probate Court of Jo Daviess County on August 15, 1902, and George W. McClellan, his son, who was named as executor therein, duly qualified as such executor. After he had qualified he found in the safe of said Robert H. McClellan, deceased, and took possession of notes and mortgages to the amount of $120,000 which represented the trust fund in the hands of Robert H. McClellan, as executor of Caroline L. McClellan, deceased, and which were admitted to be good. It further appeared that said trust fund had never been listed for taxation in Jo Daviess County by Robert H. McClellan, as executor, or trustee; that the notes were executed by non-residents and the mortgages securing the same were upon lands located outside of the State of Illinois; that the beneficial owners of the said trust fund were, for the period intervening between April 1, 1899, and April 1, 1902, non-residents of the State of Illinois, Mary McClellan and Robert Sanford McClellan during that time being residents of the State of California and George W. McClellan a resident of the State of Alabama; that no proof was offered to show where said notes and mortgages were kept on April 1, 1902, or prior to that time and that there was no testimony showing the amount of said trust fund, except as hereinbefore set forth. The Board of Review assessed George W. McClellan as executor of Robert H. McClellan, deceased, upon said trust fund, the sum of $120,000 full value, assessed value of $24,000 for each year from 1899 to 1902 inclusive, and ordered the County Clerk to extend the taxes, together with costs for those years.

It was contended in the case that as the beneficial owners of said trust fund were non-residents of the State of Illinois, and as there was no proof that the notes and mortgages which represent said trust fund were within the State of Illinois on the first day of April, 1902, or prior to that date, during the time for which the same
were assessed, said fund was exempt from taxation in this state, and the Board of Review erred in assessing said fund. In reply to this contention the court stated:

It was contemplated by the framers of the constitution that all property in this state should be listed for taxation unless expressly exempted therefrom, and in part to effectuate that intention section 6 of the Revenue Act (Hurd’s Stat. 1899 p. 1394) was passed, which provides that every person of full age and sound mind, being a resident of this State, shall list all moneys and personal property invested, loaned or otherwise controlled by him as the agent or attorney or on account of any other person or persons, company or corporation, whatsoever, and that personal property held in trust shall be listed by the trustee, and that the estate of a deceased person shall be listed by the executor or administrator of such estate. Under the provisions of this act it was the duty of Robert H. McClellan to list the personal property of Caroline L. McClellan, deceased, in his hands as executor, for the purpose of taxation, and such fund continued to be taxable in his hands until it was actually distributed among the beneficiaries named in the will; and the fact that the fund may have been loaned by the executor beyond the jurisdiction of the state, through agents appointed in other states, and that the securities taken therefor may have remained for a time in the possession of such agents, did not change the rule. The executor being a resident of this state and the legal title to the fund being vested in him, this state had jurisdiction over his person and over the fund and credits which represented it, which, in legal contemplation, in the absence of any showing that they had a situs elsewhere, accompanied his person and were assessable in the county in which he resided, as the general rule is, subject to certain exceptions within which this case does not fall, that personal property taxable as credits has its taxable situs at the domicile of the creditor.

8 Citing People v. Theological Seminary, 174 Ill. 177.
9 Citing Cooley on Taxation (2d Ed.), pp. 375, 376 and notes.
10 Citing Goldgart v. People, 106 Ill. 25; People v. Davis, 112 Ill. 272; Cooper v. Beers, 143 Ill. 25; Scripps v. Board of Review, 183 Ill. 278; Hawgard v. Board of Review, 189 Ill. 294.
It clearly appears that the fund in question was in the hands of and under the control of the executor of Caroline L. McClellan, deceased, during the four years for which it was assessed by the Board of Review, and that it was not listed or taxed during those years, and that the same was subject to taxation in Jo Daviess County during that period. The decision of the Board of Review, therefore, will be approved.

The foregoing opinion has been cited at considerable length because it is frequently referred to in later cases in Illinois and is of importance in considering some of the amendments to the Revenue Act of Illinois which will be hereafter discussed.

One of the important things to notice about the foregoing case is that Robert H. McClellan had in his possession and under his control on the first day of April the assets of his wife’s estate during the taxable years for which they were assessed by the Board of Review of Jo Daviess County.

At least two propositions of law appear to be obvious from the foregoing decision. The first is, that it is the duty of the personal representative of an estate to file a schedule of the personal property which is in his possession as such executor, administrator or trustee on the first day of April of each year while he continues to act as executor. The second is, that he is personally liable for the tax which would have been assessed had he filed a proper schedule, or which may be assessed by the Board of Review in the absence of a schedule being filed. In this connection, however, it should be borne in mind that these two propositions apply only in case the property is in the possession of the personal representative on April 1 of any given year for which the tax is assessed.

In People v. Hibernian Bank Association,\textsuperscript{11} the Illinois Supreme Court again passed upon paragraph six aforesaid and the personal liability of the personal representative where he files or fails to file the schedule of personal

\textsuperscript{11}245 Ill. 522.
property in his hands as executor or administrator on April 1 of any year. In this case an action was commenced in the Municipal Court of Chicago against the Hibernian Banking Association for taxes for 1906 amounting to $526.16, and a writ of error was brought to review this judgment. The case was tried by the court without a jury upon an agreed statement of facts substantially as follows:

The Hibernian Banking Association was administrator of the estate of Daniel Sullivan, and had on February 1, 1906, the sum of $39,298.59 assets of the estate. During February it distributed $22,297.00 to the heirs of Daniel Sullivan, and on June 11, 1906, after giving notice of final settlement of the estate, it filed a final report, the estate was declared settled and it was discharged. In the meantime the county assessor had entered personal property for taxation on the assessor's book by writing in book 11, on page 10, of South Chicago, First ward, personal property, under index 'S', on the line used for listing property, the words "Sullivan, Daniel, Est.," and opposite thereto, as the property listed for taxation, the amount of $40,000.00, and immediately above and beyond the entry of the estate of Daniel Sullivan was written in smaller letters; "Hibernian Banking Association, Extr.," so that the entry appeared as follows:

Hibernian Banking Association, Extr.
Sullivan, Daniel, Est. $40,000

The amount of the taxes was not determined until the fall of 1906, and they were not payable nor were the tax books delivered to the collector until December, 1906. The amount of money the plaintiff in error held as assets of the estate on April 1, 1906, was $17,001.59. The taxes on the $40,000.00 listed amounted to $526.16, and were never paid. In its opinion the court said:

Paragraph 6 of section 6 of the Revenue Act requires the personal property of the estate of a deceased person to be listed by the executor or administrator, and section 19 requires it to
be listed in the same place in which the executor or administrator is required to list his own property, but separately, specifying the estate to which it belongs. It was the duty of the plaintiff in error to list for taxation the personal property of the estate in its possession on April 1, 1906, and upon its failure to do so it became the duty of the assessor to ascertain the amount and value of such property and assess the same as he believed to be the fair amount and value thereof. (Hurd’s Stat. 1908, sec. 83, p. 1752.) Section 256 of the Revenue Act gives to every person to whom, as agent or in a representative capacity, property is assessed, a lien for the taxes upon such property and all property of the principal in the possession of the person so assessed. By virtue of the duty to list for taxation and the lien given for the amount of the taxes, we have held that there exists a personal liability on the part of agents and others acting in a representative capacity for the payment of the taxes upon the property of others in the possession of such agents or representatives.12

It is insisted that the property on which the taxes were levied was not owned by or in the possession or under the control of the person against whom the taxes were assessed, and in this connection attention is called to the fact that the property was in the form of money, that it amounted to less than one-half of the assessment and that there was no opportunity for valuation. It is true that an assessment of personal property against one who was not, on the first day of April in the year for which the assessment was made, the owner of the property or interested in it and had not possession or control of it is without authority of law. But this is not such a case. The plaintiff in error had property which it was its duty to list. It did not do so, and as required by the statute the assessor assessed it according to his judgment of the fair amount and value thereof. There is no claim that the assessment was fraudulent, that there was not a fair exercise of judgment, or that the valuation arrived at was not justified by the means of knowledge at hand. Plaintiff in error having failed to furnish the information necessary to a correct assessment, the records of the Probate Court

12 Citing Scott v. People, 210 Ill. 594; Walton v. Westwood, 73 Ill. 125; Lockwood v. Johnson, 106 Ill. 334.
could be availed of as well as such other sources of information as existed. The valuation of property for taxation is not, in the absence of fraud, subject to the supervision of the courts.\textsuperscript{13} Mere over-valuation is not sufficient to establish fraud.\textsuperscript{14} Circumstances in connection with the over-valuation may be sufficient to establish the fraudulent character of an assessment.\textsuperscript{15} In this case, however, nothing has been shown as to the valuation except that the assessment exceeds the amount which was in the possession of the plaintiff in error on the first day of April. . . . The assessment in this case was lawfully made by the proper authority and at the proper time. The property was rightly assessed to the plaintiff in error. Having failed to avail itself of the remedy provided by law for an over-valuation in the assessment it cannot now successfully resist the payment of the tax.

It must be noted, in reviewing this case, that plaintiff in error was acting as executor on April 1, 1906, the year for which the assessment involved in this suit was levied. Though there have been a number of amendments to the Revenue Act of Illinois since the two aforementioned cases were decided, the duty of the personal representative, with respect to filing a schedule and the liability of the personal representative for personal property tax assessed as of April 1 in any year in which he was acting on that date is still the same as set forth in the two aforementioned cases.

It now becomes necessary to consider the liability of a personal representative or the beneficiaries of an estate for personal property tax assessed against the personal property of a deceased person where the executor or administrator was not acting as such executor or administrator on April 1 of the year or years for which the assessment was levied, and the duty of such executor or administrator to file a schedule for the year or years

\textsuperscript{13} Citing Keokuk v. Hamilton Bridge Co. v. People, 185 Ill. 276; Burton Stock Car Co. v. Traeger, 187 Ill. 9.

\textsuperscript{14} Citing People v. Bourne, 242 Ill. 61.

\textsuperscript{15} Citing Chicago, Burlington and Quincy R. R. Co. v. Cole, 75 Ill. 591; State Board of Equalization v. People, 191 Ill. 528.
preceding his appointment. This liability must be considered during several different periods of time in order to arrive at a proper understanding of the same.

The first period to be considered extends from 1872 to July 1, 1915. In *Scott et al. v. The People*, an action in debt was brought by "The People" against George W. Scott. A demurrer to the declaration was overruled. In default of further pleading, judgment was entered against Scott, in the sum of $14,045.58 and costs. A writ of error was sued out to bring the judgment into review in the Supreme Court. The praecipe and summons ran against the plaintiffs in error in their representative capacity as executors of the last will of Church Sturtevant, deceased. The declaration charged personal liability, and by leave of the court the praecipe and summons were amended by striking out the words "as executors of Church Sturtevant, deceased."

The substantial averments in the declaration may be briefly stated as follows: One Church Sturtevant, deceased, a resident of Henry County, Illinois, departed this life on the ninth day of November, 1899, leaving a last will, by which he nominated and appointed the plaintiffs in error executors of the will; that on the first day of May in each of the years 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897 and 1898, and on the first day of April, 1899, said Church Sturtevant was a resident of Henry County, and was possessed of and owned "notes, bonds, credits and choses in action" liable to be assessed for taxation and to be taxed; that said credits were not listed by said deceased for assessment nor were they assessed; that in the year 1900 (after the death of said Sturtevant) the county treasurer of Henry County, as supervisor of assessments, assessed said credits as omitted property, and the county clerk extended taxes on the books of the collector of taxes on the same as omitted property; that the collector demanded of the plaintiffs in error payment of the amount so extended; that the plaintiffs in error

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16 210 Ill. 594.
refused to pay the same; that on the thirtieth day of August, 1901, a claim therefor was filed in the Probate Court against the plaintiffs in error as the executors of said estate, and that the same was withdrawn on the twenty-fourth day of November, 1902; that the plaintiffs in error, as executors, received credits belonging to their testator at the time of his death, amounting, in the aggregate, to the sum of $122,000.00, which, as they well knew, had not been assessed for taxation during said years previous to the death of the testator; that the Board of Review of Henry County, on July 30, 1902, notified plaintiffs in error to appear before them, and assessed said credits for each of said years 1890 to 1899, inclusive, and placed the same on the rolls against plaintiffs in error, as executors of said estate; that afterwards, on August 13, 1902, objections to said assessment were heard, and plaintiffs in error appeared and the assessment was modified; that at that time they had on hand assets of said estate sufficient to pay the taxes so assessed, including the interest thereon; that afterwards the tax rates for the years named were applied to said assessment and extension made by the county clerk, together with ten per cent per annum interest from the time the same ought to have been paid by said Church Sturtevant; that the total amount of such extension and interest is $14,045.58; that a warrant was issued to the collector on January 28, 1903; that demand was made thereon and refused; that the board of supervisors of Henry County directed this action to be brought, by means whereof plaintiffs in error became liable to pay the plaintiff (the People) $14,045.58.

Judgment was rendered against the plaintiffs in error as individuals. In its opinion the court said:

The determination of the contention of the defendant in error that the plaintiffs in error became liable personally for the payment of the alleged omitted taxes is the sole question which we deem it necessary we should discuss.

The proposition advanced is, that though the property liable to be taxed was that of the testator and the omission to list the
same for taxation during the various years was that of the testa-
tor, and though the assessment made by the Board of Review
more than two years after the death of the testator was against
the plaintiffs in error in their representative capacity as execu-
tors, and not individually, liability to pay the tax is made the
personal liability of the executors by the provisions of section
256 of Chapter 120 of our statutes. (3 Starr & Cur. Stat. 1896,
par. 258, p. 3510.) The section reads as follows: "When prop-
erty is assessed to any person as agent for another, or in a
representative capacity, such person shall have a lien upon such
property, or any property of his principal in his possession,
until he is indemnified against the payment thereof, or, if he
has paid the tax, until he is reimbursed for such payment."

The insistence seems to be, that as the executors have the pos-
session and legal title to the property of the testator, and are
by this statute given a lien on the property to indemnify them-
sewls or to reimburse themselves for any payment of taxes made
by them, the liability arises in favor of the taxing power to look
to them, as individuals, for the payment thereof. We think
this section has reference to persons acting as agents or in some
representative capacity, who at the time fixed by the statute
for the assessment of property for taxation had property in
their hands, as agents or in some representative capacity, which,
under the provisions of section 6 of said Chapter 120, it became
their duty to list for assessment in their names as agents or in
such representative capacity, and who, by reason of such list-
ing, became liable to pay the taxes under the provisions of said
section 256 of the Revenue Act.

The case made by the declaration is, that the testator of plain-
tiffs in error failed to list notes, credits, etc., for taxation during
his lifetime, and that the Board of Review, after his death,
caused an assessment to be entered against his executors for the
omission on his part, during the years 1890 to 1899, inclusive,
to return his property for assessment as the law requires. We
are not aware of any statute requiring the executor of a de-
ceased person to make lists for assessment of property omitted
to be made by the testator during his lifetime. The executors
are not, therefore, to be charged with a failure to perform a
statutory duty as a basis for creating an individual liability
against them, and we are unable to understand upon what theory they can be held personally liable to pay taxes upon property which their testator should have listed.

The judgment must be reversed, and the cause will be remanded for such further and other proceedings as to law and justice may appertain.

In this case it is worth noting that the deceased died on November 9, 1899; that a portion of the tax being sued for was predicated upon an assessment as of April 1, 1899. The opinion clearly holds, first, that at the time this case was decided there was no duty upon the executor or administrator requiring him to make lists for assessment of property omitted to be made by the testator during his lifetime, and secondly, that an executor or administrator does not become individually liable for a tax based upon an assessment predicated upon an estimate of the personal property in the hands of a deceased person on any April 1 prior to his death, even though such an assessment is made while the executors are still acting as such.

In *People v. Sears,* supra substantially the same propositions of law were again before the Supreme Court of Illinois. There Richard W. Sears, a resident of Lake County, Illinois, died in September, 1914, leaving personal property which was appraised for the purpose of ascertaining the inheritance tax, at nearly $13,000,000. By his will he gave all of his property to his widow, Anna L. Sears, and nominated her as executrix. The subject matter of the suit is a claim of the state for taxes on the personal property of Sears alleged to have been omitted from assessment in his lifetime for the years 1907 to 1912 inclusive. The appeal is by Mrs. Sears, individually and as executrix, from a decree of the Circuit Court of Lake County rendered upon a bill in chancery in the name of the People. By this decree the property received under the will was charged with a lien.

17 344 Ill. 189.
for the payment of taxes found to be due on Sears' property omitted from assessment during the years stated. The facts further show that Sears was a resident of the Village of Oak Park, in Cook County, on the first day of April in each of the years for which taxes are claimed in this proceeding, except 1912. He removed from Oak Park to Lake County in 1912. An assessment of personal property was made against him by the assessor of the town of Oak Park in each of those years, except 1912, upon which taxes were extended, and he paid in his lifetime the taxes so extended. From 1912 until his death he was a resident of Lake County, and the case does not concern any taxes during that time or in that county. The bill was filed originally in the Circuit Court of Cook County, but the venue was changed to Lake County, and Mrs. Sears answered, both individually and as executrix. Mrs. Sears resisted the collection of the taxes on the ground that at the time Sears died no liability existed for the payment of taxes of any decedent which had been omitted from assessment during his lifetime. The court, in its opinion, said:

If this contention is correct it will not be necessary for us to consider any of the other points raised.

The liability of the owner of property for the payment of taxes is purely statutory. The law is well settled that the legislative power of a state to provide for the levy and collection of taxes is unlimited, except as restricted by the State and Federal constitutions. The obligation of the citizen to pay taxes is purely a statutory creation, and taxes can be levied, assessed and collected only in the mode pointed out by express statute. The Revenue Act of 1872 provided for the assessment of real or personal property which had been omitted in the assessment of any year and the placing of it on the assessment and tax books. The provisions for such assessments are contained in sections 276, 277 and 278 of Chapter 120 (Cahill's Stat. 1929, sees. 291, 292, 293), and are as follows:

The court then quotes paragraphs 291, 292, and 293 of

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18 Citing Chambers v. People, 113 Ill. 509.
Chapter 120 of Cahill's Illinois Revised Statutes of 1931 which are hereinbefore set forth verbatim, and continues:

The statute thus provided for the assessment of omitted property. During Sears' lifetime none of the omitted property was assessed, therefore no liability existed against Sears in his lifetime for any omitted taxes. He had paid all the taxes assessed against him. None of the property involved in this suit which he owned at the time of his death had ever been assessed. Section 276 (par. 291) provided for the assessment of omitted property when discovered, and required the county clerk to add uncollected personal property taxes to the taxes of any subsequent year whenever he should find the person owing such uncollected tax assessed for any subsequent year. Its provisions clearly apply only to the omitted property of a living person, as it would obviously be impossible for the county clerk to find and tax a person who was dead. Section 277 makes no reference to an omitted tax but refers merely to uncollected taxes. This court in *People v. National Box Co.*, 248 Ill. 141, held that section 277 "deals only with a tax which had been already levied and had not for some reason been collected." This section, therefore, has no bearing upon the question of omitted taxes, and would only have applied if Sears had failed to pay taxes levied against him, which is not true in this case. Section 278 provides that "no such charge for tax and interest . . . shall be made against any property prior to the date of ownership of the person owning such property at the time the liability for such omitted tax was first ascertained, etc.

The liability for such omitted tax was not ascertained during the lifetime of Sears, who died in September, 1914. The assessments for omitted taxes are for the years 1907 to 1912, both inclusive. The petition for assessment of omitted personal property of decedent was not presented to the Board of Review of Cook County until September, 1915, and the assessments now in question were not made by the board until September, 1916. At the death of Sears, in 1914, there was a change of ownership. His will gave all his property to his widow at the instant of his death, subject only to the payment of his debts. There was no tax debt at that time, because dur-
ing his lifetime there had been no assessment for omitted taxes. After his death and the change of ownership to his widow any charge against the property for taxes and interest for previous years was expressly prohibited by section 278 (par. 293 Cahill’s 1931 Statutes). If there is any doubt whether the sections in question authorized a charge for taxes against the legatee on account of property omitted from assessment by a deceased owner and devised by him, the language of the statute cannot be extended beyond its clear import to make the property subject to the taxation. Such statutes imposing a tax, in case of doubt, are construed most strongly against the government and in favor of the citizen.19 There could be no valid subsequent assessment, for the reason that the statute expressly prohibited an assessment after a change of ownership. While the executrix held the legal title the sole beneficial ownership was in the legatee or heir. If Sears had transferred all of his money and personal property to another in his lifetime there would have been a change of ownership, which under the express terms of section 278 (par. 293 Cahill’s 1931 Statutes) would have prevented any charge against the property for taxes or interest of previous years. He did make a transfer by his will, which had the same effect at the moment of his death as a transfer by a grant and delivery of possession would have had in his lifetime. The fact that the new owner of his property was his widow made her position no different from that of a stranger, as no exceptions are made in section 278 (par. 293 Cahill’s 1931 Statutes) to its general prohibition against the assessment of omitted property after a change of ownership.

Even if the language of section 276 (par. 291 Cahill’s 1931 Statutes) were construed to authorize an assessment of omitted taxes of a decedent the provisions of section 278 (par. 293 Cahill’s 1931 Statutes) would nullify the authorization. The language used in section 278 compels the conclusion that it refers to section 276. Section 278 provides, “No such charge for tax and interest . . . as provided in the preceding section.” The only previous reference to “interest,” or the duty of the clerk to “charge” it against property, is in section 276. Section 278

19 Citing Fidelity and Casualty Co. v. Board of Review, 264 Ill. 11; People v. Barrett, 309 Ill. 53.
also refers to the "person owning such property at the time the liability for such omitted tax was first ascertained." The use of the phrase "such omitted tax" shows that section 278 referred to and qualified section 276, as that section deals with omitted taxes while section 277 does not mention omitted taxes but refers only to uncollected taxes. In People v. National Box Co., supra, this court had occasion to consider the relation of section 278 to sections 276 and 277. No question of the assessment of omitted taxes against the estate of a deceased person was involved in that case, which had to do with corporate franchise taxes, but it was there held that notwithstanding the reference in section 278 to "the preceding section," its provisions extended not only to section 277 but also to section 276. It was there also held that the use of the word "preceding" referred not only to section 277 but also to section 276. Moreover, the ordinary definition and use of the word "preceding" does not limit its application exclusively to the section immediately preceding it, as the words "next preceding" or "immediately preceding" are generally used when such restricted application is intended. A consideration of these three sections therefore fails to reveal any authority for an assessment of omitted taxes against a decedent's estate. Neither one of them contains any reference to the property of a deceased person. No directions are contained in either section for the assessment and collection of omitted taxes, in case of a deceased person, as to whether the executor, administrator, trustees, creditors, heirs, legatees or devisees shall be proceeded against, and no method of procedure in such cases is provided.

The court then discussed four cases cited by the people and continued as follows:

What has been said thus far concerns only sections 276, 277 and 278 as they were originally enacted as a part of the general Revenue Act of 1872. They continued in force without change, except by a minor amendment to section 277 not necessary to be now considered, until the Revenue Act of 1898 was passed, section 35 of which provided that "the Board of Review shall: First, assess all property subject to assessment which shall not have been assessed by the assessors." The effect of this provision was to modify section 276 so as to take from the
local assessors the power and duty of assessing property which
had been omitted in the assessment of any previous year or
years and imposed that duty on the Boards of Review of the
various counties.\textsuperscript{20} The Act of 1898 was "An act for the
assessment of property and providing the means therefor, and to
repeal a certain act therein named." The act repealed was
an act to provide for the election of assessors in certain townships
and its repeal does not concern this case. Section 55 of the act
of 1898 declares that "all the provisions of the general Revenue
law in force prior to the taking effect of this act shall remain
in force and be applicable to the assessment of property and
collection of taxes except in so far as by this act is otherwise
expressly provided." Therefore, while section 276 was modi-
fied by the transfer of the power of assessing omitted property
by the local assessors to the board of review section 278 was
in no way affected, and the prohibition of any assessment of
omitted property subsequent to a change of ownership remained
in force and continued to be in force until July 1, 1915, nearly
a year after Sears' death. The Forty-ninth General Assembly
amended section 35 of the Act of 1898, and by this amend-
ment, which became effective July 1, 1915, for the first time
provided for an assessment, after his death, against property
omitted from assessment by the owner in his lifetime, the
assessment to be made in the name of the decedent's personal
representative, the amount of the tax, when ascertained, to be
made a claim of the first class against his estate by the proceed-
ings provided for by the amended section.

This amendment has no application to this case unless it is
given effect retroactively to create a cause of action which had
no existence at the time of Sears' death. While the appellee con-
tends that under sections 276, 277 and 278 and original section
35 an assessment could be made against the estate and Mrs. Sears,
we hold that those sections do not authorize such an assessment.
When a statute is amended "so as to read as follows," as in the
case of this amendment, the amendment has no retroactive force.
The part of the original act which remains unchanged is con-
sidered as having continued in force as the law from the time of
its original enactment and the new portion as having become

\textsuperscript{20} Citing People v. Sellars, 179 Ill. 170.
the law only at the time of the amendment. . . . The provisions for the assessment of real or personal property omitted from taxation by a decedent during his lifetime are all contained in the second and third paragraphs of this amendment and must be considered as having become the law on July 1, 1915, and afforded no basis for the attempt of the Board of Review to assess the property omitted by Sears in his lifetime against Mrs. Sears, either as his legatee or the executrix of his will. The moment he died her rights under his will attached. Her title was then vested, and no change in the law thereafter made could disturb such vested rights.21 The title to all his property was vested in her, subject to his debts. Since there could be no tax without an assessment there was no debt, and since section 278 prohibited any assessment against the property prior to the date of her ownership there never could be any assessment or any debt. "The moment the testator or intestate dies then the rights of the devisees or heirs attach at once, for the title is then already vested, and any change in the law after that could not affect such vested rights."22 Mrs. Sears from the death of her husband was the sole and absolute beneficial owner of all the property which he owned at his death, subject only to the payment of his lawful debts. It was not within the power of the State thereafter, by mere legislation, to impose upon her any additional obligation or to create any charge against her property. To do so would be taking of her property without due process of law. . . . Since the statute at the time of the death of the decedent made no provision for the assessment after his death of personal property which he had owned but which had been omitted from assessment in his lifetime in various years, as claimed by the bill, the decree of the Circuit Court is without foundation in the law for its support. . . . For the reasons given the decree is reversed.

From the foregoing opinion in the Sears Case and in the Scott Case it seems clear that the executor, administrator or persons beneficially interested in the estate of a deceased person prior to July 1, 1915, were under no obligation to schedule property of their decedent which

21 Citing Rowlett v. Moore, 252 Ill. 436. 
22 Quoting from Sturgis v. Ewing, 18 Ill. 176.
he had in his hands on any April 1 preceding his death and were not liable, nor was his property liable for the payment of any tax upon omitted property where such tax was assessed after his death; said tax being predicated upon an estimate made by the assessing authorities.

It now becomes desirable to consider the period between July 1, 1915, and February 13, 1932, and thereafter to consider the effect of Senate Bill No. 14 approved February 13, 1932, which amended and added sections to the Revenue Act of Illinois forming the basis for the appointment of the present local assessor and Board of Appeals in Cook County, Illinois.

There are two cases cited by the Supreme Court of Illinois during the period intervening between July 1, 1915, and February 13, 1932, which are of importance.

In the first of these cases, Board of Education v. Boger, the opinion was filed on December 17, 1919, and a re-hearing was denied on February 5, 1920. In this case the Board of Education of Glen Ellyn Township High School District No. 87 and the Board of Education of School District No. 41 of the County of Du Page filed a petition for mandamus in the Circuit Court of Du Page County against the appellees, George Roger and others, members of the Board of Review of said county, Aaron A. Kuhn, County Clerk, the Directors of School District No. 38, and Alfred C. Hoy, administrator of the estate of William P. Cowan, deceased. To the appellants’ petition appellees filed a general demurrer, which was sustained by the court and judgment thereon entered. This judgment was attacked by the appeal. The facts stated in the petition and admitted by the demurrer are the following:

William P. Cowan resided during the years 1914 to 1918, both inclusive, in school district No. 38, in said county, and continued to live therein up to his death,
August 13, 1918. On September 9, 1918, Alfred C. Hoy, public administrator of said county, was by the County Court of Du Page County appointed administrator of the estate of the deceased and took charge of the assets of his estate and has since continued to act as such administrator, and on April 1, 1919, was residing in Glen Ellyn Township High School District No. 87 and school district No. 41 in the village of Glen Ellyn, in said county. The local assessor made and entered the personal property assessment for the year 1919 against Hoy, as administrator aforesaid, at his residence, in the sum of $1,500,000 full value. That amount was reduced by the board of review to the sum of $1,325,000 full value. The board of review, during its session for the year 1919, found that Cowan had not listed for assessment certain personal property owned by him for the years 1914 to 1918, both inclusive, while he was so residing in school district No. 38. The board of review thereupon made and entered a personal property assessment against the personal property of Cowan, and assessed the same in the name of Alfred C. Hoy, as administrator of the deceased, upon credits and other personal property found by the board to be omitted from the assessment and taxation, as follows: For 1914, $575,000 full value, $191,667 assessed value; for 1915, $635,000 full value, $211,667 assessed value; for 1916, $875,000 full value, $291,667 assessed value; for 1917, $980,000 full value, $326,667 assessed value; for 1918, $1,220,000 full value, $406,667 assessed value. The board of review made and entered the assessment for back taxes from the property so omitted from taxation for said years in school district No. 38, after due notice to the administrator. Hoy does not, and never did, reside in school district No. 38, and Cowan never resided in Glen Ellyn Township High School District No. 87 or in school district No. 41. Appellees Boger, Senne and Reed constitute the board of review. Appellee Kuhn is the county clerk, and declared that he will follow the entry of said assessments for such omitted years in school district No. 38 and will extend the taxes thereon for said years in said district, and will
The court says the question to be decided is whether the omitted property for the years above mentioned should be assessed in the district and collected for the district where the decedent resided at the time the property was omitted from assessment, or whether it should be assessed and collected for the districts where his administrator resided on April 1, 1919. The only taxes involved are the omitted taxes for the years mentioned. No question is raised concerning the current taxes for the year 1919.

The court first points out that sections 6 and 19 of our Revenue Act, which paragraphs are hereinbefore set forth verbatim, apply only to property in the hands of the legal representative of a deceased person on April 1 of any given year, and then continues:

He cannot be, and is not, regarded by the statute as the legal owner or possessor of the decedent’s property at any time during the lifetime of the decedent.

The omitted assessments and taxes in question in this case are for prior years, and the property was not owned or possessed by the administrator but by the decedent in his lifetime. The question whether or not the property shall be taxed in school district No. 38 or in the appellant school districts is to be solved entirely from a consideration of sections 276, 277, 278 and section 35 (or paragraph 329) as amended in 1915, because they are the only sections applicable to the question.
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The opinion of the court then sets forth verbatim sections 276, 277 and 278 of the Revenue Act which sections are respectively paragraphs 291, 292 and 293 of Chapter 120 of Cahill’s Illinois Revised Statutes 1931.

The court in its opinion next sets forth the provisions of section 35 of the Revenue Act, which section is paragraph 346 of Chapter 120, Cahill’s Illinois Revised Statutes 1931 and at the time the opinion was written read as follows:

Sec. 35. The board of review shall, in any year, whether the year of the quadrennial assessment or not:

First—Assess all property subject to assessment which shall not have been assessed by the assessor, and list and assess all property real or personal that may have been omitted in the assessment of any year or number of years, or if the tax thereon, for which such property was liable, from any cause has not been paid, or if any such property, by reason of defective description or assessment thereof shall fail to pay taxes for any year or years, in either case the same, when discovered, shall be listed and assessed by the board in its revision of assessments, and the board may make such alterations in the description of real or personal property as it shall deem necessary.

Second—No such charge for tax of previous years shall be made against any property prior to the date of ownership of the person owning such property at the time the liability for such omitted tax was first ascertained, provided, that an assessment of real or personal property omitted from taxation by a decedent during his lifetime, shall be made against said property and be assessed in the name of the personal representative as executor, administrator, or trustees of such decedent’s estate. The owner of real or personal property, and the executor, administrator or trustees of a decedent, whose property may have been omitted in the assessment in any year or number of years, or on which a tax for which such property was liable, has not been paid, and the several taxing bodies interested therein, shall be given at least five days’ notice in writing by the board of the hearing on the proposed assessment of such omitted prop-
property and the board shall have full power to examine the owner or the executor, administrator, trustees, legatees or heirs of such decedent or other person touching the ownership, kind, character, amount and the value of such omitted property or credits.

Third—If the board shall determine that the property of any decedent was omitted from assessment during any year or number of years or that a tax for which such property was liable has not been paid, it shall be the duty of said board to give written notice to the executor, administrator or trustees of such decedent of the assessments made against such property and the amount thereof, and thereupon it shall be the duty of such executor, administrator or trustees to retain in his or their hands sufficient of the assets of such decedent's estate to pay the tax when extended on such assessment and it shall be the duty of the county clerk to file in the county or probate court a copy of such assessment together with the rate of taxation thereon, certified by such county clerk and upon the filing of such certificate the county or probate court shall enter an order directing such executor, administrator or trustee to deposit with the clerk of the court or to sequester sufficient of the assets of said estate to pay the taxes on said assessments when extended as now provided by law or to enter into bond in double the amount of said tax with sureties to be approved by the court conditioned for the payment of said tax when so extended, and when so extended by the county clerk the full amount of such tax shall be a claim of the first class against such estate: Provided, however, that an assessment of omitted property by the board of review in the manner provided in this act shall not be subject to review by any succeeding board.

For the purpose of enforcing the provisions of this act, the several taxing bodies interested therein are hereby empowered to employ counsel to appear before said board and take all necessary steps to enforce the assessment on such omitted property.

The court then continues as follows:

The first three of the four sections were enacted in 1872 and have been modified by section 35 as amended in 1915. Section 276 has been rendered partially inapplicable to this or any other
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proceeding since the amendment of section 35. The local assessor is no longer required to list and assess the property, but by section 35 the Board of Review is required to do this. It will also be noted that the administrator or owner of property is not required to list property under any one of these four sections.

We think it is clear, after a careful consideration of said four sections, that the property in question was properly listed and assessed by the board of review in school district No. 38 and that the demurrer of the appellees was properly sustained by the court. One of the things made prominent in these four sections is, that no such charge for taxes and interest shall be made against any property prior to the date of ownership of the person owning such property at the time the liability for such omitted tax was first ascertained, and that that owner, if known, shall be notified of such assessment. In case the owner is dead the property itself is directly taxed but in the name of the administrator, if there is one, because there is no owner of the property for the years taxed and because he is possessed of the funds that must pay the tax. It is clear that there is no liability against the administrator personally for such tax by such assessment until all the requirements of section 35 are complied with, and that his liability is the same then as on any other probated claim and sufficient funds are in the estate to pay the same. This section treats the claim for taxes as an original claim against the decedent and allows it to be probated as a first-class claim against the estate. This shows clearly that it is not a claim against the administrator as owner of the property, as taxes assessed against the property of the decedent for the years after his appointment and before distribution are regarded.

Another reason for our conclusion is, that the omitted assessments and taxes are referred to in these sections as "the arrearages of tax which might have been assessed," and it is provided by the statute that a penalty of ten per cent interest thereon shall be collected "from the time the same ought to have

24 Citing People v. Sellars, 179 Ill. 170; Stevens v. Henry County, 218 Ill. 468; People v. Webb, 256 Ill. 364; People v. National Box Co., 248 Ill. 141.
been paid.” Arrears or arrearages, as defined by our best lexicographers, are some things overdue and unpaid, outstanding debts or liabilities, and that is a common definition of these terms when found in the law. Interest is the legal damages or penalties for the unjust detention of money, as used in this statute. There were no arrearages against the administrator as owner and no reason for assessing a penalty against him as owner. He was in no fault whatever. There was nothing due appellants from the decedent or his estate for arrearages, and hence there was no reason to penalize the estate or the administrator by allowing to appellants interest as a penalty. There was every reason for allowing interest or a penalty against decedent’s estate to school district No. 38.

In conclusion we may add that it is not possible for the county clerk to “find the person owing such uncollected tax assessed” for the subsequent years aforesaid, as provided in section 276, because such owner is dead, and the administrator is not the one owing the tax, within the meaning of that section. It would not be proper, therefore, for the county clerk to add these taxes for arrearages to the taxes of the administrator which he owes as administrator or owner to appellants. Neither the administrator nor the deceased ever owed such arrears to appellants. The deceased in his lifetime did justly owe these arrearages to school district No. 38. His estate now owes them to that district, and section 35 contemplates that that debt “shall be a claim of the first class” in favor of that district and not in favor of appellants. The general rule of law is that, in the absence of a statutory provision to the contrary, property should be assessed and taxed in the name of the owner at the place where he resides and in favor of the taxing district in which he resides, for all years that the same is taxed. No one of the sections provides in terms where those arrears should be assessed and taxed, but from all the provisions of those sections the implication is strong that school district No. 38 is to have the benefit of those assessments, and we must so interpret the statute.

25 Citing Hollingsworth v. Willis, 64 Miss. 152.

26 Citing County of Madison v. Bartlett, 1 Scam. 67.
There are three propositions of law which should be considered as a result of the foregoing decision:

The first is that the Revenue Act of Illinois in force between July 1, 1915, and February 12, 1932, did not require the personal representative of a deceased person to file a schedule on behalf of such deceased for any year during which such personal representative was not acting as such on the first day of April of the year or years in question. For in its opinion the court says in referring to sections 276, 277, 278 and section 35, of the Revenue Act: "It will also be noted that the administrator or owner of property is not required to list property under any one of these four sections."

The second proposition of law presented is that under the Revenue Act in force between July 1, 1915, and February 12, 1932, the Board of Review has the power to make an assessment against property belonging to a deceased owner in the name of the administrator or executor if there is one where such property has not been assessed in the decedent's lifetime and that there is no personal liability against the administrator personally for such tax resulting from such assessment until all the requirements of section 35 are complied with and his liability is the same then as on any other probated claim and sufficient funds are in the estate to pay the same.27

The third proposition of law suggested by this case is that the assessment when made under the Revenue Act in force between July 1, 1915 and February 12, 1932, for the years when the deceased was alive should be assessed in the School District in which deceased lived on April 1 of the year for which such assessment is being levied.28

In regard to the second suggested proposition the case is not particularly strong, because the principal question before the court was whether or not the property

27 See pp. 198 and 199 of the court's opinion.
28 See p. 200 of the court's opinion.
should be taxed in one school district or another and the administrator did not question the right of one or the other of the two school districts involved to require the property to be assessed. In other words, the court was assuming that a legal assessment could be made if section 35 was complied with.

In line with this thought it is interesting to note that in *People v. Sears* the court commented on *Board of Education v. Boger* as follows:

In the last case cited [the Boger case] the board of review of Du Page county for the year 1919 made an assessment against the personal property of William P. Cowan, who died on August 13, 1918, which it found had not been listed for assessment for the years 1914 to 1918. . . . The only question mentioned or decided in the case was whether the omitted property should be assessed in the district where the decedent resided when the property was omitted from assessment, or in the district where the administrator resided on April 1, 1919, after the decedent’s death. No question was made about the right of the board of review to make an assessment. In fact, the interest of all the parties was the same, so far as this question was concerned, except the administrator, and he had no interest one way or the other. He might have had an interest in the proceedings of the board making the assessment, but it was a matter of indifference to him, as administrator, to which of the school districts he paid the taxes. The board of review and all the school districts believed that the assessment was within the power of the board, and therefore no question about it arose in the case or was considered or decided. The court decided simply the question submitted by the parties that the assessment, when made, should be in district where the decedent resided when the omission occurred. It thus appears that in the case cited by the appellee the court did not decide that the assessor or the board of review had any power to make an assessment of personal property omitted by a deceased owner in his lifetime and charge it against his executor, administrator or legatee.

*344 Ill. 189 at p. 196.*
From the language in this case the court appears to cast some doubt upon the right to assess property of a deceased person not assessed in his lifetime even after the amendment in 1915 of section 35 and refuses to accept as correct the statement of the court in the Boger Case that such an assessment can be made. It was necessary, however, for the court in the Boger Case to decide the first and third suggested propositions of law because they were material to the court's decision.

The next case in Illinois which may have some bearing upon the period between July 1, 1915, and February 12, 1932, and which is deserving of careful analysis is the case of People v. Ballans, Admx. The facts in this case are that on April 2, 1918, David Ballans died intestate, leaving no widow surviving him and leaving as his sole heir-at-law his daughter, Anna M. Ballans. Letters of administration were issued by the County Court of Bureau County, Illinois, to the daughter. An appraiser was appointed to appraise the property for the purpose of fixing the inheritance tax. He valued the real estate at $64,308.03 and the personal property at $72,173.61.

Among other things, the County Court, in fixing the tax, allowed a deduction of $1,243.30 for the 1918 tax on real and personal property belonging to the estate. The Attorney General prayed an appeal to the Supreme Court claiming that the court erred in allowing the above deduction and several other deductions not here important to be considered. The State contended that because the regular 1918 taxes were not fixed in amount and were not due and payable until long after the death of the decedent no deduction should be made on account thereof for the purpose of determining the amount of the estate subject to inheritance tax. He further contended that, for the purpose of the inheritance tax, real and personal property taxes should not be deducted unless the decedent died subsequent to the time the books

30 294 Ill. 551.
were delivered to the collector. In passing upon this contention the court said:

Paragraph 302 of the chapter on revenue (Hurd’s Stat. 1917, p. 2482) provides that all property subject to taxation shall be listed with reference to the ownership thereof on the first day of April in each year and that the owner of such property on the first day of April shall be liable for the taxes for that year. Paragraph 347 of the same chapter provides that taxes upon real property shall be a prior and first lien on such real property from and including the first day of April in the year in which the taxes are levied. Paragraph 254 of the same chapter provides that the taxes assessed upon personal property shall be a lien upon the personal property of the person assessed from and after the time the tax books are received by the collector, and paragraph 346 provides that the county clerk shall deliver the books to the collector on the second day of January following the year in which such taxes are levied. In the case of personal property tax there is a personal liability for the taxes, and this liability is independent of the tax lien. Therefore an action may be brought against the tax-payer for the taxes, whether there is or is not a lien in existence. . . . As only the beneficial interest passing from the deceased to the heir are subject to the inheritance tax, we think the real estate taxes were clearly deductible. By paragraph 6 of the chapter on revenue the administratrix was required to list the personal property of her father’s estate. Since this property was owned by her father on the first day of April, 1918, she was required to list the property then owned by him as the property of the estate. Personal property does not pass directly from the deceased to his next of kin, so all that appellee will take is what may be coming to her from the estate on its distribution after settlement. The administratrix is regarded by the statute in matters of taxation as the legal owner and possessor of the property after her appointment and until the property is distributed and is therefore made personally responsible for the taxes. Appellee was personally liable as administratrix of her father’s estate for the personal property taxes assessed against his estate for the year 1918, and the amount paid by her for such taxes was an expenditure of the administratrix and never passed to
her as next of kin of deceased, and therefore this amount was not subject to the inheritance tax.

In analyzing this case it is difficult to see upon what basis the court predicated its statement that the administratrix under paragraph 6 of the Revenue Act was required to list the personal property of her father’s estate, particularly in view of the fact that the court in *Scott v. People* and *Board of Education v. Boger*, heretofore cited, had previously held that section 6 of the Revenue Act applies only to property in the possession of the personal representative on April 1 of any given year. Again, in the later opinion of *People v. Sears*, the court discussed paragraph 6 and held that it applied only to property in the hands of the personal representative on April 1 of any given year and did not require a personal representative to schedule property which he did not have in his possession or under his control as such representative on the first of April. In view of the Scott Case, the Boger Case, and Sears Case, the statement of the court in the Ballans Case that the personal representative was required to list the property of her father which was owned on the first day of April, 1918, is not supported by previous decisions nor by subsequent decisions. In fact it is entirely contrary to previous rulings of the court and is contrary to subsequent ruling of the court in the Sears Case. The same may be said with respect to the statement of the court that the appellee was personally liable as administratrix of her father’s estate for the personal property taxes assessed against his estate for the year 1918. The opinion does not disclose whether or not she filed a schedule on behalf of her father’s estate. If she did, and this fact was before the court at the time it decided this case, then the reasoning of the court is understandable, because by filing a schedule the personal representative would probably have assumed personal liability as administratrix of her father’s estate for the tax. There was nothing in the amendment of 1915 of the Revenue Act which placed any burden upon the personal representative to schedule...
personal property belonging to her father on April 1 of the year 1918.

There is a provision, however, in the amendment, upon which the court might properly have decided that the personal property tax in question was a proper deduction for the purpose of fixing inheritance taxes. The provision referred to is section 35, which provides, in substance, that if the statute as amended, is complied with, personal property taxes for years during which the decedent was alive may be allowed as a first class claim against his estate. If this statute is valid and the tax could be allowed as a first class claim against the decedent's estate, then it would be a proper deduction for inheritance tax purposes and the Supreme Court might better have predicated its decision in the Ballans Case upon this amendment to the Revenue Act rather than following the reasoning which it did pursue in arriving at its conclusion.

It is true that the case of *People v. Sears* was decided under the law in force prior to the amendment of 1915, but it is equally true that there was nothing in the amendment of 1915 which compelled the personal representative to file a schedule on behalf of such representative's deceased, nor was there anything in the amendment adding to the personal liability of the personal representative for taxes assessed against a deceased person where the personal representative was not acting as such on April 1 of the year for which the tax was assessed, except and unless the statute providing for making the tax a debt of the estate and having it allowed as a first class claim against the estate was complied with. Hence, the recent ruling of the court in *People v. Sears* that the personal representative need not schedule on behalf of the deceased for any year during which the personal representative was not acting as such on April 1 is, in the opinion of the writer, better applicable than the statement of the court with respect to the duty of the personal representative in *People v. Ballans*. 
On February 13, 1932, Senate Bill No. 14 was approved by the Legislature of Illinois to take effect upon its passage. This bill is entitled "An Act to Amend sections two, three, five, thirteen, twenty-one, twenty-three, thirty, thirty-two, thirty-three, thirty-four, thirty-five, thirty-seven, thirty-eight, thirty-nine, forty-two, forty-three, forty-four and forty-seven of 'An Act for the assessment of property and providing the means therefor, and to repeal a certain Act therein named,' approved February 25, 1898, as amended and to add sections 32a, 33a, 35a, 35b, 35c, 35d, 35e, 35f, 35g and 35h thereto." The principal sections which were amended or which were added and which have any bearing upon the questions involved in this discussion are paragraphs first, second and third of section 35 and new section 35a, b, c and d. By the amendment, section 35, clauses first, second, and third, are amended to read as follows:

S. 35. In counties having less than two hundred fifty thousand inhabitants, the board of review shall, in any year, whether the year of the quadrennial assessment or not:

First: Assess all property subject to assessment which shall not have been assessed by the assessor, and list and assess all property real or personal that may have been omitted in the assessment of any year or number of years, or if the tax thereon, for which such property was liable, from any cause has not been paid, or if any such property, by reason of defective description or assessment thereof, shall fail to pay taxes for any year or years, in either case the same when discovered shall be listed and assessed by the board in its revision of assessments, and the board may make such alteration in the description of real or personal property as it shall deem necessary.

Second: No such charge for tax of previous years shall be made against any property prior to the date of ownership of the person owning such property at the time the liability for such omitted tax was first ascertained: Provided, that an assessment of real or personal property omitted from taxation by a decedent during his lifetime, shall be made against said property and be assessed in the name of the personal representative
as executor, administrator or trustees of such decedent’s estate. The owner of real or personal property, and the executor, administrator or trustees of a decedent, whose property may have been omitted in the assessment in any year or number of years, or on which a tax for which such property was liable, has not been paid, and the several taxing bodies interested therein, shall be given at least five days notice in writing by the board, of the hearing on the proposed assessment of such omitted property, and the board shall have full power to examine the owner, or the executor, administrator, trustees, legatees or heirs of such decedent or other person touching the ownership, kind, character, amount and the value of such omitted property or credits.

Third: If the board shall determine that the property of any decedent was omitted from assessment during any year or number of years or that a tax for which such property was liable has not been paid, it shall be the duty of said board to give written notice to the executor, administrator or trustees of such decedent of the assessments made against such property and the amount thereof, and thereupon it shall be the duty of such executor, administrator or trustees to retain in his or their hands sufficient of the assets of such decedent’s estate to pay the tax when extended on such assessment, and it shall be the duty of the county clerk to file in the County or Probate Court, a copy of such assessment, together with the rate of taxation thereon certified by such county clerk, and upon the filing of such certificate, the County or Probate Court shall enter an order directing such executor, administrator or trustees to deposit with the clerk of the court or to sequester sufficient of the assets of said estate to pay the taxes on said assessments when extended as now provided by law, or to enter into bond in double the amount of said tax with sureties to be approved by the court conditioned for the payment of said tax when so extended, and when so extended by the county clerk, the full amount of such tax shall be a claim of the first class against such estate: Provided, however, that an assessment of omitted property by the board of review in the manner provided in this Act shall not be subject to review by any succeeding board.

For the purpose of enforcing the provisions of this Act, the several taxing bodies interested therein are hereby empowered
to employ counsel to appear before said board and take all necessary steps to enforce the assessment on such omitted property.

The foregoing amendments it will be noticed are only applicable in counties having less than 250,000 inhabitants. New section 35a, paragraphs (a) (b) and (c) and new section 35d read as follows:

S. 35a.—In counties containing two hundred fifty thousand or more inhabitants the board of appeals in any year shall

(a) On complaint that any property is over assessed or under assessed, or is exempt, review and order such assessment corrected;

(b) Order the county assessor to correct any mistake or error (other than mistakes or errors of judgment as to the valuation of any real or personal property) in the manner provided in section 35c of this Act; and

(c) Direct the county assessor to assess all property subject to assessment which he has not assessed, for any reason and enter the same upon the assessment books and to list and assess all property, real or personal, that has been omitted in the assessment of any year, or number of years, or if the tax thereon, for which such property was liable from any cause, has not been paid or if any such property, by reason of defective description or assessment thereof, fails to pay taxes for any year or years, in either case the same, when discovered by the board shall be listed and assessed by the county assessor and the board may order the county assessor to make such alterations in the description of real or personal property as it deems necessary.

S. 35d.—The owner of real or personal property and the executor, administrator or trustee of a decedent whose property may have been omitted in the assessment in any year or number of years or on which a tax for which such property was liable has not been paid and the several taxing bodies interested therein shall be given at least five days notice in writing by the board of appeals in counties containing two hundred fifty thousand or more inhabitants of the hearing on the proposed assessments of such omitted property, and the board shall have full power to examine the owner, or the executor, administrator, trustee, lega-
tee or heirs of such decedent, or other person touching the ownership, kind, character, amount and the value of such omitted property or credits.

If the board determines that the property of any decedent was omitted from assessment during any year or number of years, or that a tax for which such property was liable, has not been paid, said board shall direct the county assessor to assess such property. No charge for tax of previous years shall be made against any property prior to the date of ownership of the person owning such property at the time the liability for such omitted tax is first ascertained: Provided, that an assessment of real or personal property omitted from taxation by a decedent during his lifetime, shall be made against said property and it shall be assessed in the name of the personal representatives as executor, administrator or trustee of the decedent's estate. The County assessor shall give written notice to the executor, administrator or trustees of such decedent, of the assessments made against such property, and the amount thereof, and thereupon, such executor, administrator or trustee, shall retain in his or their hands, sufficient of the assets of such decedent's estate to pay the tax when extended on such assessment, and the county clerk shall file in the County or Probate Court, a copy of such assessment, together with the rate of taxation thereon, certified by such county clerk, and upon the filing of such certificate, the County or Probate Court shall enter an order directing such executor, administrator or trustee to deposit with the clerk of the court, or to sequester sufficient of the assets of said estate to pay the taxes on said assessments, when extended, as provided by law, or to enter into bond in double the amount of said tax, with sureties to be approved by the court conditioned for the payment of said tax when so extended by the county clerk, the full amount of such tax shall be a claim of the first class against such estate. The assessment of omitted property by the county assessor may be reviewed by the board of appeals in the same manner as other assessments are reviewed under the provisions of this Act and when so reviewed such assessment shall not thereafter be subject to review by any succeeding board.

For the purpose of enforcing the provisions of this Act, relat-
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ing to property omitted from assessments, the several taxing bodies interested therein are hereby empowered to employ counsel to appear before said board and take all necessary steps to enforce the assessment on such omitted property.

The writer's only purpose in setting forth the amendment which applies to counties having a population of less than 250,000 is to enable the reader to make a comparison between the language used in the amended section and the new sections, which latter only apply to counties having a population in excess of 250,000. According to the Supreme Court in the case of People v. Sears the amendment to section 35 of the Act of 1898 which became effective on July 1, 1915, contains all the provisions for the assessment of real or personal property omitted from taxation by decedent during his lifetime after the amendment became effective if the deceased died subsequent to the amendment. If this is true, paragraphs 291, 292 and 293 of Cahill's Illinois Revised Statutes 1931 which are hereinbefore set forth insofar as they apply to the assessment of personal property belonging to a deceased person are abrogated by the amendment to section 35 adopted in 1915 and would continue to be abrogated by section 35 as amended in 1932. A careful reading of the amendment to section 35 adopted in 1932 and new section 35a, subsections (a) (b) and (c) and new section 35d discloses that there is nothing about these amendments or these new sections which changes the duty of the personal representative to file a schedule on behalf of a deceased where the personal representative was not acting on April 1 of the year for which the tax is being assessed, or which changes the liability of the personal representative for a tax assessed against the personal property of a deceased person in the name of the personal representative who was appointed after April 1 of the year for which the assessment is levied. In fact, there is a remarkable similarity in language between section 35 before the amendment and the new sections were added.
in 1932 and section 35 after it was amended and the new sections were added in 1932.

If there was an effort to change the duty and liability of the personal representative as to filing a schedule and paying a tax for any year where the personal representative was not acting as such on April 1 of the taxable year (which effort the writer does not believe was made) it is interesting to note in passing what the result would have been in the cases where the deceased died prior to the amendment in 1932.

In view of the language used by the court in the case of People v. Sears relative to the effect of the amendment adopted on July 1, 1915, it is difficult to see wherein the legislature by the Act of 1932 could change the duty of a personal representative to file a schedule or increase the liability of the personal representative for personal property tax in any case where the deceased died prior to February 13, 1932, even if the legislature was trying to do so. Perhaps the legislature could legally designate different officials thereafter to levy assessments on personal property belonging to deceased persons who died prior to the adoption of the amendment and new sections in 1932, but even if they were trying to do so, the amendment and new sections added in 1932 could not be retroactive so as to change the personal liability of the personal representative for a personal property tax where the deceased died prior to the adoption of the amendment and new sections. However, as stated before, a close examination of the statute discloses that even by the amendment and new sections which were added in 1932, the legislature did not thereby seek or intend thereafter to change the duty of the personal representative to file a schedule for any year in which such personal representative was not acting as such on April 1 or to increase the personal liability of the personal representative for taxes assessed against the property of a deceased person during any given year in which the personal representative was not act-
ing as such on April 1 of the taxable year. On the contrary, the provisions in section 35 as amended in 1915 directing the County Clerk to file a claim in the Probate Court for such tax are specifically retained in new section 35 as amended and added to in 1932.

The question which now presents itself is whether or not the provisions of the Revenue Act in force from 1915 to February 12, 1932, and in force from February 13, 1932 up to the present time providing for the filing of a claim against the estate of a deceased person for personal property taxes assessed against a deceased person in the name of the personal representative appointed after April 1 of the year in which the deceased person died, is the only method by which the administrator can be made liable for the tax to the extent of assets which he receives in this capacity as administrator.

In *People v. Hibernian Bank*, previously cited, the court decided that it was not necessary to file any claim against the estate of a deceased person for personal property tax assessed against such estate for any year during which the personal representative was acting as such on April 1 of the year for which the assessment was levied. The reasoning of the court in this regard is entirely sound, because under section 6 of the Revenue Act the personal representative under such circumstances is required to file a schedule and is given a lien upon the property of the estate for the purpose of protecting himself in the payment of the taxes assessed for the taxable years in which he was acting as administrator or executor on April 1. This case however clearly has no application to the question of whether or not a claim can be filed where the tax is assessed as of April 1 for the year or years during which the personal representative was not acting as such on April 1.

In *Board of Education v. Boger*, already referred to, the court discussed this question and said:

In case the owner is dead the property itself is directly taxed
but in the name of the administrator, if there is one, because there is no owner of the property for the years taxed and because there is no owner of the property for the years taxed and because he is possessed of the funds that must pay the tax. It is clear that there is no liability against the administrator personally for such tax by such assessment until all the requirements of section 35 are complied with, and that his liability is the same then as on any other probated claim and sufficient funds are in the estate to pay the same. This section treats the claim for taxes as an original claim against the decedent and allows it to be probated as a first-class claim against the estate. This shows clearly that it is not a claim against the administrator as owner of the property, as taxes assessed against the property of the decedent for the years after his appointment and before distribution are regarded.

It will be recalled that in the Boger Case the deceased died on August 13, 1918, and a portion of the tax in question involved the tax assessed as of April, 1918. The deceased was therefore alive at the time his liability accrued, yet the court was of the opinion that only in the event the provisions of section 35 were complied with, would the personal representative become personally liable for such tax and that his liability would be the same then as on any other probated claim and sufficient funds are in the estate to pay the same. In view of the fact that section 35, as amended in 1932, and the new sections which were added at that time do not substantially change the duty or liability of the personal representative which existed under section 35 as it was in force at the time the court decided the Boger Case, it would seem clear that unless new section 35a subsections (a) (b) and (c) and new section 35d are complied with, there is no duty upon the personal representative to file a schedule on behalf of a deceased person for any year in which such personal representative was not acting in such capacity on April 1 of such year and that such personal representative has no liability for such tax unless and until said new section 35a, subsections (a) (b) and (c) and said new section 35d are
complied with. It is true that *People v. Ballans*, already cited, was decided after the case of *Board of Education v. Boger*. It is also true that in this case the court stated that there was a duty on the personal representative to file a schedule and that such personal representative became liable for such tax even though such personal representative was not acting as such on the first day of April of the year in which such schedule was to be filed, but the statement of the court in this case is predicated upon a misconception of the interpretation of section 6 of the Revenue Act. Furthermore, the construction of section 6 as adopted by the court was not necessary to its decision because there were ample provisions in section 35 of the Revenue Act in force at the time the taxable liability accrued and the decision was given, to sustain the court in its ultimate conclusion that the estate was entitled to a deduction for personal property taxes where the deceased died on April 2 of the year for which the tax was assessed. Also, it should be borne in mind, in connection with this case, that it is not clear from the opinion whether or not the personal representative assumed liability for tax in question by filing a schedule. In fact, a careful examination of the case rather leads one to believe that such a schedule was filed.

In the case of *People v. Sears*, the court did not have to construe section 35, as it was in force after the amendment of 1915 up to February 13th, 1932, but in commenting upon the section, nevertheless, stated:

The provisions for the assessment of real or personal property omitted from taxation by decedent during his lifetime are all contained in the second and third paragraphs of this amendment and must be considered as having become the law on July 1, 1915. . . .

Apparently the court felt that section 35 as amended in 1915, contained the only provisions and defined all of the liability of the personal representative for taxes assessed against a deceased person for any given year in
which the personal representative was not acting as such on April 1 of such year.

The next question which arises is at what place the assessment is to be made where it is being made against the deceased in the name of a personal representative appointed after April 1 of the year for which the assessment is being made.

On this question we can again refer to *Board of Education v. Boger*, which indicates very clearly that the assessment would have to be made in the taxing district in which the deceased resided on April 1 of the year for which the assessment is being levied and should not be made in the taxing district where the person who is appointed after April 1 of such year resides. This contention is further supported by the case of *People v. Culver*,\(^{31}\) in which the facts were as follows:

Appellant lived in the Village of Glencoe, in Cook County and maintained a law office in the town of South Chicago, in the City of Chicago. His office equipment was permanently located in that town. The Board of Assessors of Cook County, in the absence of a list returned by him of personal property, estimated the value of his personal property subject to taxation in the Village of Glencoe for the year 1919, and also returned an estimated value of the personal property of appellant in the Town of South Chicago for said year to be taxed in the latter town. The taxes estimated thereon amounted to $46.26. Appellant paid the taxes assessed against the property in the Village of Glencoe but objected to the payment of the taxes levied against his office equipment in the town of South Chicago on the ground that the Board of Assessors had no authority to assess his personal property at any other place than in the village where he resides. The appellee contended that since the personal property in question was permanently located in the town of South Chicago, it was,

\(^{31}\) 304 Ill. 566.
in the absence of a showing that it had been included with the personal property located within the Village of Glencoe, properly assessed in the town of South Chicago. In discussing this question the court said:

The power of a board of assessors to make an assessment of personal property is derived from section 7, and other sections therein referred to, of the Revenue act. Section 7 is in part as follows: "Personal property, except such as is required in this act to be listed and assessed otherwise, shall be listed and assessed in the county, town, city, village or district where the owner resides." . . . It is clear from the stipulation filed in this case that unless the property in question comes within the provision of section 7 of the Revenue Act relating to property "required in this act to be listed and assessed otherwise," the board of assessors was without power to assess it in any taxing district other than the one in which appellant resides. As a general rule, the taxable situs of personal property, moneys and credits is the domicile of the owner. The exceptions to this rule referred to in section 7 of the Revenue Act include cases where the owner is a non-resident or has listed property in the taxing district where the same was assessed though living in another taxing district, and cases which come within the express statutory exceptions. There is nothing in this case to bring it within any of the exceptions to the rule prescribed in section 7. Appellant did not list his personal property located in the town of South Chicago for assessment in that town and there is nothing in the character of his property which brings it within any specific statutory exception to the general rule. . . .

Appellee cites Tolman v. Raymond, 202 Ill. 197. That case is to be distinguished from the case at bar. There the property holder voluntarily filed a schedule of personal property in the town where he had his business office, in addition to the schedule filed in the town where he resided. This distinction on the facts is sufficient to show the inapplicability of that case to the one under consideration.

An examination of the Revenue Act discloses that there are no exceptions included in the section referred to by the court in its opinion which renders the princi-
ple commonly involved in this case inapplicable to cases where the tax is assessed against the personal property of a deceased person in the name of a personal representative who was appointed after April 1 of the year for which the assessment is levied.

In view of this case, and Board of Education v. Boger, if the taxing authorities did elect to pursue the remedy provided for them under section 35 as amended in 1915, and section 35 as amended in 1932, together with the new sections added thereto, the tax to be legally assessed and collectible as a first class claim against the estate would have to be assessed in the taxing district in which the decedent resided during the respective years for which the tax is being assessed, such residence being determined, it would seem, as of April 1 of the year for which the assessment is being levied. If this is true, then what would happen in case of the death of the deceased prior to the first of April of the year for which the assessment is being levied, and the appointment of a personal representative for him after April 1 of such year? Could a tax be assessed at all in such a case, and if it can be, then in what taxing district should the assessment be made? In other words, did section 35 as amended in 1915 or as amended and added to in 1932 create any liability against the personal representative for a tax even if a claim was filed against the estate of the deceased, where the deceased died prior to April 1 of the taxable year and the personal representative was not appointed until after April 1 of such year? The answer seems to be that there may be some doubt whether any liability is created in such a case. In the first place it is clear that before the amendment to section 35 in 1915 there was no liability for personal property tax on the part of a personal representative except where he was acting as such on April 1 of the taxable year. People v. Sears and Scott v. People are very clear in this regard.

Starting from this premise an examination of section
35 as amended in 1915 does not show clearly that there was any change in this liability after the amendment in question if the deceased died prior to April 1 and his personal representative was not appointed until after April 1, because the language of the statute indicates that it might refer only to property omitted from taxation by a decedent during his lifetime. The deceased being dead on April 1, the date when the tax liability, if any, accrued, it might be urged that his property on such date did not constitute "property omitted from taxation in his lifetime" within the meaning of section 35 as amended in 1915. Substantially the same contention might be advanced as to the meaning of the amendments to section 35 and new sections added thereto in 1932.

Furthermore the difficulty of determining in what taxing district the assessment is to be levied in such a case might lend some weight to the contention. If this contention is sound, then what has been said heretofore with regard to the liability of personal representative for personal property tax if section 35 as amended and added to is complied with would apply only to cases where the deceased was alive on April 1 of the taxable year. If, on the other hand, section 35 as amended and added to applies alike whether the deceased died before or after April 1 of the taxable year and the personal representative starts acting after April 1 then it would seem that the taxable situs of the property would be the taxing district in which he lived at the time of his death.

There is one remaining question which has caused considerable concern in connection with assessing personal property taxes in the cases where the personal representative is required to schedule under section 6. Is the assessor bound to accept valuations placed on such property by the person filing the schedule?

One of the leading cases in Illinois on this question is
the case of People v. Kimmel.\textsuperscript{32} In this case the Supreme Court stated:

If a tax-payer makes out and delivers to the assessor a list of his taxable property, with the valuations thereon, and the schedule and valuations are accepted by the assessor as correct, they cannot afterwards be altered or changed without notice to the taxpayer. The assessor, however, is not bound to accept the taxpayer's valuations of his property as correct, and if he does not accept them he is not required to give notice to the taxpayer of changes in valuation.\textsuperscript{33} . . . It was not shown that the County Assessor accepted appellants' valuation as correct. Moreover, the assessment as made by the assessor was published in the local newspaper and appellants had notice of the increased valuation. Pursuant to the notice so given appellants appeared before the board of review and obtained a reduction in their assessment. They availed themselves of the remedy provided by law, and it cannot be assumed, in the absence of proof, that the board of review placed a valuation upon their personal property so excessive as to amount to fraud.

What would constitute an acceptance by the assessor of the schedule and valuation set forth therein presents a difficult situation. In the instant case the schedule with the valuations contained therein was returned by the tax-payer to the deputy assessor who, thereupon, informed the tax-payer over the telephone that the valuations placed upon the property described in the schedule would have to be raised to certain figures and the tax-payer then assented to such increases. The court was of the opinion that it was not shown by these facts that the County Assessor had accepted the tax-payer's valuation as correct.

In conclusion the following summary can be made of the laws applicable to the assessing and collecting of personal property tax in Cook County, Illinois, in estates of deceased persons from 1872 down to the present date:

\textsuperscript{32} 323 Ill. 261.

First—From 1872 to July 1, 1915, the personal representative was required to file a schedule of the decedent’s personal property for each taxable year during which year such personal representative was acting as such on the first day of April, and the personal representative became personally liable for such tax, whether the tax was based upon his schedule or based upon an estimate made by the taxing authorities.

Second—From 1872 down to July 1, 1915, there was no duty on the part of the personal representative to file a schedule on behalf of a deceased person for any taxable year during which the personal representative was not acting as such on April 1. Furthermore the taxing authorities in such case had no right to estimate the value of the decedent’s personal estate for the years during which the personal representative was not acting as such on April 1, and there was no liability on the part of the personal representative for any personal property tax assessed during any taxable year during which the personal representative was not acting as such on April 1.

Third—Between July 1, 1915, and February 13, 1932, it was the duty of the personal representative to file a schedule for each taxable year during which he was acting as such on April 1. If such schedule was not filed the assessment could be estimated by the assessing authorities and the personal representative became personally liable for the tax based upon his schedule or based upon such estimated assessment.

Fourth—From July 1, 1915, to February 13, 1932, if the deceased died after April 1 of any taxable year there was no duty on the part of the personal representative to file a schedule for such taxable year during which the personal representative was not acting as such on April 1, but the taxing authorities possibly could estimate the amount of the personal property subject to assessment and if a claim was filed and allowed against the estate of the deceased in accordance with section 35 in force
during said period, the liability of the personal representative for the tax in such case was the same as on any other probated claim and sufficient funds were in the estate to pay the same. If, however, the provisions of section 35 were not complied with, there would be no liability on the part of the personal representative for a tax based upon an estimated assessment.

Fifth—Between July 1, 1915, and February 13, 1932, if the deceased died before April 1 and the personal representative was appointed after April 1, there was no duty on the part of the personal representative to file a schedule on behalf of the deceased. In such case under one construction which might be placed upon section 35 the assessing authorities might estimate the value of the personal property and by filing a claim against the estate the liability of the personal representative would be the same as on any other probated claim and sufficient funds are in the estate to pay the same. Under another construction placed upon the act in question, section 35 does not give the right in such case to the assessing authorities to make an estimated assessment and to file a claim for the tax based thereon. Under this latter construction the estate and personal representative could not be held liable for any tax based upon an estimated assessment made for any taxable year during which the personal representative was not acting as such on April 1.

Sixth—From February 13, 1932, to the present it has been and is the duty of the personal representative to file a schedule of the personal property belonging to a decedent’s estate for each year during which the personal representative is acting as such on April 1. If he fails to file such a schedule the taxing authorities may estimate the value of the personal property and a tax can be extended thereon. In either event the personal representative becomes personally liable for such tax.

Seventh—From February 13, 1932, to the present, if the deceased was alive on April 1, there is no duty on
the personal representative to file a schedule on behalf of such deceased for such taxable year during which the personal representative was not acting as such on April 1. It is very possible that in such case the taxing authorities can estimate the amount of personal property subject to assessment, have a tax extended thereon, and file a claim against the estate for such tax, in which event the liability of the personal representative would be the same as on any other probated claim, and sufficient funds are in the estate to pay the same. In the absence of such steps being taken by the taxing authorities there would be no liability for the tax based upon an estimated assessment.

Eighth—From February 13, 1932, to the present, if the deceased died before April 1 of the taxable year in question and a personal representative was appointed after April 1, there is no duty imposed upon the personal representative to file a schedule for such taxable year. Under one construction of section 35 as amended and added to in 1932 the taxing authorities could estimate the amount of the assessment, have a tax extended thereon, and file a claim against the deceased's estate in which event the liability of the personal representative would be the same as on any other probated claim and sufficient funds are in the estate to pay the same. Under another construction placed upon section 35 as amended and added to in 1932 the taxing authorities, in the case we are now supposing, could not estimate the amount of personal property belonging to the deceased, nor have a tax extended thereon, nor have a claim allowed against the estate of the deceased for such tax, and under this construction the estate or the personal representative of the deceased could not be held liable for any tax based upon an estimated assessment where the personal representative was not acting as such on April 1 of the taxable year in question.

Ninth—During all three of the periods involved, namely, from 1872 to July 1, 1915, and July 1, 1915, to
February 13, 1932, and from February 13, 1932, to date, where the personal representative is acting as such on April 1 of the taxable year, the taxable situs of the property scheduled by the personal representative, or upon which an estimated assessment is made by the taxing authorities, would be the taxing district in which the personal representative resided on April 1.

Tenth—Between the two periods, namely, from July 1, 1915, to February 13, 1932, and from February 13, 1932, to date, where the deceased was alive on April 1 of the taxable year in question if the taxing authorities sought to estimate the amount of the personal property of the deceased, have a tax extended thereon, and file a claim against the decedent’s estate for said tax, the situs of the personal property for the purpose of fixing the amount of such estimated tax would be in the taxing district in which the decedent resided on April 1 of the taxable year involved.

Eleventh—Between the two periods, namely, from July 1, 1915, to February 13, 1932, and from February 13, 1932, to date, where the deceased died prior to April 1, and the personal representative was not appointed until after April 1, and the taxing authorities seek to estimate the value of the personal property of the decedent as of April 1, have a tax extended thereon, and file a claim against the estate of the deceased for such tax, about which right there may be some doubt, the situs of the personal property for the purposes of such assessment would appear to be the taxing district in which the decedent resided at the time of his death, or if not in such district, then in the taxing district in which the property was actually located.

Twelfth—Between the three periods, namely, from 1872 to July 1, 1915, from July 1, 1915, to February 13, 1932, and from February 13, 1932, to date, where the personal representative was acting as such on April 1, and a tax is assessed against him either upon a schedule filed by him or upon an estimated assessment, the tax-
ing bodies would not be required to file a claim against the decedent's estate for such tax in order to render the personal representative personally liable therefor.

Thirteenth—Between the two periods, namely, from July 1, 1915, to February 13, 1932, and from February 13, 1932, to date, if the deceased died after April 1 of the taxable year in question, in order to collect a tax based upon an estimated assessment made by the taxing authorities, it would be necessary for the taxing authorities to file and have allowed in the Probate Court a claim for such tax, and in the absence of such compliance with the statute neither the estate of the deceased nor his personal representative would incur any liability for such tax.

Fourteenth—Between the two periods, namely, from July 1, 1915, to February 13, 1932, and from February 13, 1932, to date, if the deceased died prior to April 1 and the personal representative was not appointed until after April 1 and the taxing authorities tried to make an estimated assessment and have a tax extended thereon in order to render the estate of the deceased or the personal representative liable for such tax, a claim would have to be filed in and allowed by the Probate Court for such tax and there is some doubt as to whether or not such a claim should be allowed in such case.

Fifteenth—Between the three periods, namely, from 1872 to July 1, 1915, from July 1, 1915, to February 13, 1932, and from February 13, 1932, to date, where the personal representative is acting as such on April 1 of the taxable year and as required by law makes out and delivers to the Assessor a list of the taxable personal property belonging to such estate with the valuations thereon, and such schedule and valuations are accepted by the Assessor as correct, they could not afterwards be altered or changed without notice to the tax-payer. The Assessor, however, is not bound to accept a personal representative's valuations as correct and if the Asses-
sor does not accept them it seems he would not be re-
quired to give notice to the personal representative of
any changes in the valuation.

Sixteenth—If the second construction of section 35 as
amended in 1915 or as amended or added to in 1932 (as
set forth in paragraphs fifth and eighth of the summary
herein) are correct, then it would appear to be the duty
of anyone having in his possession as agent or attorney
on April 1 of the taxable year any money and other
personal property invested, loaned or otherwise con-
trolled by him of the decedent's estate, to file a schedule
of such property pursuant to the requirements of the
second paragraph of section 6 of the Revenue Act, and
such person would have a lien upon the property until he
is indemnified against the payment of the tax, or if he
has paid the tax, until he is reimbursed for such pay-
ment, as provided in section 256 of the Revenue Act.
For such tax he could file a claim against the decedent's
estate if he had paid the same. The practical result
would then be that the decedent's estate would be com-
pelled to pay the tax. In the event of such a schedule
being filed the situs of the property would be the taxing
district in which the agent or attorney resided.