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DOUBLE DOMICILE AND FEDERAL INTERPLEADER REVISITED

by Elizabeth Whitaker Zervopoulos

Intangible property, unlike real property and tangible personal property, is unprotected constitutionally from the imposition of death taxes by more than one state.¹ A network of state legislation channeling the right to tax to the state of the decedent's domicile² has been the primary means by which intangibles have escaped multiple taxation. Neither legislation nor judicial proceedings, however, have been effective in precluding the possibility of multiple taxation when two or more states have claimed to be the state of domicile. In this situation, each of several claiming states has the power to seek a favorable judgment of domicile in its own state courts and force the estate to pay full taxes. Although commentators have insisted that allowing each of several states to assess full death taxes is inequitable, the situation has continued for decades. Recently, four Supreme Court Justices expressed a belief that these inequities need not continue, because an estate can bring a statutory interpleader action in federal district court whereby all the claiming states can be bound to a single determination of domicile. This Comment analyzes the validity and efficacy of this method of remedying multiple taxation and concludes that access by an estate to

1. The term death tax includes two forms of taxes levied at the time of the taxpayer's death. The first is an estate tax, which is a tax on the right to transmit the decedent's property to the donees. The second is an inheritance or succession tax, which is a tax on the donee's right to receive. [1974] INHER., EST. & GIFT TAX REP. (CCH) § 1000.

2. The right of the state of domicile to tax is based on the doctrine of *mobilia sequuntur personam* (movables follow the [law of the] person), BLACK'S LAW DICTIONARY 905 (5th ed. 1979), pursuant to which the property is deemed to be located where the owner of the property is domiciled. See, e.g., *Blodgett v. Silberman*, 277 U.S. 1, 10 (1927); *Blackstone v. Miller*, 188 U.S. 189, 204 (1903).

A person is domiciled in the state in which that person intends to make his home. Further, a person may have only one domicile. Thus, if a person has two or more dwelling places, his domicile is at the earlier dwelling place unless another is his principal home. Once a person acquires a domicile, he retains that domicile until he acquires a new one. Three types of domicile are recognized today. The first is the domicile of origin, which is fixed in the state in which a person is born. The second is the domicile of choice, which supersedes the domicile of origin. A person legally capable of changing his domicile acquires a domicile of choice by physically dwelling in a place with intent to make that place his home. The third is the domicile fixed by operation of law, which is applied today mostly to children who are considered as a matter of law to be domiciled with their father. RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 11-23 (1971) [hereinafter cited as RESTATEMENT (SECOND)]. See Reese, *Does Domicil Bear a Single Meaning?*, 55 COLUM. L. REV. 589 (1955), for a discussion of how the definition of domicile may vary depending on the court construing the definition, and on the subject of litigation.

The term "domicile" may be contrasted with the term "residence." The definition of residence must be determined in each legal context. Frequently, residence is equivalent in meaning to domicile. At times, however, residence means a domicile at which a person actually dwells. At other times, residence means the place where a person lives for a period of time, without necessarily having an intent to establish a home at that place. RESTATEMENT (SECOND), *supra*, § 11, Comment k.

federal district court for the purposes of avoiding multiple taxation is not yet a reality.

I. DEATH TAXES AND DOMICILE: A DILEMMA

Only the state in which real property and tangible personal property is physically located may constitutionally levy death taxes on the transfer of such property.³ Intangible personal property, however, is not bound physically to any particular place.⁴ Consequently, the Supreme Court has experienced difficulty in determining which states may tax intangible personal property.⁵ Initially, the Court recognized that more than one state could tax the property.⁶ Subsequently, in a series of decisions⁷ culminating in *First National Bank v. Maine*,⁸ the Court established that the simultaneous taxation by two or more states of the same intangible property interest violated the due process clause of the fourteenth amendment. The Court reasoned that if one type of property, tangible property, was constitutionally protected from multiple taxation, another type of property, intangible property, should also be protected.⁹ Several Justices consistently criticized this principle,¹⁰ and finally the dissent achieved a majority, overruling *First National Bank* in *State Tax Commission v. Aldrich*.¹¹ The Court's revised position was that any state could impose a death tax upon assets of a decedent whose rights in such assets were at least in part protected by that state's laws.¹² The Court returned to the

3. See *Treichler v. Wisconsin*, 338 U.S. 251 (1949); *City Bank Farmers' Trust Co. v. Schnader*, 293 U.S. 112 (1934); *Frick v. Pennsylvania*, 268 U.S. 473 (1925); *Union Refrigerator Transit Co. v. Kentucky*, 119 U.S. 194 (1905); R. LEFLAR, *AMERICAN CONFLICTS LAW* § 62 (3d ed. 1977).

4. See *Graves v. Schmidlapp*, 315 U.S. 657, 660 (1942); *Union Refrigerator Transit Co. v. Kentucky*, 199 U.S. 194, 206 (1905); Marsh, *Multiple Death Taxation in the United States*, 8 U.C.L.A. L. REV. 69, 71 (1961).

5. See *State Tax Comm'n v. Aldrich*, 316 U.S. 174, 179-81 (1942); *Farmers Loan & Trust Co. v. Minnesota*, 280 U.S. 204, 209-10 (1930); [1974] *INHER., EST. & GIFT TAX REP.* (CCH) ¶ 1675.

6. See *Blackstone v. Miller*, 188 U.S. 189 (1903).

7. *Beidler v. South Carolina Tax Comm'n*, 282 U.S. 1 (1930); *Baldwin v. Missouri*, 281 U.S. 586 (1930); *Farmers Loan & Trust Co. v. Minnesota*, 280 U.S. 204 (1930); *Safe Deposit & Trust Co. v. Virginia*, 280 U.S. 83 (1929).

8. 284 U.S. 312, 327 (1932), *overruled*, *State Tax Comm'n v. Aldrich*, 316 U.S. 174 (1942). The Court stated:

The rule of immunity from taxation by more than one state . . . rests for its justification upon the fundamental conception that the transmission from the dead to the living of a particular thing, whether corporeal or incorporeal, is an event which cannot take place in two or more states at one and the same time.

Id. at 326.

9. *Id.* at 326-27; *Farmers Loan & Trust Co. v. Minnesota*, 280 U.S. 204 (1930).

10. See *First Nat'l Bank v. Maine*, 284 U.S. 312, 331-34 (1932) (Holmes, Brandeis, & Stone, JJ., dissenting); *Beidler v. South Carolina Tax Comm'n*, 282 U.S. 1, 10 (1932) (Holmes & Brandeis, JJ., acquiescing); *Baldwin v. Missouri*, 281 U.S. 586, 595-99 (1930) (Holmes, Brandeis & Stone, JJ., dissenting); *Farmers Loan & Trust Co. v. Minnesota*, 280 U.S. 204, 214-18 (1930) (Stone, J., concurring; Holmes & Brandeis, JJ., dissenting); *Safe Deposit & Trust Co. v. Virginia*, 280 U.S. 83, 95 (1929) (Brandeis & Stone, JJ., concurring; Holmes, J., dissenting).

11. 316 U.S. 174, 181 (1942).

12. *Id.* at 181-82; see *Greenough v. Tax Assessors*, 331 U.S. 486 (1947); *State Tax*

multiple tax theory of taxing intangibles for several reasons. First, the Court stated that a tax on intangibles is merely a way of distributing the costs of government to those who enjoyed its benefits.¹³ Secondly, the Court feared that resort to the fourteenth amendment would create more difficulties and injustices than it would remove.¹⁴ Finally, the Court stated that it would need to extend unduly the fourteenth amendment in order to afford protection against multiple taxation of intangibles.¹⁵

As a result of the *Aldrich* decision, the estate of a mobile decedent faced a large potential tax burden. Many states, however, chose to mitigate the potential tax liability of estates by enacting tax exemption laws.¹⁶ These laws vested the right to impose death taxes in the state of the decedent's domicile.¹⁷ As all states recognized that a person may have only one domicile,¹⁸ the state statutory schemes ensured that normally only one death tax would be levied on a decedent's assets. The mutual exemption laws, however, did not address one potential source of multiple taxation.¹⁹ Two or more states still could claim to be the decedent's domicile.²⁰ As each state tended to consider its own determination of domicile as the correct one,²¹ each would assess a death tax on the entire value of the decedent's intangible estate.²²

Comm'n v. *Aldrich*, 316 U.S. 174 (1942); *Graves v. Schmidlapp*, 315 U.S. 657 (1942); *Graves v. Elliott*, 307 U.S. 383 (1939); *Curry v. McCanless*, 307 U.S. 357 (1939); [1974] INHER., EST. & GIFT TAX REP. (CCH) ¶ 1675.

13. 316 U.S. at 180; see *Curry v. McCanless*, 307 U.S. 357, 370 (1939).

14. 316 U.S. at 181; see *State Tax Comm'n v. Aldrich*, 316 U.S. 174, 179 & 181 (1942); *Curry v. McCanless*, 307 U.S. 357, 373-74 (1939); 30 COLUM. L. REV. 404 (1930).

15. In a concurring opinion, Justice Frankfurter suggested that multiple taxation was a political problem that state legislatures could solve by enacting reciprocal exemption laws. 316 U.S. at 181; see *State Tax Comm'n v. Aldrich*, 316 U.S. 174, 184 (1942) (Frankfurter, J., concurring); *First Nat'l Bank v. Maine*, 284 U.S. 312, 325 (Stone, J., dissenting). See also *State Tax Comm'n v. Aldrich*, 316 U.S. 174, 181 ("[E]ven though we believed that a different system should be designed to protect against multiple taxation, it is not our province to provide it."). See generally Brown, *The Present Status of Multiple Taxation of Intangible Property*, 40 MICH. L. REV. 806 (1942); Guterman, *Revitalization of Multiple State Death Taxation*, 42 COLUM. L. REV. 1249 (1942); [1974] INHER., EST. & GIFT TAX REP. (CCH) ¶ 1680.

16. For a listing of the state exemption laws, see [1970] INHER., EST. & GIFT TAX REP. (CCH) ¶ 12,080. States were motivated to enact such legislation because they hoped to gain more from stimulating the business of their banks, trust companies, and brokers than by levying inheritance taxes on intangibles owned by nonresidents. Tweed & Sargent, *Death and Taxes Are Certain—But What of Domicile*, 53 HARV. L. REV. 68, 70 (1939).

17. The most common type of exemption legislation provides that state *Y* will not tax the intangible property of a person domiciled in state *X* if state *X* will reciprocate and exempt the intangible property of persons domiciled in state *Y*. Other types of legislation include: those absolutely prohibiting the taxation of nonresidents; those taxing only those intangibles used in the course of business within that state; those permitting taxation unless the state of domicile actually taxes the intangibles; and those allowing reciprocal exemption only for United States domiciliaries. Nevada is the only state to assess no death taxes whatsoever. [1970] INHER., EST. & GIFT TAX REP. (CCH) ¶ 12,080. See generally Current Legislation, *Legislative Efforts in New York to Avoid Multiplicity in Inheritance Taxation*, 28 COLUM. L. REV. 806 (1928).

18. See RESTATEMENT (SECOND), *supra* note 2, § 11.

19. [1974] INHER., EST. & GIFT TAX REP. (CCH) ¶ 1680.

20. *Id.* ¶ 1425D.

21. Chafee, *Federal Interpleader Since the Act of 1936*, 49 YALE L.J. 377, 384 (1940).

22. A classic example of the attempts by two states to tax the same intangible estate is

Legislative schemes providing for arbitration or compromise have attempted to adjust conflicting claims between states to a decedent's domicile.²³ An example of a compromise statute is the Uniform Act on Interstate Compromise of Death Taxes.²⁴ Under this Act, conflicting claims are adjusted by tax officials of claimant states who negotiate for a percentage of the full amount of their claim.²⁵ All claimant states, therefore, receive a partial tax. An example of an arbitration statute is the Uniform Act on Interstate Arbitration of Death Taxes,²⁶ which provides that an arbitration board resolve conflicting claims by making a binding determination of domicile. One state thus receives a full tax under the arbitration scheme. Although such legislation has the potential for solving the multiple tax problem, seventeen states have failed to adopt a legislative solution.²⁷ Moreover, some of the arbitration and compromise legislation is not mandatory,²⁸ and an estate therefore has no assurance that it will escape multiple taxation.

Judicial intervention has been an alternative method of resolving conflicting claims of domicile between states. A claimant-state could seek a single adjudication of domicile by consenting to suit in the courts of another state.²⁹ While the potential effectiveness of state court review is demonstrated in cases such as *In re Trowbridge*,³⁰ claimant-states have consented infrequently to such review.³¹

set forth in the *In re Dorrance's Estate* litigation. See *In re Dorrance's Estate*, 309 Pa. 151, 163 A. 303 (1932), cert. denied sub nom. *Dorrance v. Pennsylvania*, 287 U.S. 660 (1932); *New Jersey v. Pennsylvania*, 287 U.S. 580 (1932); *In re Dorrance*, 115 N.J. Eq. 268, 170 A. 601 (Prerog. Ct. 1932), aff'd, 116 N.J. Eq. 204, 172 A. 503 (Prerog. Ct.), aff'd sub nom. *Dorrance v. Thayer-Martin*, 13 N.J. Misc. 168, 176 A. 902 (N.J.), cert. denied sub nom. *Hill v. Martin*, 296 U.S. 393 (1935). This litigation is discussed in detail in Nash, *And Again Multiple Taxation*, 26 GEO. L.J. 288, 318-24 (1938).

23. The full faith and credit clause of the Constitution, U.S. CONST. art. IV, § 1, is ineffective to require one state to recognize a sister state's determination of domicile because the doctrine of sovereign immunity precludes a state court from compelling a sister state's joinder in its proceedings. See *Western Union Tel. Co. v. Pennsylvania*, 368 U.S. 71 (1961); *Worcester County Trust v. Riley*, 302 U.S. 292 (1937); *Baker v. Eccles & Co.*, 242 U.S. 394 (1917).

24. UNIFORM INTERSTATE COMPROMISE OF DEATH TAXES ACT § 1.

25. See generally Guterman, *Avoidance of Double Death Taxation of Estates and Trusts*, 95 U. PA. L. REV. 701, 711-12 (1947).

26. UNIFORM INTERSTATE ARBITRATION OF DEATH TAXES ACT § 4.

27. The states are Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Louisiana, Missouri, New Mexico, North Dakota, Rhode Island, South Dakota, and Wyoming. Nevada assesses no death tax. NEV. CONST. art. 10, § 1; see [1975] INHER., EST. & GIFT TAX REP. (CCH) ¶¶ 12,010, 12,035.

28. Marsh, *supra* note 4, at 86.

29. *Id.* at 85; Nash, *supra* note 22, at 308.

30. 266 N.Y. 283, 194 N.E. 756 (1935). In this case, Connecticut, as a party-litigant, intervened in proceedings in the State of New York on the issue of where the decedent had domiciled and which state was entitled to tax his estate. The lower court determined that New York was the state of domicile. After a detailed review of the facts, however, the appellate court reversed and found Connecticut to be the state of domicile.

31. For examples of cases litigated between two states in state court, see *In re Bourne's Estate*, 181 Misc. 238, 41 N.Y.S.2d 336 (Sur. Ct. 1943), aff'd, 267 A.D. 876, 47 N.Y.S.2d 134, aff'd, 293 N.Y. 785, 58 N.E.2d 729 (1944); *In re Benjamin's Estate*, 176 Misc. 518, 27 N.Y.S.2d 948 (Sur. Ct. 1941), aff'd, 263 A.D. 981, 34 N.Y.S.2d 394, aff'd, 289 N.Y. 554, 43 N.E.2d 531 (1942); *In re Hartshorne's Estate*, 171 Misc. 27, 11 N.Y.S.2d 814 (Sur. Ct. 1939);

A claimant-state could also seek a single adjudication of domicile by bringing an original action against another state before the United States Supreme Court.³² In the landmark case of *Texas v. Florida*,³³ the State of Texas attempted to bring such an action in the Supreme Court. The bill of complaint alleged that Texas, Florida, Massachusetts, and New York each claimed to be the domicile of the decedent and therefore to have the sole right to impose death taxes upon the decedent's intangible estate. The bill of complaint further alleged that if all four states obtained a favorable adjudication in their state courts, the estate assets would be insufficient to satisfy the total tax liability. In the course of its review, the Court addressed sua sponte the issue of its jurisdiction in the original action before it³⁴ and held that two jurisdictional prerequisites must be met. First, the claims of the party-states must be mutually exclusive, as when several states claim to be the sole domicile of a decedent. Secondly, the estate's assets must be insufficient to satisfy the total tax liability should each state independently decide it was the domicile. Since both conditions were present, the Court reviewed the case on the merits and determined which state was the domicile.³⁵

The narrowness of the jurisdictional base established by *Texas v. Florida* was demonstrated by the subsequent denial of Massachusetts' motion for leave to file a complaint in an original action to settle a dispute with Missouri over the right to levy death taxes on intangible property.³⁶ Recently, three Supreme Court Justices suggested that the jurisdictional basis should be narrowed further. The Justices recommended that *Texas v. Florida* be overruled and questioned whether two states should ever be allowed to litigate their death tax claims before the Supreme Court.³⁷ Supreme Court review, consequently, has been and probably will continue to be only a limited means of resolving death tax claims.³⁸

A final forum of judicial review is the federal district court. Pursuant to

In re Stone's Estate, 135 Misc. 736, 240 N.Y.S. 398 (Sur. Ct. 1929); *In re Lyon's Estate*, 117 Misc. 189, 191 N.Y.S. 260 (Sur. Ct. 1921), *aff'd*, 192 N.Y.S. 936 (App. Div. 1922).

One commentator has suggested that a state should not be criticized for refusing to submit to the courts of another state that is likely in need of tax revenues. Nash, *supra* note 22, at 308-09.

32. "In all Cases . . . in which a State shall be Party, the supreme Court shall have original Jurisdiction." U.S. CONST. art. III, § 2. This constitutional grant of jurisdiction is treated in 28 U.S.C. § 1251(a) (1976), which provides that "The Supreme Court shall have original and exclusive jurisdiction of: (1) All controversies between two or more States"

33. 306 U.S. 398 (1939).

34. *Id.* at 405.

35. The Supreme Court adopted the finding of the special master that Massachusetts was the state of domicile. The master found that the laws of the litigant-states were uniformly patterned after the common law formulation of domicile. The master, therefore, followed the common law codification in the *Restatement of Conflict of Laws* in determining that the decedent had been domiciled in Massachusetts. *Id.* at 413-28.

36. *Massachusetts v. Missouri*, 308 U.S. 1 (1939).

37. *California v. Texas*, 437 U.S. 601 (1978).

38. See R. LEFLAR, *supra* note 3, § 15; Nash, *supra* note 22, at 314; Traynor, *State Taxation and the Supreme Court*, 1938 Term, 28 CALIF. L. REV. 1, 13-18 (1939).

the Federal Interpleader Act,³⁹ a party holding assets claimed by more than one person is empowered to join all claimants in a single suit to determine which claimant, if any, has a right to the assets. Theoretically, therefore, an estate could join states claiming to be the sole domicile of the decedent in one suit to determine which state has the right to levy a death tax.⁴⁰

39. 28 U.S.C. § 1335 (1976). The Act provides:

(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of \$500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of \$500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of \$500 or more, if

(1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if (2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.

(b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

40. An interpleader action is litigated in two stages. 3A J. MOORE, MOORE'S FEDERAL PRACTICE ¶ 22.14 (2d ed. 1979); 7 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1714 (1972). In the first stage, the stakeholder deposits the claimed assets into the registry of the court. 3A J. MOORE, *supra*, ¶ 22.14[1]. In an interpleader action brought by an estate, the larger tax would be deposited into court if the tax has already been computed. 7 C. WRIGHT & A. MILLER, *supra*, § 1716; Chafee, *supra* note 21, at 387. If the tax has not been computed, the estate would deposit a bond into court in an amount the court deemed proper. C. WRIGHT & A. MILLER, *supra*, § 1716. The court would then determine whether the stakeholder is entitled to interpleader relief. *Id.* § 1714. The stakeholder must show, among other things, that two or more persons may claim the deposited assets. *See State Farm Fire & Cas. Co. v. Tashire*, 368 U.S. 523, 531-33 (1967). The interests of these persons, however, must be adverse. The interests of the claimants will be considered adverse if although the claims are independent, the assets constituting the subject of the interpleader are inadequate to satisfy all claims. *State Farm Fire & Cas. Co. v. Tashire*, 368 U.S. 523 (1967); 7 C. WRIGHT & A. MILLER, *supra*, § 1705. Thus, if the butcher claims \$300 and the baker \$400, the claims may be interpleaded if the stakeholder has \$500 in assets. Additionally, the interests may be adverse because legal rights giving rise to the claims are mutually exclusive. *See, e.g., Metropolitan Life Ins. Co. v. Chase*, 294 F.2d 500 (3d Cir. 1961); *Gannon v. American Airlines, Inc.*, 251 F.2d 476 (10th Cir. 1958); 7 C. WRIGHT & A. MILLER, *supra*, § 1705. Thus, provided a person has one domicile only, one state's claim to be the state of domicile theoretically would be inimical to a sister state's claim to be the state of domicile.

Having determined that the parties are properly before it, the court may normally issue an injunction against state proceedings to ensure the effectiveness of the interpleader remedy. *See* 7 C. WRIGHT & A. MILLER, *supra*, § 1717. The interpleader action would then progress into its second stage, during which the court would judge the merits of the action. 3A J. MOORE, *supra*, ¶ 22.14[2]. To judge the merits, the court would need to determine which law it should follow in reaching its decision. This potentially complicated inquiry is not

In *Worcester County Trust v. Riley*⁴¹ the estate of Mr. Hunt attempted to bring a statutory interpleader action to preclude California and Massachusetts from inconsistently determining the decedent's domicile. The estate claimed that the collection efforts of the two states' tax officials threatened to deprive the estate of its property without due process of law and asked that the tax officials be enjoined from further collection efforts. The allegation that the tax officials violated the Constitution was essential to the estate's right to maintain the action.⁴² As the taxing officials were the states' agents, the Court stated that suit against them would ordinarily be a suit against the state.⁴³ The eleventh amendment, however, precludes suits in federal court by citizens against a state.⁴⁴ The Court in *Ex parte Young*⁴⁵ had held that the eleventh amendment does not preclude a suit enjoining a state agent alleged to have acted unconstitutionally. In such a situation the officer would be "stripped of his official or representative character and [be] subjected in his person to the consequences of his individual conduct."⁴⁶ Accordingly, as the suit would be against an individual and not a state, the eleventh amendment would not bar the action.

The *Worcester* Court held that the Constitution does not require uniformity in the court decisions of different states as to the place of domicile. Accordingly, each adjudication of the decedent's domicile was valid, and the tax officials of neither state acted unconstitutionally in imposing taxes based on the adjudication. Therefore, their actions were within the scope of their official duties and were attributable to the states. The *Ex parte Young* doctrine thus was inoperative and the eleventh amendment barred the suit.

The *Worcester* decision marked the effective closing of the judicial doors to estates threatened with multiple assessments of death taxes.⁴⁷ The ability to initiate judicial review was now vested exclusively in claimant-states, who stood to gain monetarily from a judgment that they were the state of domicile.⁴⁸ The reaction of commentators to the *Worcester* decision has

addressed in this Comment. See generally Farage, *Multiple Domicils and Multiple Inheritance Taxes—A Possible Solution*, 9 GEO. WASH. L. REV. 375, 380 (1941). Following the court's judgment, the estate would obtain its own discharge from the taxing officials of the state adjudged to be the decedent's domicile. Chafee, *supra* note 21, at 387.

For further study of the interpleader action, see generally 3A J. MOORE, *supra*, ¶¶ 22.01-.17; 7 C. WRIGHT & A. MILLER, *supra*, §§ 1701-1721; Chafee, *Modernizing Interpleader*, 30 YALE L.J. 814 (1921); Chafee, *Interstate Interpleader*, 33 YALE L.J. 685 (1924); Chafee, *The Federal Interpleader Act of 1936: I*, 45 YALE L.J. 963 (1936); Chafee, *supra* note 21; Chafee, *Broadening the Second Stage of Interpleader*, 56 HARV. L. REV. 541 (1943).

41. 302 U.S. 292 (1937).

42. *Id.* at 296-97.

43. U.S. CONST. amend. XI reads: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." In *Hans v. Louisiana*, 134 U.S. 1 (1890), the amendment was construed to bar suits brought not only by citizens of another state, but also by a citizen against his own state.

44. 302 U.S. at 296-97.

45. 209 U.S. 123, 159-60 (1908).

46. *Id.* at 160.

47. [1974] INHER., EST. & GIFT TAX REP. (CCH) ¶ 1425E; Nash, *supra* note 22, at 304.

48. See Nash, *supra* note 22, at 316 ("[T]o leave the solution of the problem of double

been largely negative.⁴⁹ Professor Chafee, considered to be the father of the Federal Interpleader Act,⁵⁰ typified this reaction when he stated, "[I]t is highly unfair for both state governments to tell the taxpayer, 'You have to pay only one tax,' and then make him pay twice."⁵¹ Despite such criticism, however, the *Worcester* opinion has remained law for four decades.⁵²

II. THE CONCURRING OPINIONS IN CALIFORNIA V. TEXAS

Forty years after *Worcester County v. Riley*, the Supreme Court had an opportunity to review that opinion in *California v. Texas*.⁵³ Following the death of Howard Hughes, the State of Texas instituted proceedings in Texas state court to determine his domicile at the time of death for the purpose of assessing death taxes. The State of California sought to enjoin these proceedings and attempted to bring an original action before the United States Supreme Court on the issue of whether Texas was the state of domicile. In its motion for leave to file complaint, California alleged that both California and Texas claimed to be the domicile of the deceased and were both seeking to impose death taxes on the decedent's estate. California further alleged that if each state successfully imposed a death tax in their respective courts, the assets of the estate would be insufficient to cover the tax claims. The Supreme Court declined this opportunity to reexamine *Worcester* and denied the motion without comment.⁵⁴ Four Justices, however, appended three concurring opinions explaining their decision to deny California's motion and expressing their belief that the holding in *Worcester* had been abrogated by more recent precedent. Their views merit examination because they reveal the attitudes of a substantial number of Supreme Court Justices and could be influential on lower courts. The concurrence of one more Justice would create a majority for the view that *Worcester* no longer prevents an estate's interpleader of two taxing states.⁵⁵

Justice Stewart, joined by Justices Powell and Stevens, stated in a footnote⁵⁶ that *Worcester* had been substantially undercut by the decision of

domicile to be worked out by the unaided efforts of the states, can be of doubtful benefit at best."). See also [1974] INHER., EST. & GIFT TAX REP. (CCH) ¶ 1425E.

49. Nash, *supra* note 22, at 314; Tweed & Sargent, *supra* note 16, at 77. See also Farage, *supra* note 40, at 380; Guterman, *supra* note 25, at 703-08; Lowndes, *The Tax Decisions of the Supreme Court, 1938 Term*, 88 U. PA. L. REV. 1, 15-16 (1939); Traynor, *supra* note 38, at 13-21. But see Marsh, *supra* note 4, at 71.

50. *California v. Texas*, 437 U.S. 601, 615-17 (1978) (Powell, J., concurring). See generally articles by Professor Chafee cited in note 40 *supra*.

51. Chafee, *supra* note 21, at 384 (footnote omitted).

52. See [1974] INHER., EST. & GIFT TAX REP. (CCH) ¶ 1425E.

53. 437 U.S. 601 (1978).

54. *Id.*

55. The votes of these four Justices also would be a sufficient number to grant a writ of certiorari on the issue of taxation based on double-domicile adjudications. See generally Lieman, *The Rule of Four*, 57 COLUM. L. REV. 975 (1957).

56. *California v. Texas*, 437 U.S. 601, 608 n.10 (1978). Justice Stewart was primarily concerned with the defects he perceived in the *Texas v. Florida* decision.

Edelman v. Jordan,⁵⁷ and, as a consequence, an estate could now bring a statutory interpleader action in federal district court for declaratory and injunctive relief against the taxing officials.⁵⁸ Justice Powell, believing this issue merited special emphasis, concurred separately in order to amplify Justice Stewart's findings.⁵⁹ Justice Brennan agreed with Justices Powell and Stewart. Accordingly, he joined the Court in voting to dismiss California's motion, at least until it could be shown that a statutory interpleader action would not or could not be brought.⁶⁰

The concurring Justices relied on the interpretation of the eleventh amendment expressed in *Edelman v. Jordan*⁶¹ to suggest that *Worcester* no longer barred an estate's interpleader of multiple taxing states. In *Edelman v. Jordan* a petitioner filed a class action alleging that officials of the Illinois Department of Public Aid were processing welfare applications and dispensing benefits in a manner that violated federal administrative law and the United States Constitution. The district court granted an injunction requiring the state officials to comply with federal standards and ordered that the state officials remit wrongfully withheld benefits. The court of appeals affirmed. On writ of certiorari, the Supreme Court invalidated that part of the district court's order compelling the state officials to pay withheld benefits. The Court held that "a federal court's remedial power, consistent with the eleventh amendment, is necessarily limited to prospective injunctive relief, *Ex parte Young*, . . . and may not include a retroactive award which requires the payment of funds from the state treasury."⁶² As the relief sought by the petitioner constituted a retroactive award payable out of the state treasury, such relief was barred by the eleventh amendment.⁶³ *Edelman* thus indicated that the *Ex parte Young* doctrine, which allows a state officer acting unconstitutionally to be sued as an individual under the eleventh amendment,⁶⁴ applied only when the remedies sought were prospective and would not operate when the relief sought would require retroactive payment of funds out of the state treasury. The *Edelman* opinion, however, did not otherwise alter the *Ex parte Young* doctrine. After *Edelman*, a state officer could still be sued as an individual only when allegedly acting unconstitutionally.⁶⁵

57. 415 U.S. 651 (1974).

58. 437 U.S. at 608 n.10 (Stewart, J., concurring).

59. *Id.* at 615 (Powell, J., concurring).

60. *Id.* at 601-02 (Brennan, J., concurring). Justice Brennan stated, "[i]t may well be possible for the Hughes estate to obtain a judgment under the Federal Interpleader Statute . . . which would be binding on both California and Texas. In this event the precondition for our original jurisdiction would be lacking." *Id.* at 601-02.

61. 415 U.S. 651 (1974).

62. *Id.* at 677.

63. 415 U.S. at 678.

64. 209 U.S. 128, 160 (1908); see text accompanying notes 45 & 46 *supra*.

65. See generally Frug, *The Judicial Power of the Purse*, 126 U. PA. L. REV. 715, 751 (1978); Nowak, *The Scope of Congressional Power to Create Causes of Actions against State Governments and the History of the Eleventh and Fourteenth Amendments*, 75 COLUM. L. REV. 1413, 1420-21 (1975); Comment, *Federal Powers and the Eleventh Amendment: Attorneys' Fees in Private Suits Against the State*, 63 CALIF. L. REV. 1167, 1168 (1975); Comment, *Edelman v. Jordan: The Case of the Vanishing Retroactive Benefit and the Reappearing De-*

The suggestion of the concurring Justices in *California v. Texas* that *Edelman* had lifted the eleventh amendment bar to a district court interpleader action by the Hughes estate is problematic because the Justices did not point to any allegedly unconstitutional actions on the part of the taxing officials of California and Texas. Rather, the Justices affirmatively recognized *Worcester's* holding that two states may constitutionally tax a decedent as their domiciliary.⁶⁶ An essential element of the *Ex parte Young* doctrine as it is presently conceived, therefore, was thus not considered by the concurring Justices in *California v. Texas*. Unless the Hughes estate can charge state taxing officials with unconstitutional actions, an interpleader action brought to enjoin state officials from collecting taxes would be against the officials in their official capacity and would be barred by the eleventh amendment as a suit against the state.

The Justices possibly perceived *Edelman v. Jordan* as eliminating the requirement that unconstitutional actions be alleged before a state official may be sued in his individual capacity, provided that the relief sought was prospective.⁶⁷ Had the *Edelman* opinion intended to dispose of the long-standing requirement that a state officer be charged with unconstitutional conduct before he can be sued in his individual capacity,⁶⁸ however, it would surely have done so expressly. Instead, the Court in *Edelman* was careful not to divorce its discussion of *Ex parte Young* from a factual context in which state officers were accused of violating the Constitution.⁶⁹ Furthermore, the doctrine in *Ex parte Young* has been upheld since the *Edelman* decision, despite the suggestion that its application be limited.⁷⁰ Accordingly, the interpretation of *Edelman* possibly expressed in the concurring opinions of *California v. Texas* is of doubtful validity. The eleventh amendment, therefore, remains a bar to an interpleader action brought by an estate to enjoin multiple death taxation based on domicile. An allegation of unconstitutional action by individual state taxing officials is necessary before the eleventh amendment bar can be removed.

Significantly, four Justices in *California v. Texas* wrote concurring opinions addressing the plight of the estate.⁷¹ Three Justices quoted the complaints of Professor Chafee that multiple taxation was "highly unfair" and

sense of Sovereign Immunity, 12 HOUS. L. REV. 891 (1975); Comment, *Edelman and Scheuer: The Relationship between the Eleventh Amendment and Executive Immunity*, 58 MARQ. L. REV. 741 (1975); Note, *Awarding Attorney's Fees Against a State: The Eleventh Amendment after Edelman v. Jordan*, 44 GEO. WASH. L. REV. 112 (1975); Note, *Edelman v. Jordan: A New Stage in Eleventh Amendment Evolution*, 50 NOTRE DAME LAW. 496 (1975); 40 MO. L. REV. 536 (1975).

66. *California v. Texas*, 437 U.S. 601, 612 (1978).

67. *See id.* at 616.

68. *Ex parte Young*, decided in 1908, has been affirmed repeatedly. *Younger v. Harris*, 401 U.S. 37 (1971); *Alabama Public Serv. Comm'n v. Southern Ry.*, 341 U.S. 341 (1951); *Overnight Motor Transp. Co. v. Missel*, 316 U.S. 572 (1942).

69. *See* text accompanying notes 43-46 *supra*.

70. *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 156 n.6 (1978).

71. *California v. Texas*, 437 U.S. 601 (1978) (Brennan, Stewart, Powell, Stevens, JJ., concurring).

that federal courts should find a remedy.⁷² The attitude evident in the Justices' opinions could produce a willingness by the Court to find that the imposition of double death taxes violates the Constitution in some manner. A possible basis for such a result may be found in the holding of *Western Union Telegraph Co. v. Pennsylvania*.⁷³ In this case, Pennsylvania initiated proceedings in state court to escheat unclaimed money-order deposits held by Western Union. Western Union, while not claiming the fund for itself, challenged Pennsylvania's power to escheat. Western Union pointed out that other states potentially entitled to the funds would not be bound by the Pennsylvania judgment and that Western Union, therefore, faced the possibility of multiple liability on the same fund. The Pennsylvania Supreme Court declared the funds to be escheated to Pennsylvania. On appeal, the Supreme Court reversed, holding that when a state court's jurisdiction to adjudicate property rights is based on the presence of the property within the state, due process is violated if the holder of the property must relinquish the property without the assurance that he will not be held liable in a second suit elsewhere.⁷⁴ Accordingly, since a judgment of the Pennsylvania courts could not protect Western Union from having to pay the single obligation twice, the Pennsylvania judgment denied Western Union due process.⁷⁵

The principles expressed in *Western Union* arguably are broad enough to provide a basis for declaring that a state court judgment of death tax liability based on domicile violates due process if it fails to protect an estate from a second death tax based on an inconsistent determination of domicile. If the judgment can be established as unconstitutional, then the activities of state officials in the enforcement of the judgment likewise would be unconstitutional. This conclusion would modify the result of *Worcester* and remove the eleventh amendment bar to an interpleader action pursuant to the *Ex parte Young* doctrine.

The success of this argument depends on the extent to which the princi-

72. *Id.* at 608 n.9, 615-16.

73. 368 U.S. 71 (1961).

74. *Id.* at 75. The Court stated that Pennsylvania could not claim that the same debts or demands could be escheated by two states. The Court gave no basis for this proposition; however, it did cite as support *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951), in which the Court had stated in a dictum that double escheat is barred by the full faith and credit clause of the Constitution. *Id.* In *Western Union*, however, the Court disagreed with the reliance on the full faith and credit clause. 368 U.S. at 75. Apparently, therefore, the *Western Union* Court saw the principle as self-evident. See, for example, the assertion of the Court in *Harris v. Balk*, 198 U.S. 215, 226 (1905): "It ought to be and it is the object of courts to prevent the payment of any debt twice over. . . . [A debtor] certainly ought not to be compelled to pay it a second time"

75. *Id.* See generally Lane, *Western Union v. Pennsylvania or Whose Mink was Gored?*, 18 BUS. LAW. 311 (1962); Note, *Jurisdiction: A New Basis for Quasi in Rem Jurisdiction Over Intangible Property—Western Union Tel. Co. v. Pennsylvania (U.S. 1961)*, 50 CALIF. L. REV. 735 (1962); Note, *Escheat—Possible Multiple Liability of Abandoned Intangible Personal Property*, 11 DE PAUL L. REV. 337 (1962); Note, *Western Union Telegraph Co. v. Pennsylvania—Due Process as a Bar to Multiple Escheat of Intangibles*, 57 NW. U.L. REV. 484 (1962); 36 ST. JOHN'S L. REV. 331 (1962); 13 SYRACUSE L. REV. 478 (1962); 39 U. DET. L.J. 431 (1962); 23 U. PITT. L. REV. 1016 (1962); 15 VAND. L. REV. 1016 (1962).

ples expressed in *Western Union* may be extended beyond adjudications involving a single debt. The inchoate death tax liability of an estate is not, in the strict sense, a single debt.⁷⁶ A debt is created only when a taxing entity has assessed a tax. If two assessments are made, two debts are created, despite the fact that the assessments may be based on inconsistent factual determinations.

The principles expressed in *Western Union* need not be limited to the context of single debts. The *Western Union* opinion characterized the multiple death tax claims litigated in *Texas v. Florida*⁷⁷ as similar "in all material respects" to the double escheat of a single debt.⁷⁸ The essential similarity is that in both instances a state court judgment fails to protect a party from claims that would be foreclosed if the fact determinations necessary to support the judgment could be made binding on all claimants. Thus, in *Western Union*, had both claimant-states been bound to one adjudication of the identity of the obligee, the obligor would have been protected from the possibility of paying the debt twice. Likewise, when several states attempt to impose death taxes on one estate, if all claimant-states could be bound to one adjudication of which state was the state of domicile, the estate would be protected from paying multiple death taxes.

If this principle is the essence of the basic constitutional infirmity identified in *Western Union*, then a direct analogy can be drawn between the situation in *Western Union* and the situation in which multiple states claim the right to impose domiciliary death taxes.⁷⁹ Accordingly, it would be immaterial that *Western Union* was decided in the context of the double escheat of a single debt. In light of the long-standing difficulty experienced by estates in gaining a single adjudication of domicile, to draw the analogy between the two situations would be salutary.⁸⁰

76. H. OLECK, CREDITORS' RIGHTS AND REMEDIES 1 (1949).

77. See notes 33-35 *supra* and accompanying text.

78. 368 U.S. at 77.

79. The principle enunciated in *Western Union* conceivably could be extended to protect all stakeholders to whom interpleader is unavailable for some reason. One commentator found such an extension improbable because of long-standing precedent to the contrary. See McCloskey, *The Supreme Court 1961 Term*, 76 HARV. L. REV. 54, 139 (1962). In light of the long-standing inequities experienced by estates, however, it would be reasonable to extend *Western Union* only to the extent necessary to achieve a resolution of the double-domicile issue.

80. Justice Stewart distinguished *Western Union* from the death tax situation on the ground that *Western Union* held that several states constitutionally may not enforce their escheat laws on the same tangible property in their own courts, whereas several states constitutionally may enforce their tax laws on the same intangible property in their own courts. *California v. Texas*, 437 U.S. 601, 612 n.13 (1978). Justice Stewart was incorrect in identifying the property in *Western Union* as tangible property; the property was intangible. See *Pennsylvania v. New York*, 407 U.S. 206, 209-10, 212 (1972) (original action by Pennsylvania on the issue of which state had the right to escheat the same funds claimed in *Western Union*). In addition, it begs the question to say that in one situation there is and in the other there is not a constitutional impediment. The question is whether the principle in *Western Union* may be extended mildly so as to impose a constitutional impediment on the levying of multiple domiciliary death taxes.

III. DIVERSITY OF CITIZENSHIP

Although the four Justices in *California v. Texas* believed that an interpleader action could be used by the Hughes estate to gain a binding adjudication of the decedent's domicile, a federal district court dismissed the interpleader action brought by the Hughes estate subsequent to the dismissal of the original action.⁸¹ The district court based its dismissal on a lack of diversity of citizenship jurisdiction.⁸² The Federal Interpleader Act, the source of the statutory interpleader action, is based exclusively on diversity of citizenship jurisdiction.⁸³ The Act requires that at least two parties to a suit be citizens of different states.⁸⁴ In a suit between an estate and state taxing officials, a problem arises. It has long been established that a state is not a citizen for purposes of diversity jurisdiction.⁸⁵ Consequently, the estate must find some means of suing the taxing agent as an individual.

Whether a state official or the state is the proper party defendant to a suit normally depends on whether the state is the real party in interest. Generally, the state is considered to be the real party in interest when the relief sought will inure to the benefit of the state alone or when the weight of a judgment will fall on the state.⁸⁶ Actions based on the collection of taxes have been held to involve the state as the real and only beneficial party in interest.⁸⁷ Consequently, based on general principles, an interpleader action between an estate and two states would fail for lack of jurisdiction.

One can consider, however, whether diversity jurisdiction can be established by an application of the *Ex parte Young* doctrine,⁸⁸ so that a taxing official can be sued as the real party in interest if he acts unconstitutionally.⁸⁹ Several courts have held that the analyses required under the eleventh amendment and under diversity of citizenship are distinct.⁹⁰ One

81. *Lummi v. White*, No. A-78-CA-148 (W.D. Tex., judgment entered July 27, 1979).

82. *Id.*, slip op. at 4.

83. 28 U.S.C. § 1335 (1976).

84. *Id.* This section provides in part that: "The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader . . . if (1) Two or more adverse claimants, of diverse citizenship . . . are claiming or may claim to be entitled to . . . money or property . . ." Thus, only minimal diversity is required under the Federal Interpleader Act. *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523 (1967).

85. Annot., 6 A.L.R. Fed. 615, 619 (1971); see cases cited in Annot., 147 A.L.R. 786, 787 (1943).

86. See cases cited in Annot., 6 A.L.R. Fed. 615, 623 (1971). For a discussion of factors considered in determining who is the real party in interest, see Annot., 6 A.L.R. Fed. 615, 625-40 (1971); Annot., 147 A.L.R. 786, 796 (1943). The names of the parties appearing in the pleadings is not conclusive on the question of who is the real party in interest. See cases cited at Annot., 147 A.L.R. 786, 795 (1943).

87. See Annot., 6 A.L.R. Fed. 615, 654 (1971); Annot., 147 A.L.R. 786, 797 (1943).

88. See notes 45 & 46 *supra* and accompanying text. Jurisdiction in *Ex parte Young* was not based on diversity of citizenship, 38 U.S.C. § 1332 (1976), but on a federal question, 28 U.S.C. § 1331 (1976). See *Ex parte Young*, 309 U.S. 123, 145 (1908).

89. This argument was attempted without success in *Lummi v. White*, No. A-78-CA-148 (W.D. Tex., judgment entered July 27, 1979). The court, relying on *Worcester*, found that the taxing officials were acting constitutionally and therefore the *Ex parte Young* doctrine could not be implemented. *Id.*, slip op. at 5.

90. *National Mkt. Reports v. Brown*, 443 F. Supp. 1301, 1305 n.7 (S.D.W. Va. 1978);

federal district court, however, has stated that the analyses, while distinct, often overlap so that if a state agency is not considered to be the state for eleventh amendment purposes, it is usually held to be a citizen for diversity purposes.⁹¹ Under the principle enunciated by this court, state officers acting unconstitutionally arguably can be sued as citizens for diversity purposes because under the eleventh amendment, *Ex parte Young* would operate to separate the officers' actions from those of the state.

The few courts that have considered directly whether a suit alleging unconstitutional acts by state officers is against the state or against the officers as individual citizens have not been in agreement. Two federal district courts have stated that such a suit would be against the individual officer.⁹² A federal district court and a state court, however, have rejected the materiality of *Ex parte Young* in a diversity of citizenship analysis.⁹³ Consequently, whether the *Ex parte Young* doctrine may operate in a diversity of citizenship context is an unsettled question. The recent attacks upon diversity jurisdiction itself could affect a court's willingness to extend diversity jurisdiction through application of the *Ex parte Young* doctrine.⁹⁴ On the other hand, the continuing problem of gaining judicial review over multiple death tax claims based on domicile could motivate a court to find that a tax official who acts unconstitutionally can be sued in his individual capacity for purposes of diversity of citizenship jurisdiction.⁹⁵

S.J. Groves & Sons v. New Jersey Turnpike Auth., 268 F. Supp. 568, 571 (D.N.J. 1967); DeLong Corp. v. Oregon State Highway Comm'n, 233 F. Supp. 7 (D. Ore. 1964), *aff'd*, 343 F.2d 911 (9th Cir.), *cert. denied*, 382 U.S. 877 (1965); see *Weyerhaeuser Co. v. State Roads Comm'n*, 187 F. Supp. 766 (D. Md. 1960).

91. *S.J. Groves & Sons v. New Jersey Turnpike Auth.*, 268 F. Supp. 568, 571 (D.N.J. 1967).

92. *Ohio ex rel. Senev v. Swift & Co.*, 270 F. 141 (6th Cir.), *cert. denied*, 257 U.S. 633 (1921), *appeal dismissed*, 260 U.S. 146 (1922); *State Life Ins. Co. v. Daniel*, 6 F. Supp. 1015 (W.D. Tex. 1934). See also *Riley v. Worcester County Trust Co.*, 89 F.2d 59 (1st Cir.), *aff'd*, 302 U.S. 292 (1937).

93. *National Mkt. Reports v. Brown*, 443 F. Supp. 1301, 1305 n.7 (S.D.W. Va. 1978); *Commonwealth v. Norman*, 249 Mass. 123, 144 N.E. 66 (1924).

94. ALI, *STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS* § 1302 (1969); Burger, *Annual Report on the State of the Judiciary*, 62 A.B.A.J. 443, 444 (1976) (The Supreme Court Chief Justice stated: "[D]iversity cases have no more place in the federal courts in the second half of the twentieth century . . . than overtime parking tickets or speeding on the highways simply because the highway is federally financed." (footnote omitted)); Currie, *The Federal Courts and the American Law Institute*, 36 U. CHI. L. REV. 1, 4-6 (1968); Rowe, *Abolishing Diversity Jurisdiction: Positive Side Effects and Potential for Further Reforms*, 92 HARV. L. REV. 963 (1979).

95. Justice Stewart, in *California v. Texas*, 437 U.S. 601, 608 n.10 (1978), suggested that a possible barrier to an interpleader action to determine domicile for tax purposes is the Tax Injunction Act, 28 U.S.C. § 1341 (1976). The Act provides that: "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." Justice Stewart concluded that the Act would preclude a federal interpleader action because a state that does not recognize an earlier determination of domicile by a sister state is not affording an estate a plain, speedy, and efficient remedy. See *Annot.*, 17 L. Ed. 2d 1026 (1967), for a review of the judicial constructions of the statute.

IV. CONCLUSION

The search for a comprehensive solution to the problem of multiple death tax liability continues unabated. While the states have the power to resolve the problem through judicial or legislative channels, they have not exercised this power effectively. The one potential means of avoiding double taxation that is within the estate's control was barred in *Worcester County Trust v. Riley*. Recently, however, four Supreme Court Justices stated that *Worcester* has been eroded, basing their conclusion on an unduly liberal reading of *Edelman v. Jordan*. Consequently, *Worcester* remains a vital force unless an alternative ground for modifying its result is developed. A basis for modifying *Worcester* arguably may be derived from the principles enunciated in *Western Union Telegraph v. Pennsylvania*. Even if this analysis is accepted, however, so that the eleventh amendment no longer bars an interpleader action by an estate, the requirements of diversity of citizenship jurisdiction pose an additional barrier. Consequently, despite the suggestion of four Supreme Court Justices, access by an estate to federal district court is not yet a reality.

