

Book X.
Title XXXVI.

Concerning taxes on gifts (of curial property).

10.36.1. Emperors Theodosius and Valentinian to Apollanius, Praetorian Prefect.

From the burden of the (annual) tax of four siliquae, which is levied on gifts of land only and not on human beings nor on movable things, are exempted relatives in the ascending or descending line, though they are not curials; so that, if a father, grandfather or great-grandfather leaves any of his possession to a son, grandson, great-grandson, daughter, granddaughter, or great-granddaughter - and it makes no difference whether they are married to curials or not - either by a last will or as a gift while living, the foregoing tax shall not be assessed. So, too, if persons in the descending line, leave any property in the foregoing manner, to persons in the ascending line in the degree of relationship above mentioned, the gift shall not be subject to the accession of a burden; for a gift to persons so closely related is like a payment of debt naturally owing by them. 1. We ordain that this law shall also apply when persons related in the foregoing manner inherit any property from a person who died intestate; for such succession is in the nature of a payment of a debt rather than a gift, and, though the decedent made no gift of his property while living, it is acquired by the very fact of relationship. 2. But others, though somewhat related to the donor, shall not receive land belonging to a decurion as a gift without payment of the foregoing tax, unless, perchance, the recipient is himself a decurion of the same city, in which event, he shall, though classed as a stranger among heirs, receive the gift made to him exempt from the tax; for when the personal status is not changed, the status of the property should not be changed. 3. Property received as a gift, and subject to the burden of the aforesaid tax, shall only include such property as is received by anyone as an inheritance, legacy, or trust, or as a gift in contemplation of death, or under the provisions of a last testament. 4. So, too, a gift between the living, made through sheer liberality, should bear the same name and burden. But if a future father-in-law makes a gift because of the contemplated relationship to a woman betrothed to a son, grandson, or great-grandson, or if a parent endows a daughter, granddaughter or great-granddaughter, whether marrying a curial or a stranger, although in the course of events the person to whom the gift is made turns it to gain, such gift shall not be considered a gift within the meaning aforesaid, and shall not be subject to the burden of the tax. For it would not be just that marriage, burdened as it is by so many and such great difficulties, should have others added thereto. 5. But the property which in the cases mentioned has been given as a gift of the nature contemplated, remains subject to said tax, though it may be transferred by the donee by sale or other contract. If the grantee receives the property knowing it to be so burdened, he has no one but himself to blame, and if he did not know it, he must look after his own interest. On the other hand,¹

¹ [Blume] This provision, commencing with "on the other hand," is obscure. It is attempted to be elucidated in note to German translation of this law. The subsequent provision should be considered in determining its meaning. That provided that if a curial acquired any property in a trade or business transaction, and he subsequently willed it or made a gift of it in contemplation of death, or if it fell to anyone on intestacy, it should be

if a contract, in its beginning, escapes the name of a gift (within the meaning aforesaid), he will escape the burden of said tax, although subsequently someone may acquire the property as a gift. 6. For the occasion of a merger does not arise, if subsequent events are in conformity with the beginning of the title, unless, perchance, the property of a decurion which he acquired through some trading, is transferred to another either by a last testament, on intestacy or by a gift among the living; for in such case, when it has once become the property of the decurion, it is justly subject to the condition and burden of a gift, without regard to the former title.

Given at Constantinople March 9 (442).

C. Th. 22.2.

Note.

This is another of those laws designed to aid the decurions, and to retain as much of the property belonging to a curial as possible within the curia. As early as 384 A.D., the elder Theodosius had promulgated a constitution that all persons, not decurions who would receive real property from a decurion as a gift - either as a gift among the living, or after death under a testament or otherwise - should pay an annual tax of two siliquae on each tax-unit. C. Th. 12.1.107; see also C. Th. 12.1.123. A siliqua was one twenty-fourth of a solidus. In 428 A.D., Theodosius the Younger enacted a law that all those non-decurions who should receive such a gift should annually pay a tax of four siliquae or about fifty cents for each tax-unit. C. Th. 12.4.1. No exceptions were made for any relatives. The same emperor, in 443 A.D., enacted the law in substantially the form now shown in C. 10. 36, by which he left the former law in force by exempted certain relatives therefrom, and making the tax payable only on tax-units assessed against land, exempting slaves and unfree serfs (*capita humana*) and animals. That unfree serves were included in the term "*capitatio humana*" is fully shown by Leo, Capitatio Humana und Captatio Plebeia; see especially p. 84. If property of a curial fell to the church or charitable organization, the tax here mentioned was not imposed. Nov. 1.31, c. 5; C. 1.2.22.

subject to the tax provided in this law. The doubtful portion of this law, above mentioned also probably had reference to some trading of the curial. Inasmuch as the instant law exempted movable property and slaves and serfs bound to the soil, and only made land subject to the tax provided by this law, the foregoing doubtful portion probably contemplated only trade in land. Now at the time of the enactment of this law, a curial could sell his land, provided it was done under a decree, and he could exchange his land without such decree. C. 10.34.3. Hence, a contract not in contravention of that law was not a gift, subjecting the land to the tax, although - which seems to be the meaning - the person who obtained the land under such contract subsequently made a gift of it, for no occasion for a merger could arise in such case - in other words, the gift would have nothing to do with the contract. Scott translated the provision as: "On the other hand, if an agreement of any kind was not, in the beginning, to be classed as a gratuitous transaction, and the title to the property should afterwards vest in anyone under a lucrative title, it will not be subject to the above-mentioned imposition." 7 [15] Scott 134 (as C. 10.35.1). [Blume included in his list of Book X's "difficult points" C. 10.36.1.5 and 6.]