PELLEGRINO, J., dissenting. I agree with parts III and IV of the majority opinion. I respectfully disagree, however, with the majority's decision in parts I and II as it relates to the taxation of the inter vivos gifts of the Bunting & Lyon stock and real estate.

I cannot agree with the majority's conclusion that the portion of the tax clause in the will that provides that ''any estate, succession, inheritance, death or transfer tax arising by reason of or in connection with my death'' is confusing and is ''latently ambiguous.'' I fail to see any ambiguity in that provision of the will and therefore I think that the trial court improperly permitted extrinsic or parol evidence to determine the decedent's intent as to that clause. I believe that the majority improperly affirmed the trial court's finding that the decedent's intent as to the allocation of taxes in connection with the inter vivos transfers was contrary to his intent expressed in his will.

My disagreement with the majority stems from the fact that before the court can consider any extrinsic evidence to vary the terms of a will, it must determine that there exists either a latent or patent ambiguity. *Hoenig* v. *Lubetkin*, 137 Conn. 516, 519, 79 A.2d 278

(1951). Our review of this issue is plenary. *Issler* v. *Issler*, 250 Conn. 226, 235–36, 737 A.2d 383 (1999).

The majority agrees that the language of the tax clause in the will standing alone is not ambiguous. The majority contends, nevertheless, that Article I of the will contains a latent ambiguity, which it defines as an ambiguity arising from '' 'extraneous or collateral facts which make the meaning of a written instrument uncertain although the language thereof be clear and unambiguous.' '' The majority concludes that because no person who participated in the drafting of the will envisioned the need to deal with the gift of stock and property given by the testator to the defendant prior to the execution of the will, a latent ambiguity was created.

The majority relies on *Connecticut National Bank & Trust Co.* v. *Chadwick*, 217 Conn. 260, 585 A.2d 1189 (1991), in support of its conclusion that the phrase in the tax clause previously mentioned is latently ambiguous. That case, however, is easily distinguished from the present one. In *Connecticut National Bank & Trust Co.*, the word in the will that was found to be ambiguous was the reference to ''grandchild,'' and the problem and uncertainty in that case was whether ''grandchild'' included the adopted children of the testator's son. Id., 261–62. With this uncertainty existing, the trial court was permitted to consider extrinsic evidence to resolve the latent ambiguity. Id., 270. The majority relies on *Stearns* v. *Stearns*, 103 Conn. 213, 221, 130 A.2d 112 (1925), for the proposition that ''[w]e admit parol evidence of the meaning of the testator in the use of some *term or word* in a will when the meaning is equivocal or ambiguous.'' (Emphasis added.) There is nothing ambiguous or uncertain in the phrase ''any estate, succession, inheritance, death or transfer tax arising by reason of or in connection with my death . . . .'' Only after considering extrinsic evidence that at the time the will was drafted there was no discussion about the taxability of the inter vivos gifts did the majority conclude that the tax clause was capable of two meanings and was, therefore, latently ambiguous. In my estimation, this reasoning puts the cart before the horse. I believe that the majority should have concluded not only that the language was not patently ambiguous, but also that it was not latently ambiguous, and that it should have reversed the judgment of the trial court for those reasons.

The majority did, however, find that the portion of the tax clause that provides ''without apportionment or contribution'' is clear and unambiguous as to the assets passing under the will, and I agree. Because the language was not ambiguous, the majority reverses the trial court's decision, but only as to those assets passing under the will. I find the language of the entire tax clause to be clear and unambiguous and, therefore, I would reverse the decision of the trial court and order

that all the taxes be paid as an expense of administration as provided by the decedent in his will.

Accordingly, I respectfully dissent.