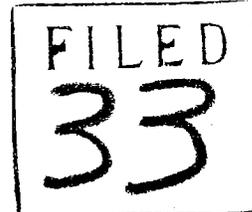


STATE INHERITANCE TAXES:

Inheritance tax  
To be paid by life tenant and not  
contingent remainderman, when.

FILED 33

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Mr. C. L. Gillilan  
Assistant Supervisor  
Inheritance Tax Unit  
Jefferson City, Missouri

Dear Sir:

This is to acknowledge receipt of your recent letter requesting a legal opinion of this department regarding the proper assessment of state inheritance taxes in connection with the administration of the estate of Irving W. Kurtz, deceased, now pending in St. Louis County Probate Court. Reference is made to the letter of John F. Maloney, attorney, containing facts upon which the opinion request is based. Said letter reads as follows:

"I wrote to you recently in regard to this matter, but presume you did not receive my letter.

"I have been appointed to appraise the State Inheritance Tax in the above estate of Irving W. Kurtz, deceased.

"The will of the deceased provides a life estate for the widow in assets of the value of \$212,429.18. The remaining corpus, after her life estate, to be paid over to such persons as she may designate and appoint in her last will and testament. Upon her death, if she shall fail to exercise the power of appointment, the remaining corpus of the trust shall be added to and become a part of the residue of decedent's estate.

"It is my contention that the remainder, after the widow's life estate, should be added to the residue for inheritance tax purposes. The attorney for the estate contends that the full amount of the trust assets should be taxed to the widow.

"Kindly advise me at your earliest convenience, as to how this life estate should be taxed."

Upon referring to Article 8 of the Will, it appears that a trust was created, the assets of which consist of certain corporate stocks and certain real estate. The net income from this trust may be used for the benefit of the widow during her lifetime with the power to name (by her Will) those remainder-men who shall receive any corpus remaining in the trust property at her death, but in the event she should fail to exercise such power of appointment, then and in that event, such unapportioned corpus shall be added to and become a part of the residuary estate.

In the management of the trust property the trustees have been given very broad discretionary powers and the judgment of the trustees in such matters shall be conclusive on all persons. The trustees have also been given power to encroach upon the corpus of such property if in their judgment such action is necessary to enable them to obtain funds with which to provide for the comfort, support, maintenance and welfare of the widow in consideration of her station in life.

Article 14 of the Will reads as follows:

"I direct that my executors shall pay all inheritance, estate, succession and legacy taxes to which my estate or the transfer of any property hereunder may be subject and that such taxes be not deducted from any legacy herein provided and that the same be charged and paid out of my residuary estate under Article Ninth."

The question for determination in this opinion request is whether the full amount of the trust assets should be taxed to the widow or whether the remainder after her life estate shall be added to and become a part of decedent's estate for inheritance tax purposes.

Section 597, Mo. R.S.A., 1939, as amended Laws of 1943, p. 307, provides in part as follows:

"\* \* \* When the property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are wholly dependable upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the lowest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith by the executor, administrator, or trustee out of the property transferred; provided, however, that on the happening of any contingency or condition whereby the said property or any part thereof is

transferred to a person or corporation, which under the provisions of this article is required to pay a tax at a higher rate than the tax imposed, then such transferee shall pay the difference between the tax imposed and the tax at the higher rate, and the amount of such increased tax shall be enforced and collected as provided in this article; Provided, further, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this article, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article. Such return of overpayment shall be made in the manner provided by section 584 of this article, upon the order of the court having jurisdiction. Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estate for purposes of taxation, upon which said estates in expectancy may have been limited. Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting."

From correspondence attached to the opinion request it appears that the testator has provided a life estate in assets of the estate of the value of \$212,429.18. While other specific devises and bequests have been made by Articles 1 to 7 inclusive of the Will, prior to the trust created for the widow in Article 8, it appears from the description of such devises and bequests that such devises and bequests constitute only a small part of the total value of the assets of the estate while the value of the widow's life estate constitutes a major portion of the total value of such assets.

There are no indications in the Will that the contingent remainder-men to be named by the widow are to receive anything aside from the residue from the trust after the widow's life estate, or, in the event the widow fails to name contingent remainder-men, the only large sum ever likely to be paid into the residuary estate is the residue from the trust fund. From the residuary estate the

inheritance taxes are to be first paid and then any balance of funds remaining are to be distributed among the legatees and devisees named in the Will. Therefore, it appears that any interest in the estate to be received by the contingent remaindermen, the residuary legatees and devisees, will depend upon whatever funds, if any, are available for that purpose remaining in the trust fund after the widow's life estate. In the event the trustees expend the corpus of the trust for the widow's benefit, the remaindermen would receive no property and of course no inheritance taxes against each share could be paid from such shares. Likewise, no funds being paid into the residuary estate, the taxes could not be paid from that fund even though directed by the Will.

While it is not usual to tax the life estate, yet because of all the circumstances noted above and in view of the fact that the widow has been given unusual powers and privileges in the enjoyment of the income of the trust, and that sufficient funds of the corpus of the trust are now available from which the state inheritance taxes may be paid, and that if such taxes are to be postponed to a future date to collect same from contingent remaindermen or from the residuary estate, it is doubtful if the taxes are ever paid, it is our thought that the full amount of the trust assets should be taxed to the widow. That under the provisions of Section 597, supra, for the taxing of the transfers of contingent remainders it is within the meaning of that section to tax life estates along with other classes of transfers referred to. That in such an instance the taxing of the widow's life estate would be at the lowest possible rate provided by statute upon the happening of the condition or contingency, and would be payable forthwith by the trustees. Postponement of the taxes until some future date when the taxes may be assessed and paid out of some contingent interest, or from some particular fund is not required by the statute, and it is our thought the taxes should be paid from the widow's interest in the trust at once.

In referring to legal authority to sustain our position that the life tenant should be required to pay state inheritance taxes rather than remaindermen or others having a contingent future interest, we desire to call attention to some New York cases we believe to be in point. New York statutes with reference to the taxing of the transfer of contingent interests are similar to those of Missouri, except that the rate provided by New York statutes shall be at the highest possible rate upon the happening of the condition or contingency, whereas under present Missouri statutes the rate shall be at the lowest possible rate upon the happening of the condition or contingency.

In referring to the following cases our thought has been to call attention to taxing of the life estate only, since references made to the rate of taxation in the opinions do not apply, nor were not intended to be applied to the present case.

In the case of *In the Matter of Zborowski*, 213 N.Y., 1.c. 116, the court said:

"The different statutes hereinbefore referred to contain evidence of a constant effort of the legislature to enlarge the class of transfers immediately taxable upon the death of the transferor. The question of the legislature's power in that regard was set at rest by the decision of this court in Matter of Vanderbilt (supra). In one aspect it may be unjust to the life tenant to tax at once the transfer, both of the life estate and of the remainder though contingent, and it may seem unwise for the state to collect taxes which it may have to refund with interest, but those considerations are solely for the legislature, who are to judge whether they are more than offset by the greater certainty which the state thus has of receiving the tax ultimately its due under the statute. However unwise or unjust it may seem in a particular case like this for the state to collect the tax at the highest rate when in all probability the remainder will vest in a class taxable at the lowest rate, it is the duty of this court to give effect to the statute as it is written."

Also in the case: In the Matter of Vanderbilt, 172 N.Y. in construing Section 230 of the Transfer Tax Law as effecting the payment of the tax upon contingent remainders and holding the tax was payable forthwith out of property transferred, the court said at l.c. 72:

"It seems to me clear that the legislature by this amendment intended to change the law upon the subject and to make the transfer tax, upon property transferred in trust payable forthwith. The tax is not required to be paid by the conditional transferee, for, by the provisions of the statute, it is to be paid 'out of the property transferred.' So that whoever may ultimately take the property takes that which remains after the payment of the tax. This amendment makes provision for property transferred in trust. It, therefore, contemplates defeasible transfers as well as absolute transfers."

#### CONCLUSION

It is the opinion of this department that state inheritance taxes relating to the full amount of the assets of a trust in which a widow has been given a life estate by the Will of her husband should be assessed against and paid out of the interest of the widow.

Such taxes should not be assessed against, nor paid out of the interest of contingent remainder-men, nor from the residuary estate even though provided so by the Will. The widow has been given extraordinary powers in the naming of contingent remainder-men to take over any corpus remaining in the trust after her life estate and trustees have also been given unusual discretionary powers by the Will to encroach upon the corpus of the trust to any extent for the benefit of the widow. Such circumstances may either intentionally or unintentionally on the part of the trustees and widow result in no funds remaining in the trust after the widow's life estate to be passed on to the contingent remainder-men if named, or to the residuary legatees if the widow fails to name such remainder-men. In either event it would be impossible for the portion of the inheritance tax charged against the interest of each remainder-man to be paid out of his interest and it would also be impossible for any taxes to be paid from the residuary estate, and that no taxes would ever be paid to the state in either instance. Since the widow is the only person who may under any of the circumstances mentioned, benefit from either the income or corpus of the trust, and since the trustees are now the only persons who now have or may ever have sufficient trust funds of the estate in their possession from which the taxes can be paid, and also have sufficient legal authority to pay said taxes, it seems equitable to us that the inheritance taxes for the entire trust assets should be paid from the widow's interest, even though that interest is a life estate. That it is our further opinion that the taxing of the widow's life estate is proper and is within the meaning of Section 597, Mo. R.S.A. 1939, as amended, Laws of 1943, p. 307, providing for the taxing of the transfers of contingent remainders and that under said statutory provisions, it is unnecessary for the state of Missouri to await a future date until the inheritance tax may be assessed and paid out of the interest of contingent remainder-men if and when such interests may be ascertained, or to be paid from the residuary estate of testator if and when such estate should ever come into existence.

Respectfully submitted,

PAUL N. CHITWOOD,  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General