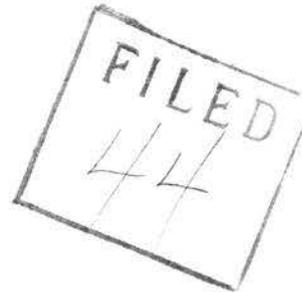


May 9, 1933.



Mr. Arch A. Johnson,  
Attorney at Law,  
Landers Building,  
Springfield, Missouri.

Dear Mr. Johnson:

This department is in receipt of your letter of April 21 in which you request a ruling from this office as to the taxation of a will. Your letter is as follows:

\*\*\*The 28th paragraph of her will is as follows: 'I give and bequeath to David and Dora Schwab, of Springfield, Missouri, the sum of Five Thousand Dollars'.

Dora Schwab named in said bequest is a niece of the testatrix and David Schwab is her husband, related to testatrix only by marriage as stated.

Question: How should this bequest be taxed?  
\*\*\*

I do not believe there is any question but that the above bequest created an estate by the entirety in David and Dora Schwab. In the case of *Lomax v. Cramer*, 202 Mo. A. 365, the Court had up for construction a bequest "to my brother, D.A. Robinson, and wife \$5,000.00". In holding the bequest to create an estate by the entirety, the Court said:

"There is no question but that in this state when a husband and wife take an estate by the entirety they hold not as separate individuals and by moieties but as one person each holding the whole of it. For this purpose they are a unit and upon the death of either the entire estate belongs to the survivor. It is also well established that there can be an estate by the entirety in personal as well as in real property. (*Ryan v. Ford*, 151 Mo. App. 689; *Johnston v. Johnston*, 173 Mo. 91). In such an estate the husband and wife each owns, not a part or a separable interest, but the whole; and therefore, the death of

one leaves the other still holding the whole as before with no one to share it. (Wilson v. Frost, 186 No. 311, 319; Frost v. Frost, 200 No. 474, 480)."

For further authority see Goldberg Plumbing Company v. Taylor, 209 No. A., l.c. 101.

Section 572 R.S. of Mo. 1929 provides as follows:

"When property, or any beneficial interest therein or income therefrom passes by any such transfer where the amount of property, interest or income shall exceed in value the exemption hereinafter specified and shall not exceed in value twenty thousand dollars, the tax hereby imposed shall be as follows:

\* \* \* \* \*

When the person or persons to whom such property or any beneficial interest therein passes shall be in any other degree of collateral consanguinity than as hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic, association, institution, or corporation, at the rate of five per centum of the clear market value of such property or interest therein. \* \* \* "

Therefore, it is the ruling of this office that the bequest be taxed at the rate of five per cent with no deductions.

Yours very truly,

JOHN W. HOFFMAN, Jr.,  
Assistant Attorney General

APPROVED:

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Attorney General

JWH:AH