

597-595 R S 7/19/33

LIFE ESTATE: Taxation of.

July 19, 1933

FILED
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Hon. Lewis B. Hoff
Prosecuting Attorney
Cedar County
Stockton, Missouri

Dear Sir:

This department is in receipt of your letter of July 17, 1933, in which you make the following request:

"J. W. Craig died leaving a widow and no children. His estate is appraised at \$17,000.00. His will provides a life estate in all his property for his wife, OR UNTIL SHE REMARRIES, in event of her death or remarriage, the estate passes to his three brothers and sisters." * * *

QUESTION: Does the provision that remarriage of the widow affect the use of the mortality tables in determining the value of a life estate and the amount of inheritance tax to be paid by the remainder of the estate? * * *

Section 597 R. S. No. 1939, provides in part as follows:

" * * 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."

In the case of *In re Plum's Estate*, 75 N. Y. S. 940, testatrix devised her residuary estate in trust, the income to be paid to her sister Mercy Plum, until her marriage or death unmarried, then the fund to go to the brother of the testatrix and her sisters S. & M. if living. The court held:

"Mercy M. Plum is properly taxable on an estate for life, although, by her own act she may marry, and thus cut down her life estate to one for a term of years only." * * *

Section 230 of the Tax Law provides as follows:

"* * * 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." * * *

This holding of the court is upheld by Gleason and Otis in their work "Inheritance Taxation", p. 254, wherein it is said: 497

"Whether the life estate be absolute or defeasible, as by remarriage, or per autre vie, whether subject to dower and curtesy, or whether it is coupled with a power to invade the principle or power of appointment, or limited by time, as surviving to a certain age; it is, in the contemplation of inheritance tax law, a present right presently valuable and taxable." * * *

Section 595 R. S. No. 1939, provides in part as follows:

"The value of every future or contingent or limited estate, income, or interest, shall, for the purposes of this article, be determined by the rule, method, and standards of mortality and of value that are set forth in the actuaries' combined experience tables of mortality for ascertaining the value of policies of life insurance and annuities, and for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per centum per annum." * * *

Therefore, it is the opinion of this department that the provision in the will of J. W. Craig that the life estate of his widow shall cease upon her remarriage does not affect the use of mortality tables in determining the value of the life estate and the amount of inheritance tax to be paid by the remainder of the estate, since under Section 597 R. S. No. 1929, an estate for life subject to be divested by the act or omission of the legatee or devisee shall be taxed as if there were no possibility of such divesting.

Very truly yours,

JOHN W. HOFFMAN, JR.,
Assistant Attorney General.

APPROVED:

ROY McKITTICK,
Attorney General.