

TAXATION (INHERITANCE TAX): When a testator leaves realty to a husband and wife subject to a life interest in two individuals and the will provides that the grantees of the life interest must pay rent in a specified sum to the remainder interest, under Section 145.200, RSMo 1959, the value of the life interest is reduced by the rent payments and the value of the remainder is increased by the same amount.

OPINION NO. 467

November 4, 1969

Mr. James E. Schaffner,
Acting Director of Revenue
Department of Revenue
Jefferson Building
Jefferson City, Missouri



Dear Mr. Schaffner:

This is in reply to your request for an official opinion of this office concerning the Missouri inheritance tax that should be assessed in a case when property was left to a husband and wife subject to a life interest in two individuals, the will providing that the individuals who were left a life estate would pay rent in a specified sum to the husband and wife.

Section 145.020, RSMo 1959, imposes a tax upon the transfer of any property, real, personal, or mixed, or any interest therein or income therefrom in trust or otherwise, to certain persons upon the death of the donor in certain enumerated cases.

In this case realty was devised to one couple, with a life interest in another couple, and, thus, tax is due under Section 145.020. In question is the value of the two gifts for determining the inheritance tax in view of the fact that the will requires that the grantees of the life estate pay rent to the remaindermen.

Section 145.200, RSMo 1959, provides for the valuation of life estates and reads in part as follows:

"When any property, interest therein or income therefrom belonging to any estate in course of administration, shall pass or be limited for the life of another or for a term of years, or to terminate on expiration of a certain period, the value of

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property at the date of death so passing shall be determined by appraisal for the purpose of taxes under this chapter immediately after the death of the decedent and the value of said life estate, term of years or period of limitation, shall be valued according to mortality tables, using the interest rate or income rate of five per cent, and the value of the remainder in said property so limited shall be ascertained by deducting the value of the life estate, term of years or period of limitation from the clear market value of the property so limited * * * ".

You have stated to us that the real estate is valued at \$4,500 and that using the formula provided for in Section 145.200, the value of the life estate is \$1,406.48. Normally, then, the tenants with a life interest would pay a tax based on the value of \$1,406.48 and the remaindermen would pay a tax based on the value of \$3,093.52. However, since the tenants with a life interest must pay \$35 per month rent, does this reduce the value of the life estate? Also, what is the effect on the value of the remainder?

The Missouri inheritance tax is a tax on the right to receive or take property and not on the right to transfer property after death, and hence the incidence of the tax falls on the recipient of the property and the amount of the tax is determined by the net value of the property received by the beneficiary. In re McKinney's Estate, 351 Mo.718, 173 S.W.2d 898,900-901.

Since the tenants given a life interest must pay rent for the realty, it is our opinion that the net value of the life estate is determined by deducting such rent payments. See In re Hart's Estate, 3 Ohio App.2d 129, 209 N.E.2d 636; and Hagy v. Kelly, 135 N.J.Eq.436, 39 A.2d 386.

This being the case the value of the remainder interest is then increased by the same amount since the statute directs that the value of the remainder interest is determined by deducting the value of the life estate.

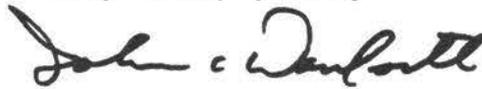
CONCLUSION

It is the opinion of this office that when a testator leaves realty to a husband and wife subject to a life interest in two individuals and the will provides that the grantees of the life interest must pay rent in a specified sum to the remainder interest, that under Section 145.200, RSMo 1959, the value of the life interest is reduced by the rent payments and the value of the remainder is increased by the same amount.

Mr. James E. Schaffner

The foregoing opinion, which I hereby approve, was prepared by my assistant Walter W. Nowotny, Jr.

Very truly yours,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in black ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General