INHERITANCE TAXATION: Proper method to be employed in assessing inheritance tax against legacy to husband and wife.

2-19

February 18, 1936.

FILED
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Hon. G. H. Fry,
Judge of Probate Court,
Vernon County,
Nevada, Missouri.

Dear Sir:

This department is in receipt of your request for an opinion as to the following:

> "I am writing you for an opinion as to whether there is an inheritance tax due the state in this estate of W.M. Thompson, deceased.
>
> "The inventory shows $2,011.60 of personal property and real estate of $15,300.00, or a total of $17,311.60 in the estate.
>
> "I am enclosing you a copy of the will so you may see the interest of each beneficiary under the will. It is in regard to the bequests to the married daughters and their husbands."

Section 3 of the Will of W.M. Thompson, deceased provides:

> "All the rest, residue and remainder of my estate, real, personal and mixed, wheresoever situate, of which I may die seized or possessed, or to which I may be entitled at the time of my decease, I give, devise and bequeath to Geraldine Isabelle Penny and her husband, Fred Edwin Penny, a daughter and son-in-law, Emma Margaret Mullies and her husband, Charles Otis Mullies, a daughter and son-in-law, William M. Thompson, Jr.,

a son, and Gertrude Willene Thompson, a daughter, to have and to hold the same to them, share and share alike, except the said two married daughters and their said husbands shall be regarded as taking but the one share each between them, absolutely and forever."

This department, in an opinion rendered to the Honorable Thomas A. Walker on November 8, 1934, has ruled that where property is left to a husband and wife, both are necessary in order to make one legatee; in other words, when property is left to a man and his wife, they take as tenants by entirety and become in contemplation of law one person with a dual body and consciousness and therefore of necessity the inheritance tax must be assessed against this entity by a consideration of the exemptions and rates of tax applicable to both parties necessary to make up the entity.

In the case now before us, the total value of the estate is $17,311.60, which said amount must be, according to Section 3 of the will, divided into four equal shares, or $4,327.90 per share. In the case of the two shares passing to the two daughters and their husbands, the exemptions of both husband and wife must be added together and the balance taxed at 2%, this being the mean rate between the rate of tax assessable against the husband and the rate of tax assessable against the wife. Since the share passing to each daughter and her husband is but $4,327.90 and the combined exemptions of each amount to $5500, there could be no tax assessable by reason of these transfers.

Likewise, in the case of the property passing to the unmarried daughter and the unmarried son, the exemption of $5,000 which each is allowed by law is greater than the value of the property passing to them and therefore, there can be no tax on these transfers.

Respectfully submitted,

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

APPROVED:

ROY McKITTRICK,
Attorney General.

JWH:AH