

INHERITANCE TAX: Taxation of bequest to adopted dau,  
and husband.

September 20, 1933.



Hon. Forrest C. Donnell,  
Telephone Building,  
1010 Pine Street,  
St. Louis, Missouri.

Dear Sir:

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

"In an estate which I have for appraisal in re Missouri Inheritance Tax, the testatrix left an interest in certain real estate 'to my adopted daughter Laura Schmidt and her husband William Alois Schmidt.' I shall thank you to inform me whether or not an inheritance tax will be assessable against the husband of said adopted daughter, assuming that the value of said interest so devised is in excess of \$1,000.00. If a tax is assessable against him, please also inform me whether or not it is proper to assess him upon one-half of the value of the interest so devised to said devisees in said real estate."

I do not believe there is any question but that the above bequest created an estate by the entirety in Laura Schmidt and her husband William Alois Schmidt. In the case of Lomax v. Cramer, 202 Mo. App. 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 Mo. 311, 319; Frost v. Frost, 200 Mo. 474, 480)"

For further authority see Goldberg Plumbing Co. v. Taylor, 209 Mo. App., l.c. 101.

In view of the foregoing, Laura Schmidt and her husband, William Alois Schmidt, each and both own the whole estate during their joint lives, and upon the death of either, the survivor continues to own the whole estate. Each is seized of an indivisible entity so neither has a separate interest therein that can be alienated.

Therefore, it is the ruling of this office that the bequest be taxed at the rate of 3% with the statutory deduction of \$500.00 allowable to the son-in-law.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK,  
Attorney General

JWH:AH