

INHERITANCE TAX: TRUSTS:
LIFE ESTATE: HOW TAXED:

For the purposes of inheritance taxes a life estate must be valued according to mortality tables, not according to actual duration of life estate.

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Honorable John J. Kelly, Jr.,
First Assistant Circuit Attorney
For the City of St. Louis
Municipal Courts Building
St. Louis, Missouri

Dear Sir:

Your request for a legal opinion of this department has been received and reads in part as follows:

"The question proposed is as follows:

"What effect, if any, should be given to Sec. 145.240 R.S. Mo., 1949 pp 3, in computing a life estate for Missouri inheritance tax purposes under Sec. 145.200 R.S. Mo., 1949, when the life tenant dies within eleven months of the decedent's death and before the determination and assessment of inheritance tax?"

Section 145.240 RSMo 1949, reads as follows:

"1. Where any property shall after the passage of this chapter be transferred subject to any charge, estate or interest, determinable by death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this chapter in the same manner as though the person or corporation

beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

"2. When the property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are wholly dependable upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the lowest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this chapter, and such tax so imposed shall be due and payable forthwith by the executor, administrator, or trustee out of the property transferred; provided, however, that on the happening of any contingency or condition whereby the said property or any part thereof is transferred to a person or corporation, which under the provisions of this chapter is required to pay a tax at a higher rate than the tax imposed, then such transferee shall pay the difference between the tax imposed and the tax at the higher rate, and the amount of such increased tax shall be enforced and collected as provided in this chapter; provided further, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this chapter, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this chapter. Such return of overpayment shall be made in the manner provided by section 145.250, upon the order of the court having jurisdiction.

"3. Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or

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on account of any valuation theretofore made of the particular estate for purposes of taxation, upon which said estates in expectancy may have been limited. Where an estate for life or for years can be divested by the act or omission of the legatee or decisee it shall be taxed as if there were no possibility of such divesting."

Section 145.200 RSMo 1949, provides the method for the valuation of life estates, and when the tax on same is due. Said section reads as follows:

"When any property, interest thereon 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 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 and the tax on the transfer of the separate estate or estates, remainder or remainders or interest shall be immediately due and payable, to the director of revenue together with interest thereon and said tax shall accrue as provided in section 145.110 and remain a lien upon the entire property until paid; provided, that the persons, institutions, association or corporation beneficially interested in property chargeable with said tax may elect not to pay the same until they shall come into actual possession or enjoyment of such property, then in that case said person, association or corporation shall give bond payable to the state of Missouri, in a penal sum three times the sum or amount of taxes due upon such transfer, with such sureties as the probate court, or any other court having jurisdiction of the matter, may approve, conditioned for the payment of said tax and interest thereon from the date such tax is due at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, which bond

shall be executed in triplicate and one copy filed in the office of the probate judge of the proper county, one with the department of revenue and the other with the secretary of state; provided further, that every person, institution, association or corporation shall make and file with the probate court of the county a full verified return of said property, or interest therein, within one year of the death of the decedent, with the bond and sureties as above provided; and provided further, said person, institution, association or corporation shall renew said bond every five years after the date of the death of decedent."

Briefly stated, the facts upon which the opinion request is based are these:

A husband and wife entered into a trust agreement with the St. Louis Union Trust Company, under which agreement the trust company received certain personal property and was to pay the income therefrom to husband and wife as beneficiaries in equal shares for their lives. Upon the death of one of the beneficiaries, the survivor was to receive all the income, and upon the death of the survivor-beneficiary, the corpus of the trust fund, together with any accrued income thereon was to be paid to designated persons in certain proportions.

Other facts relating to the transaction, as well as the position taken by the inheritance tax appraiser of the widow's estate, in regard to the imposition of the inheritance taxes on her life estate in the income of the trust are given in a letter from an officer of the trustee-corporation to the inheritance tax appraiser, and reads in part as follows:

"The controversy that you and I are now having is concerned with the taxation of the life estate of the Widow, * * *."

"In the Trust Fund the Widow was given a life estate, with remainder over at her death to various relatives. Her attained age at the date of her husband's death was 81, and the factor which we used was 3.313 on a 5% interest basis. The Widow, unfortunately, died on September 15, 1951, which was 10 months and 23 days after her husband, and subject decedent, died.

"As I understand your position, you state that under Section 145.240 R.S. Mo 1949 pp 3, that

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since the tax has not already been adjusted and since the Widow's death has already occurred, that you should only charge her with the income for 10 months and 23 days and charge the remainder over to the relatives."

In view of the position taken in the matter by the inheritance tax appraiser, the inquiry of the opinion request resolves itself into the inquiry as to whether the provisions of Section 145.240, supra, are applicable and should be given effect in computing the value of the widow's life estate under Section 145.200, supra, that is, should the widow be taxed only on the amount of the trust income she received for 10 months and 23 days, up to the time of her death, or should she be taxed on the estimated value of her life interest in the trust income, under the provisions of the latter section.

Unfortunately, this proposition has never been passed upon by any of the appellate courts of Missouri, consequently in our research, it is necessary that we look to inheritance tax statutes of other states similar to those of Missouri, and to decisions of such other states interpreting said statutes.

We here call attention to the general rule for the taxation of life estates in most jurisdictions as given by Gleason and Otis in their work: "Inheritance Taxation," page 497, as follows:

"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."

Again we quote from page 505 of the same work, in which the basis for assessment of a life estate for inheritance tax purposes is given and which theory of taxation is fully in accord with that now prevailing under Missouri statutes. We quote as follows:

"The theoretical value of a life estate computed upon the mortality tables and rate of interest fixed by the State is the value at death of the testator, and not the actual duration of life, and it is the legal measure of the value of a life estate, although the life tenant only survived the testator a few months. *Howe v. Howe*, 179 Mass. 546; 61 N. E. 225.

"Though it might seem an injustice to tax the theoretical value of a life estate of a woman of thirty whose expectation of life is thirty-five years and whose interest in the fund is about three-fourths its entire amount at full value when she actually survives the testator only a few hours, the logic that a time must be fixed for valuation and that time is the death of the testator is immutable and has thus far been uniformly sustained."

(Underscoring ours.)

"The Supreme Court of Wisconsin reasons thus:

"The right to receive being the subject of inheritance taxation, the amount is regulated, primarily, by the value of the right. The right in the particular case has reference to the privilege to receive, for life, the yearly payments. There may be many payments, but the right is an entirety. That vested, subject to the burden on the transfer, as soon as the will was allowed. Clearly it could be valued, the transfer tax assessed thereon, and be wholly liquidated, if such be the legislative plan."

(Underscoring ours.)

Again in the case of Matter of Potter, 224 N.Y.S. 383, at l.c. 384, the court said:

"The decedent died September 23, 1926. The first ground of appeal is denied. Elzia J. Vaughn died one week subsequent to the decedent. The appraiser properly fixed the value of her life estate upon the expectancy as at the date of death of decedent and not upon the actual duration of her life * * *."

"Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full undiminished value when the persons entitled thereto shall come into the beneficial

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enjoyment or possession thereof, * * *."

It is true under the above facts that the estate of the widow in the entire income of the trust fund was one in expectancy, contingent and defeasible during her husband's life. In such instance the contingency was that she must survive her husband before she would be entitled to the income. However, upon the death of her husband, the widow became vested of a life estate in said property, and her interest therein was no longer contingent or defeasible within the meaning of the statute.

While it is true that no proceedings for the determination of the widow's tax had been taken during her life, it is not true that the taxation of her interest had been held in abeyance up until the time of her death within the meaning of the statute, or that any delay in the assessment and imposition of the tax was authorized by the statute.

Section 145.200, supra, is the section by which the method of taxation of the widow's interest is to be computed, and since the facts are not those coming within the meaning of Section 145.240, pp 3, supra, that portion of the statute is inapplicable, and is not to be considered in arriving at the taxable value of the widow's life estate under the provisions of Section 145.200, supra.

As noticed above, the right of the widow to receive the entire income from the trust fund was one to which she became entitled upon the death of her husband, and it was upon this right at that time, rather than the income that she actually received, that the taxes were due and payable at the lowest possible rate, as provided by paragraph 2, Section 145.240, supra. It is also noted that neither Section 145.200 or 145.240, supra, does not provide for any delay, nor does Section 145.200 authorize the payment of taxes on the right to receive anything less than the estimated value of the life expectancy; therefore, it is immaterial that the widow did not receive the total income for her life expectancy. She came into possession and enjoyment of taxable property upon the death of her husband within the meaning of inheritance taxing statutes, and decisions in Missouri.

In this connection we call attention to the definition of the terms "possession and enjoyment," used in inheritance taxing statutes, as given in the case of *In Re: Estate of Costello v. King*, 338 Mo. 673, in which the court said at l. c. 678.

"The words 'any person' as used means a person or persons lawfully entitled to possession and enjoyment. If so, the act provides for the imposition of the tax when the executrices of the estate of Mrs. Robison

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actually come into the possession and enjoyment of the property. As used, the word 'enjoyment' does not mean personal enjoyment. It means control. * * *

"Furthermore, Mrs. Robison had a vested interest in her share of James Costello's property, subject to administration and lawful charges. She shared in any income from the property. Furthermore, she enjoyed the privilege of transferring the property by will to her daughters. We think she actually came into the enjoyment of the property within the meaning of the act. * * *"

(Underscoring ours.)

In view of the foregoing, it is our thought that the widow came into possession and enjoyment of the right to receive all the income of the trust for life upon the death of her husband, within the meaning of Section 145.200, supra, and it was at that time the tax upon such right became due and payable. The statute makes no allowance nor does it authorize the deferred payment of the tax on any sum less than the full estimated value of the life estate in such cases. Therefore, pp 3, Section 145.240, supra, is inapplicable and of no effect in computing the tax on said widow's life estate under Section 145.200, supra, when the widow survived her husband and received trust income for only ten months and twenty three days and died before the determination and assessment of the tax on the value of her said life estate.

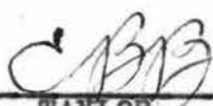
CONCLUSION

It is the opinion of this department that when a widow becomes vested in a life estate in the income of a trust upon the death of her husband and only receives such income for the period of ten months and twenty-three days immediately preceding her death, that in computing the value of said life estate for state inheritance tax purposes, the provisions of paragraph 3, Section 145.240 RSMo 1949, are inapplicable and are not to be given any effect. The value of said life estate must be computed under Section 145.200, and the inheritance taxes imposed thereon must be on the full value of said life estate.

Respectfully submitted,

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APPROVED:



J. E. TAYLOR
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