INHERITANCE TAX: Life Estate of Widow and remainder should be taxed according to provisions of Sec. 595, RSMo 1929, and tax should be at highest rate possible under provisions of Inheritance Tax Law of Mo.

LIFE ESTATE:

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August 29, 1934

Honorable Richard R. Nacy,
State Treasurer,
Jefferson City, Missouri

Attention: Mr. E. J. Arnett, Supervisor,
Inheritance Tax Department

Dear Sir:

This department is in receipt of your communication of August 25 with reference to the Estate of Wilhelm Scheer, deceased.

It appears that the deceased by Will left to his widow his entire estate "for and during her natural life**** with full power and right for her to use any and all of my personal property for her support and maintenance." Subject to this life estate in his wife, the remainder was devised to one Arthur Morgenstern. The precise question involved here, as raised in your communication, is as follows:

> "How can the total interest of the widow be figured in view of the power and right she has to use and dispose of the personal property? How can the interest of Arthur Morgenstern be figured under the tables as you cannot know what his age will be when his life interest starts?"

Section 596, R. S. Mo. 1929 provides in part as follows:

> "****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 highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and

> such tax so imposed shall be due and payable forthwith by the executor, administrator, or trustee out of the property transferred:
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> 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 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. ****"

The sections of the statutes heretofore quoted are similar to those provisions of the former New York statute. The Court of Appeals of the State of New York in the case of Matter of Zborowski, 213 N. Y. 109, in passing upon this statute, said (l. c. 116):

> "The different statutes hereinbefore referred to contain evidence of a constant effort of the legislature to enlarge the class of transfers immediately taxable upon the death of the transferror. The question of the legislature's power in that regard was set at rest by the dicision of this court in Matter of Vanderbilt (supra). In one aspect it may be unjust to the life tenant to tax at once the transfer, both of the life estate and of the remainder though contingent, and it may seem unwise for the state to collect taxes which it may have to refund with interest, but those considerations are solely for the legislature, who are to judge whether they are more than offset by the greater certainty which the state thus has of receiving the tax ultimately its due under the statute. However unwise and unjust it may seem in a particular case like this for the state to collect the tax at the highest rate when in all probability the remainder will vest

> in a class taxable at the lowest rate, it is the duty of this court to give effect to the statute as it is written."

In the case of In Re Blun's Estate, 160 N.Y. Sup. 731, the Court specifically approved the Zborowski Case, supra, and said (l.c. 733):

> "Under the seventh clause of decedent's will the executors are given the power to pay out a portion of the principal of the trust fund to decedent's son if he should desire to use it for business purposes. This is undoubtedly a power to invade the principal. The appellants contend that under the law, as laid down in the Matter of Granfield, 79 Misc. Rep. 374, 140 N. Y. Supp. 922, Matter of Blyn, 160 N. Y. Supp. 730, and Matter of Spiegelberg, 160 N. Y. Supp. 730, this portion of the estate, owing to the fact that the power of invasion is created, should be suspended for taxation. I do not agree with this contention. An examination of the last two mentioned cases shows that they were based upon the decision in the Matter of Granfield, supra. This case was decided prior to the decision of the Court of Appeals in the Matter of Zborowski, 213 N. Y. 109, 107 N. E. 44. The theory of law as laid down in that case consequently was not applied in the disposition of the said cases. I think therefore, that in the case under discussion the Matter of Zborowski governs, and that the said remainder is presently taxable."

The above decisions of the New York Courts are specifically approved by the Supreme Court of Missouri in the case of State Treasurer v. Trust Company, 293 Mo. 545.

CONCLUSION

Therefore, in view of the foregoing, it is the opinion of this department that the life estate of the widow and the remainder should be taxed according to the provisions of Sec. 595, R. S. Mo. 1929. The tax imposed should be at the highest rate which, on the happening of any of the contingencies or conditions, would be possible under the provisions of the Inheritance Tax Lax of the State of Missouri, and the tax so imposed should be due and payable forthwith by the executor, administrator or trustee out of the property transferred.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.
Assistant Attorney General

APPROVED:_____
Attorney General