

Opinion No. 60-116

June 20, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: F. E. McCulloch, Director Succession Tax Division Bureau of Revenue Santa Fe, New Mexico

QUESTION

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Where a life estate is bequeathed or devised to parents, husband, wife or lineal descendants with the remainder over to collateral kindred or strangers, at what time is the inheritance tax upon the remainder collected?

CONCLUSION

The tax on the remainder is collected upon the termination of the life estate.

OPINION

{*491} ANALYSIS

The answer to this question must be controlled by the interpretation given to the following portion of Sec. 3-16-13, N.M.S.A., 1953 Comp.:

"Where a life estate or an annuity is bequeathed or devised to a parent or parents, husband, wife or lineal descendants, or legally adopted child, and remainder over to collateral kindred, or to strangers to the blood, or to a corporation, voluntary association, or society, then the tax of one per centum (1%) shall be paid out of the principal sum or estate so bequeathed or devised for life, or constituting the fund producing said annuity, **and the remaining four per centum (4%) due from collateral kindred or strangers to the blood shall be paid out of the said principal sum or estate at the expiration of the particular estate or annuity.**" (Emphasis added)

We find that there is no case law in New Mexico dealing with the precise issue in question and that the question must be resolved by application of accepted rules of statutory construction. It is our conclusion that the "plain meaning" rule demands that the underlined language above be interpreted to mean that the remainderman's interest not be taxed until the life estate has terminated. Any other construction of the words under consideration would be tortured and unrealistic.

The question was raised as to whether the present issue was resolved by the case of **National Agricultural College v. Lavenson**, 55 N.M. 583, 237 P. 2d 925 (1951). To

the extent that the case dealt with the inheritance tax, it only declared that the statute under consideration makes the tax payable from the principal or corpus of the estate. The Court did not speak on the question of the proper time for collection of the tax. Nothing contained in the opinion of the Court precludes the interpretation suggested here.

By: F. Harlan Flint

Assistant Attorney General