

Opinion No. 20-2665

August 14, 1920

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Messrs. Renehan & Gilbert, Santa Fe, New Mexico.

Construction Inheritance Tax Law Provisions.

OPINION

Referring to your request for an opinion regarding the construction of certain portions of Chapter 122, Laws 1919 known as the inheritance tax law, accompanied by a letter from Prentice-Hall, Inc., of New York City, we wish to advise you as follows:

Your first inquiry concerns the construction of that part of Sections 1 and 2 of the act which define estate and which provide that when a portion of the property passes to or for the use of the parent or parents * * * * and a portion to collateral kindred * * * * the exemption allowed is that portion of the \$ 10,000 which the value of the property passing to a parent * * * * bears to the total value of the whole estate, and you ask if the tax officials allow an exemption of \$ 10,000 in all cases to a parent * * * * or is the exemption decreased by the subsequent provisions of the section.

The tax officials have already passed upon this question and hold that the exemption applies to the estate as a whole and not to the individual portions received by various devisees or legatees.

We believe this construction of the act is correct and that the part of Section 1 which defines the word "estate" and "property" does not necessarily conflict with that part of Section 2 last above mentioned. In defining the words estate and property, we believe it was intended that these words should be used to cover the property passing to the various legatees, etc., but not necessarily in an individual capacity, although the word "individual" is used. We think that the definition was inserted for the purpose of limiting the tax to the property that actually passed and not to the property with which the deceased was seized at the time of his death.

The part of Section 1 defining property and estate and tangible property and intangible property, is taken verbatim from the New York act and has been construed as above indicated by the New York courts. We, therefore, hold that the exemption is taken only from the entire estate and not from each individual portion received by the various devisees, legatees, etc.

Your second inquiry regards the rate of tax to be collected from the part of the estate received from the descendant of an adopted son, wife or widow of a son or adopted son, husband of a daughter or of an adopted daughter, brother or sister. Section 3 of

the act prescribes the rate assessable against property passing to the various claims of donees, and we believe is very clear in its provisions on the subject mentioned in your letter, that is, that a tax of 5 per cent is collected against such portion as is received by persons named.

Your third inquiry asks if the gift of \$ 10,000 to a corporation of New Mexico, publicly exhibiting works of art, is exempt in addition to the gift of the works of art, and is the gift of money exceeding \$ 10,000 to such corporations taxable, and if so, at what rate? The first part of your question should be answered in the negative. The words "in addition to said amount" used in paragraph 2 we believe refers to only those amounts which are received by the persons specifically named in the first part of the section, and as there is no provision therein for the exemption of \$ 10,000 received by any such corporation, that such a gift would not be exempted. The second part of your question should be answered in the affirmative and the rate at which the gift should be taxable is 5 per cent.

Your fourth question asks if only \$ 500 is exempt to each beneficiary of the second class under that part of the provisions of Section 2 which provides that "in addition to said amount" any bequest not exceeding \$ 500 is exempt. Your inquiry should be answered in the affirmative under the construction placed upon that part of the act, and which is contained in our answer to your third and fourth inquiries.

We are enclosing herewith a copy of the pamphlet prepared by the Tax Department containing a synopsis of the act and certain explanations in connection therewith, and also of the blank prepared by the Department to be used by administrators of estates in preparing their reports for the State Treasurer, as we believe these will be of value to you in assisting you to advise your correspondents concerning the construction placed upon this law by the taxing officials.

We beg to return herewith Volumes 1 and 2 of the Prentice-Hall Inheritance tax service, 1920, loaned to us by your Mr. Gilbert.