

Opinion No. 21-2992

June 3, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Hon. Richard H. Hanna, Attorney at Law, Albuquerque, New Mexico.

Exemption From Inheritance Tax of Property Passing to Wife.

OPINION

{*62} In reply to your letter of the first instant, asking for an opinion as to the construction of Chapter 122, Laws 1919, the inheritance tax law, upon the question of the exemptions from succession or inheritance tax of property passing to a wife, I would say:

It is with considerable astonishment that I find that section 2 of Chapter 122 makes no provision for exemption from the succession tax of property passing to a wife, although property passing to all lineal descendents as well as parents, adopted children and husbands and wives of adopted children, and brothers and sisters of the decedent receive the benefit of such exemption.

It evidently was a typographical error in the drawing of the bill wherein the words "husband or wife" were omitted.

In that part of section 2 where it provides for the proportionate part of the property which passes to heirs of decedent to receive the benefit of the exemption, the words "husband or wife" appear.

It therefore is clear that it was the intention of the legislature that the husband or wife should receive property in the amount of ten thousand dollars free from the succession tax; otherwise, the use of the words "husband or wife" in the latter part of the section would be without effect, since if the husband or wife of the decedent were not entitled to the exemption from taxation, provided [Illegible Word] others mentioned in the first part of the section there could be no proportionate exemption to them as provided for in the latter part of the section.

While it is quite true that in the construction of statutes granting exemptions, the statutes should be strictly construed against the granting of the exemption (Ross on Inheritance Tax, p. 171, section 131), still, where the failure to grant the exemption is clearly a clerical error upon the part of the drafter of the bill, we are of the opinion that the act should be read so as to give effect to all of its parts, and such could not be done if it were held that the husband or wife were not entitled to the ten thousand dollars exemption from taxation provided for in the first part of section 2.

{*63} I agree with you that the law of 1919 applies in the case mentioned in your letter, since death occurred in March, 1920.

We have heretofore ruled that the repeal of the 1919 inheritance tax law by the 1921 inheritance tax law (Chapter 179) does not affect the tax upon estates of decedents who died between the date of the becoming effective of the 1919 act and its repeal by the 1921 act.

The 1921 act also fails to grant the exemption to the wife, but section 1 of that act is identical in language with section 2 of the former, and in our opinion, the same construction would apply thereto insofar as the right of the wife or husband to claim the exemption from the tax in the amount of property to the value of ten thousand dollars is concerned.