

Opinion No. 44-4565

August 28, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. J. Leon Miller, Auditor, Succession Tax Division, Bureau of Revenue, Santa Fe, New Mexico

You have requested an opinion of this office concerning estates which are being probated, wherein the only assets of such estates consist of life insurance and back pay due from the Government by a deceased member of the armed services.

You have further submitted an Order entered by a Probate Judge in a Probate proceeding concerning such an estate, wherein the Judge has recited in an Order that the only assets of the estate are insurance and back pay due from the Government, and that it is therefore unnecessary to have an appraisal; and that it was further ordered that appraisal be dispensed with.

In view of this situation, you have requested an opinion of this office concerning whether or not, for succession tax purposes only, appraisal may be dispensed with.

It would appear that since the Court has jurisdiction of the estate, and upon the signing of such an Order this Order would become binding in the particular estate involved unless appealed from. Therefore, since the Order is given by a Court of competent jurisdiction, it is my opinion that you may rely upon the Order of Court and dispense with the appraisal provided for in Section 33-305 of the N.M. 1941 Compilation. In the event that you should feel that your department is prejudiced by the issuance of such an Order, your only recourse would be to appeal from such Order.

By HARRY L. BIGBEE,

Asst. Atty. General