

TAXATION AND REVENUE: Method of computation of Missouri inheritance tax upon contingent remainders under Sec. 597, R. S. Mo. 1939, as amended, Laws 1943, p. 307.

April 15, 1948



Mr. M. E. Morris  
Director of Revenue  
Jefferson City, Missouri

Attention: Mr. C. L. Gillilan, Ass't Supervisor  
In charge of Inheritance Tax

Dear Sir:

Reference is made to the request for an official opinion of this department made by Mr. C. L. Gillilan, Assistant Supervisor in charge of Inheritance Tax, Department of Revenue, based upon the facts set forth in a letter attached to such request, reading, in part, as follows:

"Re: Estate of Frances Darlington Faxon,  
Jackson County, No. 58958

"I have been appointed inheritance tax appraiser by the Probate Court of Jackson County, Missouri, at Kansas City, in the above estate. I should like your advice with reference to the assessment of the tax.

"By the will of the above deceased, the residue, after a trust estate for the benefit of a daughter, 45 years of age, is divided into eight parts, to be distributed on the termination of the trust, as follows:

'(a) One-eighth thereof to my brother, Walter Darlington, if then living, but if he be not then living, to the heirs of his body, per stirpes and not per capita.

'(b) One-eighth thereof to the heirs of the body of my deceased sister, Helen Darlington Pugh, per stirpes and not per capita.'

"The provisions and situations with respect to the other six-eighths are similar to one or the other of the above.

"With respect to (a) above, Walter Darlington is living, but is older than the beneficiary of the trust. He has four living children, two of whom have two children, one has one child, and one has none. The attorney for the estate claims that under Sec. 597, R. S. Mo. 1939, as amended, Laws of Mo. 1943, p. 307, the tax should be assessed against the five grandchildren for the part that each will receive, and against the one child who has no children for the part she will receive.

"With respect to (b) above, the heirs of the body of Helen Darlington Pugh, deceased, at the time of the death of Frances Darlington Faxon, are three children, one of whom has seven children, one, three children, and one, no children. The attorney for the estate contends that the tax should be assessed against the ten grandchildren for the part each will receive, and against the one child who has no children for the part she will receive."

Section 597, R. S. Mo. 1939, was amended by an Act of the 62nd General Assembly, found Laws of Missouri, 1943, page 307. The portion thereof applicable to the matter under consideration reads as follows:

"Where any property shall after the passage of this article be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this article in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estate or interests is derived. 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 lowest 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: \* \* \*"

A comparison of the statute as it now reads with its form prior to the amendment mentioned discloses that the only change made by such amendment was the incorporation of the word "lowest" in lieu of the word "highest," appearing previously.

It is noted from the letter upon which the inquiry is based that the contention is made that the inheritance tax upon the contingent transfers made under (a) should be computed upon the basis of the grandchildren of the testatrix receiving all of the remainder. It is further noted that it is contended that a similar position is taken with respect to the transfers provided for in (b) thereof.

With these contentions, we are unable to agree. The statement of facts with respect to (a) discloses that the first taker, viz., Walter Darlington, is now living. The statement of facts further discloses that with regard to (b), three children of Helen Darlington Pugh are now living. In the premises, a presumption arises that such status will continue until the death of the holder of the life estate and the termination of the trust provided by the terms of the will. To this effect, see "Evidence," 31 C.J.S., par. 140, page 791; also, In re Person's Estate, 263 N.Y.S. 781, 147 Misc. 398, and In re Shupack's Estate, 287 N.Y.S. 184, 158 Misc. 873. In the first mentioned case the court declared that, in computing estate tax exemptions, the proper procedure was to assume that existing circumstances would continue and that a contingently vested interest would not be divested by death of the beneficiary prior to reaching the age when the principal of the trust fund was payable.

In view of this evidentiary presumption, it seems unreasonable that the inheritance tax should be computed upon the basis contended for. To do so would lead to speculation based upon the remote possibilities of the death of Walter Darlington, his four living children, and the three living children of Helen Darlington

Pugh. It is our thought that the presumption, first mentioned, of a continuance of the existing status is the more logical basis upon which such tax should be computed, and is more in accord with the legislative intent.

If such contingency should occur so that in fact the grandchildren, or some of them, do become the beneficiaries under the will, adequate provision for their protection against the imposition of a greater amount of inheritance tax than would be presently due has been made by further provisions of the statute under consideration. We direct your attention to the following proviso found therein:

" \* \* \* Provided, further, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this article, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article. Such return of overpayment shall be made in the manner provided by section 584 of this article, upon the order of the court having jurisdiction.  
\* \* \* "

This proviso would have no meaning were a contrary construction given to the statute as a whole.

We have examined the case of *In re Shaw's Estate*, 175 S. W. (2d) 588, and find that it was decided prior to the amendment to the statute here under consideration. In our opinion, it is not in point upon the problem.

#### CONCLUSION

In the premises, we are of the opinion that Missouri inheritance tax upon contingent remainders should be computed

Mr. M. E. Morris

-5-

upon the status of the beneficiaries as of the date of the decedent's death, thereby giving due regard to the presumption that such status will continue at least for a reasonable period of time.

Respectfully submitted,

WILL F. BERRY, Jr.  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
Attorney General

WFB:HR