

Inheritance Tax—Deductions—Widow's Allowance.

A family allowance, where allowed by order of the court, and where reasonable in amount, must be deducted from the gross value of the estate in computing the amount upon which an inheritance tax must be paid.

State Board of Equalization,
Helena, Montana.

Gentlemen:

You have requested my opinion whether an allowance made to a widow by order of court must be deducted from the gross value of the estate before determining the amount of inheritance tax due to the State of Montana.

Your question involves a determination of the meaning of the clause appearing in Subdivision 2 of Section 4, Chapter 65, Laws of 1923, providing in part as follows:

“Such exemption to the widow shall include all her statutory dower and other allowances.”

This clause is identical with a clause appearing in the Wisconsin statute. This clause was inserted in the Wisconsin statute by an amendment made in 1917. Prior to the amendment, the Supreme Court of the State of Wisconsin had the question under consideration in the Estate of Smith, 161 Wis. 588. The Court in that case held that a widow's allowance was not a part of the estate of the deceased passing by the intestate laws or by the will of the deceased. In the course of the opinion, the Court said:

“Section 1087-1, Stats. 1913, imposes an inheritance tax ‘upon any transfer of property, * * * when the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state, * * * or a nonresident leaving property within the jurisdiction of the state, * * * or when the transfer is by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death,’ * * * or when the transfer is by exercise of a power of appointment. * * * ‘The tax so imposed shall be upon the clear market value of such property * * * and only upon the excess of the exemptions hereinafter granted.’ Section 1087-24 defines the word ‘property’ as used above to mean ‘the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees or successors, and shall include all personal property within or without the state.’ Also: ‘the word transfer, as used in Sections 1087-1 to 1087-24, inclusive, shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain (and) sale, gift or appointment in the manner herein prescribed. * * *’

“The allowance to the widow is not: First, a transfer by will or by the intestate laws of this state from any person. Second, the property in question is not transferred to the widow as legatee, devisee, heir, next of kin, grantee, donee, vendee, or successor, but by order of the court acting under a statutory power and for the purpose of supporting herself and her children. Third, there has been no transfer in the sense of ‘passing * * * property * * * by inheritance, descent, devise, succession, bequest, grant, deed, bargain (and) sale, gift or appointment.’ It seems very obvious that the transaction in question here is not covered or described by any or all the words of the statutes referred to.”

Our inheritance tax law (Chapter 65, Session Laws of 1923) is practically identical with the Wisconsin statute. The reasoning of the Wisconsin court warrants the same conclusion regarding an interpretation of the provisions of our statute. In fact, the Supreme Court of this state has reached the same conclusion under our old inheritance tax law in the case of *In re Blackburn's Estate*, 51 Mont. 234. Other cases reaching the same conclusion are:

- In re Kennedy Estate* (Cal.), 108 Pac. 280.
- State v. Probate Court* (Minn.), 163 N. W. 285.
- In re Eckstrum's Estate* (Minn.), 198 N. W. 459.

In re Murphy's Estate (Minn.), 179 N. W. 728.
Crenshaw v. Moore (Tenn.), 137 S. W. 924.
In re Wetmore's Estate, 197 N. Y. S. 508.
In re Page's Estate, 79 N. Y. S. 382.
In re Dellinger's Estate, 120 Atl. 27.

The purpose of the amendment of the Wisconsin statute, by inserting the clause: "Such exemption to the widow shall include all her statutory dower and other allowances," was simply to reduce the amount of the widow's exemption by the amount of her allowance, so that her total exemption, including the allowance, shall not exceed the amount named in the statute.

It is, therefore, my opinion that the family allowance made by order of the Court, if reasonable in amount, must be deducted from the gross value of the estate in computing the amount of inheritance tax due to the State of Montana.

Very truly yours,

L. A. FOOT,
Attorney General.