

OPINION 39

OFFICIAL OPINION NO. 39

December 22, 1970

Mr. James O. Mathis
Commissioner
Indiana Department of State Revenue
Indianapolis, Indiana 46204

Dear Commissioner Mathis:

This is in response to your request for my Official Opinion as to whether the following items are taxable under the Indiana Inheritance Tax Act (Burns' 7-2401 through 7-2442):—

Proceeds of Annuities.

Employees' Pensions.

Stock bonus plans.

Profit sharing plans, including proceeds of contracts purchased by trustees of such plans.

Plans where contributions are made by employee and employer.

Plans where contributions are made by employer only.

ANALYSIS

The statute governing the foregoing question is the Acts of 1931, Ch. 75, Section 1, as found in Burns' (1953 Repl.), Section 7-2401, which reads in part as follows:

“A tax is hereby imposed under the conditions and subject to the exemptions and limitations hereinafter described, upon all transfers, in trust or otherwise, of the following property, or any interest therein or income therefrom:

“When the transfer is from a resident of this state, of real property situated in this state, or of any tangible personal property except such as has an actual situs without this state, or of any and *all* intangible personal property wherever situated.

“When the transfer is from nonresidents, or persons not inhabitants of this state, of all real or per-

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sonal property *within the jurisdiction of this state.*"
(My emphasis)

All possibilities of taxable situations vary and must be determined on the facts pertaining to each. Properly studied and promulgated regulations of the Revenue Department can spell out guidelines for these situations.

If the employee owns or has a "right" in the annuity, pension, or plan, the value transferred at death is taxable under the inheritance tax law. The courts have held some plans taxable and others not.

Should the plan provide that the employee loses all rights under the plan if he leaves his employment before retirement, he has no interest to transfer. If the plan provides that no part of the fund could revert to the employer, the employee has something he can transfer, and this is taxable.

The following cases indicate just some of the possible situations which may arise, and indicate that each depends upon the facts involved: Daniels Estate (1953), 159 Ohio 109, 111 N. E. (2d) 252; Cruthers (1954), 14 N. J. Eq. 497, 103 A (2d) 153; Garos (1954), 109 A (2d), N. H. 844; Bracketts' Estate, 342 Mich. 195, 69 N. W. (2d) 164; Boyd Estate (1954), 139 N. Y. S. (2d) 443; Kramer's Estate (1964), Ohio 203 N. E. (2d) 271; Dolbeer's Estate (1963), Ohio 193 N. E. (2d) 174; Dorsey Estate (1951), 366 Pa. 557, 79 A (2d) 259.

CONCLUSION

It is my opinion that the items which may be taxable depend upon the facts in each case. Each situation merits a determination by the Inheritance Tax Division of the Indiana Department of State Revenue or its duly authorized agents.

The items that descend by inheritance are taxable as such. But being received by inheritance, they are *not* subject to tax as income.