

OPINION 31

OFFICIAL OPINION NO. 31

July 31, 1963

Hon. Charles W. Edwards
State Representative
P. O. Box 102
Spencer, Indiana

Dear Representative Edwards:

This is in response to your request for my Official Opinion in answer to the inquiry presented by your letter which reads as follows:

“A question has arisen with the inheritance tax division concerning the interpretation of the Inheritance Tax Applicability to and deductions from jointly held property.

“The Administrator of the Inheritance Tax Division has taken the position that jointly held property is taxable for Inheritance Tax purposes under BAS 7-2401 but not subject to deductions under BAS 7-2404, for court costs, attorney’s fees, etc.

“Please let me have your official opinion of the effect of these apparently conflicting provisions.”

The Acts of 1931, Ch. 75, Sec. 1, as found in Burns’ (1953 Repl.), Section 7-2401, defines the transfers which are taxable under the Indiana Inheritance Tax Law. The fifth grammatical paragraph of that section includes among such transfers the following:

“Whenever property is held in the joint names of two [2] or more persons or is deposited in banks, or other institutions or depositaries in the joint names of two [2] or more persons and payable to either or the survivor, upon the death of one [1] of such persons, the exercise of the right of the surviving person or persons to the immediate ownership or possession and enjoyment of such property *shall be deemed a transfer taxable under the provisions of this act in the same manner as though the whole property to which*

such transfer relates belonged absolutely to the deceased joint owner or joint depositor and had been devised or bequeathed to the surviving person or persons, by such deceased joint owner or joint depositor by will, excepting therefrom such part thereof as may be proved by the surviving joint owner or joint owners to have originally belonged to him or them and never to have belonged to the decedent: Provided, however, That property jointly held shall not be taken to include real estate held by the entireties.” (Our emphasis)

Therefore, with respect to jointly held property other than “real estate held by the entireties,” the transfer thereof by death to the surviving joint owner or joint owners is clearly a transfer to such survivors which is taxable under the Indiana Inheritance Tax Law, except such part, if any, as originally belonged to the survivor or survivors and never belonged to the decedent. On this phase of your inquiry, it is unquestionably correct that jointly held property is subject to taxation under the inheritance tax law to the extent to which the same was owned by the decedent.

The answer to the question concerning the allowability of deductions in the case of the transfer by death of jointly held property is governed by the Acts of 1931, Ch. 75, Sec. 4, as amended, as found in Burns’ (1953 Repl.), Section 7-2404, which reads as follows:

“In determining the value of property transferred *by will or intestate laws* in resident decedents’ estates, the following deductions and no others shall be allowed from the full fair cash value of the property to which the transfer relates:

“Debts of the transferor which constitute lawful claims against his estate.

“Taxes on real property within this state which were a lien at the death of the transferor.

“Taxes on personal property of the transferor which constituted a personal obligation during his lifetime or were a lien at the time of death.

OPINION 31

"Income taxes on the income of the transferor to the date of death.

"Inheritance or transfer taxes paid or payable to other jurisdictions on intangible personal property, but not United States estate taxes.

"Mortgages and special assessments which at the time of death of the transferor were a lien on the real property located within this state, and which shall be deducted only from the value of this property.

"Funeral expenses and all amounts not exceeding five hundred dollars [\$500] actually expended for a memorial.

"Commissions of executors, administrators and trustees.

"Expenses of administrators, including reasonable attorneys' fees.

"In case of a transfer *other than by will or intestate laws*, the only deductions permitted shall be liens subject to which the transfer is made and transfer taxes paid or payable to other jurisdictions on intangible personal property.

"The only deductions allowable in nonresident decedents' estates shall be taxes and any other liens against the property to which the transfer relates, except in such estates, where property is transferred by will or intestate laws, wherein the total of the gross domiciliary estate is insufficient to discharge the general debts of the deceased, in which instance all unpaid debts allowed by the court at the place of domicile shall be allowable as deductions." (Our emphasis)

The position of the Inheritance Tax Division is doubtless occasioned by Regulation No. 3-3 of the Rules and Regulations governing the administration of the Indiana Inheritance Tax Law as adopted on August 30, 1949, which reads as follows:

“The only deductions allowable on jointly owned property are liens subject to which the property is transferred.”

This regulation is obviously bottomed upon the supposition, in the case of the transfer by death of jointly owned property, that such a transfer is “other than by will or intestate laws” as stated in Burns’ 7-2404, *supra*. While such a supposition may be true in considering the manner by which jointly held property is transferred, and is supported upon the basis that the survivor’s interest is derived from contract, such a basis should not be controlling in the construction of the inheritance tax statute if the same is plainly repugnant to the intent of the Legislature or of the context of the inheritance tax law itself. See:

2 R. S. 1852, Ch. 17, Sec. 1, as found in Burns’ (1946 Repl.), Section 1-201.

Referring to Burns’ 7-2401, fifth paragraph, *supra*, I have emphasized the legislative intent which expressly is stated to be that the transfer of jointly owned property to the survivor or survivors shall be considered to be a transfer “taxable under the provisions of this act in the same manner as though the whole property * * * belonged absolutely to the deceased joint owner * * * and had been devised or bequeathed * * * by will * * *” Thus, for the purpose of determining the taxability of the transfer of such property, not only is the transfer of the same taxable, the same as if made by will, but Burns’ 7-2401, fifth paragraph, *supra*, states explicitly that such property is taxable “in the same manner as though * * * devised * * * by will * * *” Therefore, it would be clearly repugnant to the intent of the Legislature, to the context of the Inheritance Tax Law itself, and obviously inconsistent to hold on the one hand, for the purpose of determining the taxability of the transfer of such property, that it shall be deemed to have been transferred by will, but on the other hand, for the purpose of determining what deductions are allowable, to hold that the transfer of such property shall be considered as having been effected other than by will.

OPINION 31

As your letter points out, Burns' 7-2401, fifth paragraph, *supra*, and Burns' 7-2404, *supra*, would thus appear to be in conflict if we construe the transfer of jointly held property for inheritance tax purposes to be the same as if effected by will as expressly stated in Burns' 7-2401, fifth paragraph, *supra*, but construe another section of the same act, Burns' 7-2404, *supra*, so as to hold that the transfer of such property is other than by will. There is nothing in the statute which requires the above inconsistent interpretation.

Therefore, in harmony with the general rule of statutory construction to construe all sections of the statute so as to avoid conflict, if possible, it is my opinion that when Burns' 7-2401, fifth paragraph, *supra*, states that the transfer of jointly held property shall be deemed a transfer *taxable* under the provisions of said act *in the same manner* as if devised by will, the Legislature intended not only that the taxability of such a transfer but also all other provisions of the act, including the determination of the allowance of deductions, should be based upon the supposition that the transfer by death of such property, for inheritance tax purposes, is a transfer effected by will, except to the extent of that part originally owned by the survivor and which never belonged to the decedent. Consequently, it is my opinion that all of the deductions set forth in Burns' 7-2404, *supra*, should be allowed to the same extent as in the case of the transfer of any other property of a resident decedent which is transferred by will or intestate law.

It should be noted that Revised Form No. 6 of the Inheritance Tax Division, entitled "Schedule of All Property," contains the following:

"Schedule A—Transfers by Will or Intestate Law"
and

"Schedule B—Transfers other than by Will or Intestate Law."

Joint tenancies are reportable under Schedule B, in Schedule B-3, and are considered by the form as constituting transfers other than by will or intestate law. Furthermore, "Schedule C—Recapitulation," provides for the total amount of debts

and expenses of administration, as set forth in "Schedule D—Deductions," to be subtracted only from the total value of Schedule A. The form, "Schedule of All Property," by not considering joint tenancies as being transfers by will, is not designed to allow such joint tenancies to be added to Schedule A before the subtraction of the total amount shown in Schedule D, representing the total allowable debts and expenses of administration. Therefore, in conformity with this opinion, total joint tenancies, to the extent taxable and as shown by Schedule B-3, should be inserted in "Schedule C—Recapitulation" in a line following the Total Value of Schedule A, and Schedule A and such joint tenancies should be combined and the debts and expenses of administration subtracted from such total. While this will necessitate a change in the use of the Schedule, or possibly an amendment to "Schedule C—Recapitulation," it would appear, as hereinbefore shown, that there is no reason for disallowing the deductions provided for transfers by will or intestate law in the case of transfers of jointly held property. Inasmuch as there are many estates where perhaps the major portion, if not all, of the decedent's property is transferred by reason of a joint property arrangement, there appears no reason in the statute or otherwise to disallow the deduction of court costs, attorneys' fees and the other deductions provided by Burns' 7-2404, *supra*, if otherwise allowable, since the Legislature has expressly stated that transfers of jointly held property shall be taxable in the same manner as if the decedent's interest therein were devised by will.

OFFICIAL OPINION NO. 32

August 1, 1963

Mr. Peter A. Beczkiewicz, Member
State Board of Tax Commissioners
201 State Office Building
Indianapolis 4, Indiana

Dear Mr. Beczkiewicz:

I have your letter requesting an Official Opinion on the following question: