

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date January 3, 1966

To Ernest W. Johnson, State Tax Assessor Dept. Bureau of Taxation

From John W. Doyle, Asst. Attorney General Dept. " " "

Subject Application of Inheritance Tax Exemptions to Appointments by Donees of Limited Powers of Appointment

## FACTS

Emma L. Soule died May 2, 1964 giving a limited power of appointment to her daughter, Mildred A. Soule. The power to appoint was limited to organizations qualifying for charitable deductions under the Federal Estate Tax laws existing at Emma's death.

The Inheritance Tax Division has advised the executor of Emma L. Soule's estate that in order to qualify for exemption under Maine inheritance tax law, Mildred A. Soule would have to file an irrevocable limitation to appoint to a specific group of Maine organizations also exempt from Maine inheritance tax. This request was made in an effort to close the tax out on a compromise basis.

Mildred A. Soule has made an irrevocable limitation to appoint only a specific group of organizations exempt from the Maine inheritance tax. Included in the group listed is an out-of-state college, in Rhode Island, which is exempt only because of reciprocal provisions. However, the reciprocity has been in effect only since May 12, 1965, or approximately one year after Emma L. Soule's death. Therefore, at the date of death of Emma L. Soule no charitable deduction was allowed for gifts to the college.

(Under existing law a limited power of appointment is taxable only in the donor's estate).

The Inheritance Tax Division follows the practice of applying the law, rates and exemptions applicable at date of death. In this case, at the decedent's date of death, bequests to Rhode Island educational institutions were taxable. However, the appointment of the property will not be made by the donee until her death, subsequent to the date Rhode Island educational institutions became exempt from Maine inheritance tax.

## QUESTION

If distribution, at a future date, is made to the college in Rhode Island, will the appointment be taxable under the law at the date of decedent's (donor's) death or, will the law at the date of vesting apply and the transfer be nontaxable?

Ernest H. Johnson, State Tax Assessor      January 3, 1966

ANSWER

The law at the date of the decedent's (donor's) death will apply and the bequest will be thus taxable.

LAW

The Maine inheritance tax law provides that certain property shall be subject to an inheritance tax for the use of the State. Exemption is provided for certain charities and other similar organizations. A specific provision is found concerning such an organization which may be organized or existing under the laws of another state. The language of the statute is as follows:

" . . . . If such society, corporation, institution or association is organized or existing under the laws of a territory or state of the United States, other than this State, or of a foreign state or country, all property transferred to said society, corporation, institution or association shall be exempt, if at the date of decedent's death the said state or territory or foreign state of country under the laws of which said society, corporation, institution or association was organized or existing did not impose a legacy or succession tax or a death tax of any character, in respect to property passing to or for the use of any such society, corporation, institution or association organized or existing under the laws of this State, or if at the date of decedent's death the laws of the State or territory or foreign state or country under which said society, corporation, institution or association was organized or existing contained a reciprocal provision under which such passing of property to said society, corporation, institution or association organized or existing under the laws of another state or territory or foreign state or country shall be exempt from legacy or succession or death taxes of every character, providing such other state or territory, or foreign state or country, allowed a similar exemption to such a society, corporation, institution or association organized or existing under the laws of another state or territory or foreign state or country." Title 36 M.R.S.A. §3451. (Emphasis supplied).

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REASONS

It is therefore seen that if the organization in question had been existing in a particular state as of the date of death of Emma L. Soule, which state either exempted like Maine organizations or had a reciprocal provision, no tax would be applicable.

It must be noted that property is exempt if at the date of decedent's death there is an exemption provision or reciprocal provision. I therefore believe that the determination of the question of taxability of the property passing to the institution here should be determined as of the date of the decedent's death under the provisions of the Maine statute.

This determination is in accord with a decision in one of the few cases existing under the factual circumstances.

In the case of Old Colony Trust Company v. Commissioner of Corporations of Taxation (Mass. 1962) 180 N.E. 2d 97, the testator died a resident of Massachusetts in 1933. He had established a revocable inter vivos trust providing for certain life interests, and upon that termination for remainder gifts. Two of the remainder interests were payable to two different Rhode Island charitable corporations. Upon the death of the last of the life tenants in 1957, the trust terminated and the charitable corporations became entitled to their remainder interest. At the time of the testator's death, the statute exempting charitable gifts was not applicable to Rhode Island charitable corporations. The 1941 statute, which was retroactive to estates of decedents dying on or after July 1, 1940, was the first in Massachusetts to make provision for reciprocal exemption of gifts and charities outside Massachusetts.

In 1950 and 1955 statutes were also enacted concerning the reciprocal exemption of charities. However, these statutes made no mention of whether they were effective as to estates of decedents dying after a certain date. The issue was whether a charitable exemption was to be determined under the law at the time of the testator's death or under the law at the time of the termination of the trust and the payment of remainder interest. The Court stated that it gave weight to the doctrine of strict construction of exemption statutes and to the general principle of applying subsequent changes only prospectively.

(The Supreme Judicial Court of Maine in the case of Merrill Trust Company v. Johnson, 159 Me. 45, which was concerned with a dissimilar reciprocal exemption problem also said that the burden of proving that a particular legacy is exempt is on the one who claims the exemption.) ("Taxation is the rule and exemption the exception.")

Furthermore, the Court indicated that the 1941 statute showed a definite legislative intention that the reciprocal provisions were not to be applied to persons dying before July 1, 1940. A re-enactment

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of similar provisions of 1950 and 1953 did not show that the legislative intention had changed. Accordingly, the Court concluded that the charitable exemptions were determined by law at the time of the testator's death. Consequently, inheritance taxes were payable under remainder interest passing to the Rhode Island charitable corporations.

The Court also based its reasoning on the case of Old Colony Trust Company v. Commissioner of Corporations and Taxation, 331 Mass. 329 where it was held that the tax statute which governed was the one in effect at the testator's death.

The courts of Pennsylvania in the case of Matter of the Estate of Gertrude Hammar Tracy, Pa. 1961, 170 A. 2d 93, have also held that a charitable exemption applies prospectively.

There is also authority in the common law for the view that such an exemption applies only prospectively and that the date of taxation should be the date of decedent's death especially when dealing with the power of appointment.

The opinion of the Attorney General of the State of Maryland, October 22, 1954, cited in this regard Miller on Construction of Wills, §260, p. 741, as follows:

" . . . what the donee does, is, in theory, done by the donor through him as an instrumentality. The donor makes an appointment through the donee; and the estate created by the execution of the power takes effect in the same manner as if it had been conveyed by the instrument which created the power, that is, the appointment relates back to the instrument which created the power. The estate created by the execution of the power does not pass through the estate of the donee but upon the death of the donee passes directly to the appointee of the donor. This doctrine in relation back is regarded as the most important feature of the subject of powers."

For the above reasons I would conclude that if distribution is made at a future date to the out-state college the appointment will be taxable under the law in effect at the decedent's date of death.

JRD:epd