

# MAINE STATE LEGISLATURE

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January 9, 1968

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Bureau of Taxation

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Bureau of Taxation

Estate of Murray W. Blakney - Panob. 12559

FACTS:

The decedents will bequeath the residue of his estate to the United States of America. In paragraph third of the decedents will, the decedent states: "All the rest, residue and remainder of my estate ....I give, devise and bequeath to the United States of America as that is where it came from:"

QUESTION:

Is the bequest to the United States of America taxable or exempt?

LAW:

"All property which shall pass to or for the use of societies, corporations and institutions now or hereafter exempted by law from taxation, or to a public corporation, or to any society, corporation, institution or association of persons engaged in or devoted to any charitable, religious, benevolent, educational, public or other like work, pecuniary profit not being its object or purpose, or to any person, society, corporation, institution or association of persons in trust for or to be devoted to any charitable, benevolent, educational or public purpose, or the care or maintenance of cemeteries, cemetery lots or structures therein or thereon, shall be exempted; provided such society, corporation, institution or association is organized and existing under the laws of this State or that the property transferred be limited for use within this State..." Title 36 M.R.S.A. §3461.

ANSWER:

It is taxable.

REASONS:

The leading case directly on point is United States v. Perkins, 163 U.S. 625. There, a New York resident devised and bequeathed all of his estate to the United States. The court stated that: "Thus the tax is not upon the property, in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee." Consequently the tax is not a direct imposition on the United States or its property. It was simply an exercise of the right of the State to require a contribution to the public treasury before the bequest took place.

A more recent case directly on point is United States of America vs. Kingsley, 194 A. 2d 735. In Kingsley the decedent made a residuary

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Re: Estate of Murray W. Blakney

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bequest to the United States of America for the use in the National defense of the country. The Supreme Court in New Jersey had no difficulty finding that the bequest to the United States of America was subject to New Jersey's inheritance tax. The New Jersey court reasoned that "the tax is the price laid upon the testator in return for the right of disposition. It represents the legislative intention that a person taking advantage of the right conferred upon him shall pay a certain premium for its enjoyment....It becomes his property only after it has suffered a diminution in the amount of the tax."

It also should be noted that the United States of America does not fit under any of the exemptions enumerated under Title 36 M.R.S.A. §3461.

In view of the case law and in view of the fact that there is no specific exemption in our statute for the United States of America, this bequest to the United States of America is subject to Maine's inheritance tax.

WRD:etd