

MAINE STATE LEGISLATURE

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October 23, 1968

To: Mrs. Isabella Stewart

From: James M. Cohen

Subject: Inheritance Tax Application to an Adopted Child

SYLLABUS:

THE ADOPTED SON OF A DECEDENT'S BROTHER IS SUBJECT TO INHERITANCE TAXATION AS A NEPHEW.

FACTS:

By the Will of a decedent a bequest was made to the adopted son of the decedent's brother. For purposes of inheritance taxation property passing to a nephew is treated under the Class B. category. Property passing to a stranger is treated under Class C. If the adopted child of the decedent's brother is a nephew, he will fall within Class B; if not, Class C.

QUESTION:

Whether the adopted son of the brother of a decedent is a "nephew" for the purposes of inheritance taxation of the bequest.

ANSWER:

The adopted son of decedent's brother is a nephew for inheritance taxation of the bequest.

REASON:

Applicable statutes are as follows:

Property which shall so pass to or for the use of the following persons who shall be designated as Class B to wit: . . . nephew . . . of a decedent shall be subject to a tax upon the value thereof . . . (at specified rates). 36 M.R.S.A. §3463.

Property which shall so pass to or for the use of any person not falling within either of the classes hereinbefore set forth shall be subject to a tax upon the value thereof . . . (at specified rates). 36 M.R.S.A. §3464.

By such decree the natural parents are divested of all legal rights in respect to such child, and he is freed from all legal obligations of obedience and maintenance in respect to them; and HE IS, for the custody of the person and right of obedience and maintenance, TO ALL INTENTS AND PURPOSES, THE CHILD OF HIS ADOPTERS, WITH RIGHT OF INHERITANCE when not otherwise expressly provided in the decree of adoption, THE SAME AS IF BORN TO THEM IN LAWFUL WEDLOCK, except that he shall not inherit property expressly limited to the heirs of the

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body of the adopters, nor property from their collateral kindred by right of representation, and he shall stand in regard to lineal descendants of his adopters in the same position as if born to them in lawful wedlock 19 M.R.S.A. 9535 (Emphasis supplied)

In order to determine which rate of taxation applies to the bequest in question it is necessary to analyze the effect, if any, of the domestic relations law of Title 19. Section 535 of that title provides changes in the common law.

The most important change is the extension to the adopted child of the right to inherit as if born to the adopters in lawful wedlock. This right is limited in three respects:

First, the adopted child's right to inherit may be specifically limited by the decree of adoption; but if not so limited is limited by the statute.

Second, an adopted child shall not be treated as a natural child of the adopters if a bequest is limited to the "heirs of the body of the adopters".

Third, an adopted child shall not inherit property distributed per stirpes from collateral relatives of the adoptive parents by right representation.

With respect to lineal descendants of the adoptive parents the adopted child is in the same position as a natural child.

Keeping in mind the extent and limits proscribed by the statute we can analyze the position of the decedent's brother's adopted son.

He is taking by virtue of a clause in a will of the decedent, not as an "heir of the body" or by right of representation. Nothing to the contrary indicated, his right to inherit has not been limited by the decree of adoption, so the child has the same rights as if born to the brother of decedent in lawful wedlock.

In thus treating the adopted son he is the same as a natural son to decedent's brother and as such is a nephew to the decedent.

Therefore, for purposes of inheritance taxation the adopted son is treated as a nephew and subject to Class B rates.

Supporting this conclusion are the cases of Warren v. Prescott, 84 Me. 483 (1892); Virgin v. Marwick, 97 Me. 578 (1903); Getchell and Jeffrey v. Curtis and Given, 134 Me. 302 (1936); and New England Trust Co. v. Sanger, 151 Me. 295 (1955)