

MAINE STATE LEGISLATURE

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Common law Marriage
Domestic Relations) Common law marriage



REL. 12071 200-2070

Taxation: Common law marriage

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
BUREAU OF TAXATION
AUGUSTA, MAINE 04333

April 29, 1977

The Honorable Peter Truman
The House of Representatives
State House
Augusta, Maine 04330

Dear Mr. Truman:

You have made an oral request for an opinion concerning common law marriage.

QUESTION:

Is common law marriage recognized in Maine for inheritance tax purposes?

ANSWER:

Only in cases where the decedent and his spouse had contracted a common law marriage as domiciliaries of a jurisdiction where such a marriage would be held valid.

REASONS:

Common law marriage cannot be contracted in the State of Maine. Pierce v Sec. of State of Maine, 254 A.2d 46 (Me. 1969). A purported common law marriage allegedly taking place in this State would not be recognized for State of Maine inheritance tax purposes or any other purpose.

The general rule is

"...the validity of a marriage is determined by the law of the place where it was contracted; if valid there it will be valid everywhere, and, conversely, if invalid by the *lex loci contractus*, it will be invalid wherever the question may arise." 55 C.J.S. § 4 Marriages 811, 812.

There is no Maine case that we have discovered in respect to common law marriage that discusses this general rule. Never-

theless, in discussing problems relating to common law marriage, a leading text on Domestic Relations states that

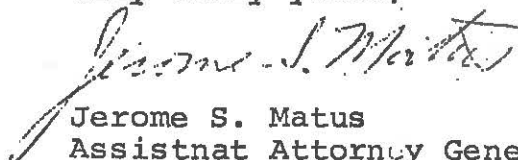
"It appears to be settled that if they [the parties] acquired a domicile in a state which held common law marriages valid, and if their conduct was such as to meet the requirements of this state's law governing such marriages, other states will recognize their marriage as valid.⁷⁵ This is so even though the state in which the validity of the marriage is litigated would not uphold common law marriages contracted within its boundaries." Clark - Law of Domestic Relations, 55 (1968).

Among the numerous cases cited in Clark, supra, to uphold the general proposition stated in the first sentence of the quote are Boltz v. Boltz, 325 Mass. 726, 92 N.E.2d 365 (1950) and La Plant v. La Plant, 99 N.H. 357, 111 A.2d 325 (1955).

It is our opinion that the rules quoted from Clark, supra, applies in the State of Maine and would be followed by Maine Courts. The State of Maine's Bureau of Taxation would recognize a common law marriage for inheritance tax purposes provided sufficient proof was furnished of a common law marriage between the parties when domiciliaries of a state that recognized common law marriage.

I trust the foregoing is of assistance to you.

Very truly yours,



Jerome S. Matus
Assistant Attorney General

JSM:spa
cc: Kenneth Cross, Supervisor
Inheritance Tax Section