



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

September 9, 1959

Honorable Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. WW-698

Re: Taxability for inheritance tax purposes of Social Security lump-sum death payment to widow, of Social Security insurance benefits to widow and of payments to widow from Civil Service Retirement and Disability Fund.

Dear Mr. Calvert:

You have requested the opinion of this office on several questions which we will consider seriatim. The first of these pertains to the lump-sum death payment which a widow receives by virtue of that portion of the Social Security Act which is codified in United States Code Annotated under Title 42, Chapter 7, Section 402 (i).

In 1940, the Treasury Department ruled that amounts payable under Title II of the Social Security Act, as amended by the Act of August 10, 1939, to a widow were not to be included in the gross estate of the decedent for Federal estate tax purposes. CB 1940-2, 285. The reasons given for such ruling were that the decedent had no control over the designation of the beneficiaries or the amounts payable to them, said beneficiaries and amounts being fixed by the provisions of the Social Security Act, as amended, and the payments being made directly to the beneficiaries. The ruling further pointed out that the decedent had no property interest in the "Federal Old-Age and Survivors Insurance Trust Fund" created under Section 201 (a) of Title II of the Social Security Act, as amended.

Revenue Ruling 55-87, CB 1955-1, 112, is to the effect that lump-sum payments under Title II of the Social Security Act are not includible in the decedent's gross estate for estate tax purposes.

Due to the basic difference in the nature of inheritance and estate taxes, this office has held in certain instances that rulings of the Federal Government

in connection with Federal estate taxes are inapposite in a determination of liability for Texas inheritance taxes. However, we think the provision of our statute necessitates the same result. The only provision of Article 7117, Vernon's Civil Statutes, which could subject the Social Security benefits to a tax is the one which taxes transfers made by ". . . deed, grant, sale or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor. . . ." The covered employee having no choice in the matter of coverage, nor in the selection of beneficiaries, nor indeed any assurance that either he or anyone else will ever receive any Social Security benefits, can scarcely be said to have made a gift intended to take effect in possession or enjoyment after his death. You are therefore advised that the Social Security lump-sum death payment to the widow is not subject to inheritance tax.

You have also requested that we advise you whether the old-age and survivors insurance benefit payments which the widow will receive by virtue of Title 42, Section 402, Chapter 7 (e), United States Code Annotated, will be subject to inheritance taxes. These benefits are paid to the widow in monthly installments. For the same reasons which we have just stated in connection with the lump-sum death payment, you are advised that such benefits are not subject to an inheritance tax.

You request that we advise you as to the taxability of a survivor annuity payable to a widow from the Civil Service Retirement and Disability Fund pursuant to the provisions of Section 2260, Title V, U.S.C.A.

In Revenue Ruling 55-682, IRB Nov. 14, 1955, 18, the Treasury Department ruled that where the decedent did not designate a beneficiary other than his estate, the amount payable upon his death is includible in his gross estate under subdivision (a) of Section 302 of the Revenue Act of 1926 as amended, and where he did designate a beneficiary other than his estate, the amount payable upon his death is includible in his gross estate under subdivisions (c) and (d) of that section. This ruling has been printed in CB 1955-2, 601.

Rev. Rul. 56-1, CB 1956-1, 444, reads as follows:

"Where an individual who is covered by the United States Civil Service Retirement System dies before retirement, the amount includible in his gross estate under section 2039 of the Internal Revenue Code of 1954 on

account of an annuity payable to his surviving spouse, or other beneficiary, is the amount of the decedent's contribution to the system."

In so far as community property states are concerned, the following ruling has been made:

"State community property laws do not apply to annuities, death benefits or refunds payable under the Civil Service Retirement Act, as amended. Accordingly, the full value of retirement contributions, plus the accrued interest thereon, are includible in the gross estate of a Federal civil service employee under section 2039 of the Internal Revenue Code of 1954." Rev.Rul. 57-446, CB 1957-2, 619.

Death benefits payable to a decedent's estate as well as benefits payable to designated beneficiaries under employees' retirement plans have been held subject to State death taxes. 28 Am.Jur. 192, 193, Sec. 256. Cases so holding may be found in 150 A.L.R. 1287, 1292.

In Attorney General's Opinion No. WW-92, this office held that the receipt of benefits by a designated nominee under the Teachers' Retirement System Act was subject to inheritance tax.

We are of the opinion that an inheritance tax is due upon that portion of the widow's annuity which is attributable to the decedent's contributions to the Retirement System. Decedent had a vested interest in such contributions and could have obtained a refund thereof had he become separated from the Civil Service prior to eligibility for an annuity. Sec. 2261, Title V, U.S.C.A.

However, we are of the opinion that if such contributions were paid from community funds, then only one-half of the amount of the annuity attributable to such contributions is taxable, cf. Blackmon v. Hansen, 140 Tex. 536, 169 S.W.2d 962 (1943); and the inheritance taxes should be computed accordingly.

SUMMARY

Social Security lump-sum death payment to widow is not subject to inheritance tax. Social Security insurance benefits are

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not subject to inheritance tax. That portion of the widow's annuity which is attributable to the decedent's contributions to the Civil Service Retirement and Disability Fund is subject to an inheritance tax. If such contributions were paid from community funds, then only one-half of the amount of the annuity attributable to such contributions is taxable.

Yours very truly,

WILL WILSON
Attorney General of Texas

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MMP:cm

APPROVED:

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REVIEWED FOR THE ATTORNEY GENERAL

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