

Opinion No. 58-106

May 22, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P. Whittaker,
Assistant Attorney General

TO: Mr. Charles B. Barker, Attorney, Bureau of Revenue, Santa Fe, New Mexico

QUESTION

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Should the entire amount of indebtedness of a decedent in a community property estate be shown as a deduction from the decedent's community estate for the purpose of computing succession tax; or should only half of said indebtedness be deducted?

CONCLUSION

The entire amount.

OPINION

ANALYSIS

The Succession Tax provided for by Article 16 of Chapter 3, New Mexico Statutes Annotated, 1953 Compilation, is levied upon "all estates which shall pass by will or inheritance or by other statutes . . ." § 31-16-2). The Supreme Court of New Mexico has held that this Succession Tax is not applicable to community property upon the death of the wife since such property belongs to the surviving spouse without administration in accordance with § 29-1-8. Accordingly, it is assumed in answering your inquiry that you refer to the situation in which the husband has predeceased his wife leaving community property.

It appears also to be the view of the Court that upon the death of the husband leaving his wife surviving, the Succession Tax is imposed upon the decedent's one-half interest in the community property. See *In Re Stutzman's Estate*, 57 N.M. 710 (1953). Under the view taken by the New Mexico Supreme Court, the answer to your question depends upon the proper construction of the Succession Tax Statute alone, as the Court has held that the Succession Tax Statute in this respect is not to be construed with reference to the statutes creating and providing for the disposition of community property. *In Re Chavez's Estate*, 34 N.M. 258 (1929); *In Re Stutzman's Estate*, supra.

The governing provision of the Succession Tax law is § 31-16-3, which provides as follows:

"For the purpose of computing the tax due under article 11 of chapter 141, New Mexico Statutes Annotated, 1929 Compilation, there shall be deducted from the gross value of the estate all exemptions provided in section 1 (31-16-1) of this act and any other exemptions allowed in said article 11 of chapter 141, as well as the funeral expenses of the decedent, the costs of administration, the indebtedness of decedent at the time of his death, including the amount of any encumbrance, lien or charge of any nature existing at the time of the death of decedent upon any property owned by decedent, for the payment of which decedent was not personally liable but which must be paid or discharged in order to preserve the interest of decedent in such property."

Although the Court has not been called upon to decide the precise question which you state, consideration of the case of *In Re Stutzman's Estate*, supra, compels the conclusion that the entire amount of the decedent's indebtedness should be deducted from the decedent's gross estate computed for Succession tax purposes, including the decedent's one-half interest in community property. In that case, the Court held that the costs of administration should be deducted in full from the deceased husband's estate, including his one-half share of the community property, for the purpose of computing the Succession Tax payable. In that respect, the decision of the trial court was reversed. In the *Stutzman* case, the trial court had determined that funeral expenses were deductible in full against the decedent's estate including his one half interest in the community property, and this ruling had not been appealed. See also *Langhurst v. Langhurst*, 49 N.M. 329, (1945), which held funeral expenses of a deceased's husband to be chargeable only against the decedent's interest in the community property, for purposes of administration.

Since no reason appears to differentiate the indebtedness of decedent from funeral expenses or costs of administration in computing deductions for Succession Tax purposes, this office advises you that the entire amount of the indebtedness should be deducted from the decedent's estate, including his one-half interest in community property, for purposes of computing Succession Tax.