

**Opinion No. 39-3204**

July 6, 1939

**BY:** FILO M. SEDILLO, Attorney General

**TO:** Mr. J. O. Gallegos, Commissioner, Bureau of Revenue, Santa Fe, New Mexico.  
Attention: Mr. Andrews, Auditor, Succession Tax Division

{\*79} You inquire whether succession tax should be charged at the rate of 1% or at the rate of 5% against a person who has not been legally adopted, but who nevertheless succeeds to the property of decedent upon proof in the courts of a legally valid and binding promise to adopt.

After careful consideration of the cases of *Wooley vs. Shell Petroleum Corporation*, 39 N.M. 256, and *Barney vs. Hutchinson*, 25 N.M. 82, I have come to the conclusion that the tax rate in such cases should be 1% as for Class 1 heirs. In both cases it is held that in decreeing the property to the claimant, the court would consider such claimant "in all respects the legally adopted son"; and, although the decree of the court does not make such person the legally adopted child for all purposes, he does take as a legally adopted child under the decree of the court.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.