

1752.

INHERITANCE TAX LAW—PROPERTY TRANSFERRED INTER VIVOS
IN CONTEMPLATION OF DEATH IS TO BE APPRAISED FOR SAID
TAX PURPOSES AS OF DATE OF DEATH OF DECEDENT—WHEN
INCHOATE DOWER RIGHT EXTINGUISHED BY MERGER.

Property transferred inter vivos in contemplation of death is to be appraised for inheritance tax purposes as of the date of the death of the decedent.

Where such transfer consists of land and is made from a husband to his wife, the inchoate dower right of the wife is thereby extinguished by merger and no dower is to be deducted, regardless of the testacy or intestacy of the decedent and the provisions of the will, if any.

COLUMBUS, OHIO, December 30, 1920.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of the commission's favor of December 14th requesting the opinion of this department, as follows:

"A and B are husband and wife. On July 1, 1919, A conveyed part of his real estate to B in contemplation of death. A died November 1st of the present year. Will you advise us:

1. As of what date should the land so conveyed be appraised for inheritance tax purposes?
2. In determining inheritance tax as against B ought her dower interest to be deducted?
 - a. In case A died intestate?
 - b. In case A died testate making B the sole beneficiary and she elects to take under the will?"

Your first question is answered by the following provisions of the inheritance tax law:

"Sec. 5336. Taxes levied under this subdivision of this chapter shall be due and payable at the time of the succession, except as herein otherwise provided, *but in no case prior to the death of the decedent.* * * *"

No special provision is made in the act for the accrual of the tax on account of a transfer made in contemplation of death. It is obvious that the succession itself occurs prior to the death of the decedent, but section 5336 of the General Code postpones the accrual of the tax in such cases until the death of the decedent.

Section 5341 provides that the county auditor shall "appraise (the property) at its actual market value as of the date of the accrual of the tax, except as hereinafter provided * * *"

There being no special provision for the appraisement of the transfer *inter vivos* in contemplation of death, it is obvious that the property involved in such successions is to be appraised as of the date of the accrual of the tax.

Applying these two conclusions together, your first question is answered by the statement that the land conveyed by A to B is to be appraised for inheritance tax purposes as of the date of A's death.

Your second question is answered by the statement that when B became entitled to the premises by virtue of A's conveyance to her, her inchoate dower right

became merged in the higher title which then vested in her. At the death of A therefore no dower interest arose in B. The question is different from that recently considered by this department in which it was pointed out that a merger of dower in a higher estate as a result of what happened at the death of the decedent could not affect the question of the deduction of dower for inheritance tax purposes; for here the merger occurred prior to the death of the decedent, when B's dower right was merely inchoate, whereas vested dower is a thing which can never arise in the very nature of things until the death of the owner of the property. Regardless, therefore, of whether A died intestate or under other circumstances mentioned in the commissioner's letter, it is the opinion of this department that B's dower interest is not to be deducted in the case inquired about.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1753.

BOARD OF EDUCATION—A BOND BEARING INTEREST AT 5 PER CENT CONTINUES TO BEAR INTEREST AT THAT RATE AFTER MATURITY UNTIL PAID THOUGH DEFAULT IS MADE THEREON AT MATURITY—INTEREST COUPONS IF PRESENTED AND UNPAID AT MATURITY BEAR INTEREST AT SIX PER CENT—SINKING FUND TRUSTEES MAY APPLY GENERAL SINKING FUND BALANCES TO PAYMENT OF PAST DUE AND UNPAID BOND AND INTEREST COUPONS—MAY NOT BORROW MONEY UNDER SECTION 5656 G. C. AT RATE OF INTEREST EXCEEDING SIX PER CENT—MAY BORROW MONEY UNDER SECTION 5656 G. C. TO EXTEND TIME OF PAYMENT OF ANY INDEBTEDNESS.

1. *In the absence of a stipulation, express or implied to the contrary, a bond bearing interest at five per cent continues to bear interest at that rate after maturity until paid, though default is made thereon at maturity. Interest coupons if presented and unpaid at maturity bear interest at six per cent.*

2. *A board of education or sinking fund commissioners of a school district may apply general sinking fund balances to the payment of past due and unpaid bond and interest coupons, in preference to applying such moneys on the bonds and interest coupons maturing in the fiscal year for which tax levies were made.*

3. *A board of education may not borrow money under section 5656 at a rate of interest exceeding six per cent.*

4. *A board of education may borrow money under section 5656 G. C. for the purpose of extending the time of payment of any indebtedness whatever, regardless of the fund in which the indebtedness exists.*

COLUMBUS, OHIO, December 30, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—You have submitted to this department the following request for opinion:

"In May, 1919, the board of education filed with the county auditor, as required by law, an annual budget, specifying among other things the sum