3113.

INHERITANCE TAX LAW—THE WORDS "HUSBAND OF A DAUGHTER" AS USED IN SUB-PARAGRAPH 3 OF SECTION 5334 G. C. DO NOT INCLUDE WIDOWER OF A DAUGHTER.

The words "husband of a daughter" as used in sub-paragraph 3 *of section* 5334 *G. C. do not include the widower of a daughter.*

COLUMBUS, OHIO, May 18, 1922.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The commission has recently requested the opinion of this department upon the following question:

"Do the words 'husband of a daughter' as used in paragraph 3 of section 5334 comprise 'widower of a daughter'? In other words, is the widower of a deceased daughter entitled to an exemption of $500.00 and a rate of 5 per cent on a succession passing to him under the inheritance tax laws?"

The phraseology of the inheritance tax law on the point is as follows:

"Sec. 5334. * * * * * *
3. When the property passes to or for the use of * * * the wife or widow of a son, the husband of a daughter of the decedent, * * * the exemption shall be five hundred dollars."

"Sec. 5335. The rates at which such tax is levied are as follows:
* * * * * *
2. On successions passing to any person mentioned in the third sub-paragraph of the preceding section.
(Five, six, seven and eight per cent, graduated according to the amount are imposed.)
3. On all successions passing to persons other than those hereinbefore mentioned * * * ."
(Seven, eight, nine and ten per cent, graduated according to the amount, are imposed.)

The attention of this department has been called to the decision in Matter of Ray, 35 N. Y. Supp. 471. This case, construing identical language, holds that the words "husband of a daughter" have a meaning broad enough to include the husband relict of a deceased daughter even though he has remarried. The facts in the case make the principle which it announces appear more or less absurd. The opinion, however, proceeds upon the basis of the alleged fact that in the code of civil procedure, the statutes of descent and distribution and elsewhere in numerous unmentioned related statutes of the state of New York, and in what the court declares to be common usage in that state, a man continues to be the "husband" of a woman after she is dead.

This department knows of no such similar common usage in this state. Cursory examination of the statutes of dower, descent and distribution discloses that a person in such a situation is referred repeatedly as a "widower", and is only referred to as a "husband" when the word is qualified by the word "relict".

It is impossible, therefore, for this department to say that the statutes or common usage in Ohio overrule the presumption of legislative intent, arising from the words used in the statute, namely, "the wife or widow of a son, the husband of a daughter", to the effect that if the "widower" or "husband relict" of a daughter had been intended to be embraced in this class, he would have been designated by some such appropriate term, inasmuch as the General Assembly has not failed specifically to mention in the same context the "widow of a son".

The only remaining point for consideration is one which has been frequently referred to in the opinions of this department interpreting the inheritance tax law, namely, that the law of 1919, being closely modeled after the New York transfer tax law, should receive such an interpretation as the latter law had been given by the courts of New York prior to the enactment of the Ohio law. This sound principle of statutory interpretation applies only when it is clear that there has been a virtual adoption by one state of a statute of another. Many of the provisions of the Ohio inheritance tax law of 1919 were so adopted from New York. This particular language, however, was not borrowed from that source, but follows language which was found in the former collateral inheritance tax law of Ohio. See section 5331 of the General Code of 1910, where the phrase "the wife or widow of a son, the husband of the daughter of the decedent" appears.

It seems to this department, therefore, that on this point the Ohio inheritance tax law should receive a local interpretation. Inasmuch then as the New York decision was based upon local policy and usage, and even so, scarcely commands respect; and inasmuch, further, that the language requiring interpretation originated in Ohio, and is to be construed without reference to decisions in other states, especially when they depend upon local policy and usage, it is the opinion of this department that the widower of a daughter is not comprised within the third class created by section 5334 of the General Code under the designation of "husband of a daughter", and not being mentioned elsewhere in that section, is a successor not entitled to any exemption, and to whose succession the seven per cent rate prescribed by section 5335 of the General Code applies.

Respectfully,
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Attorney-General.

3114.

JOINT HIGH SCHOOL—WHERE PUPIL RESIDES MORE THAN FOUR MILES FROM SUCH SCHOOL—TRANSPORTATION SHOULD BE PROVIDED BY BOARD OF EDUCATION OF DISTRICT IN WHICH CHILD LIVES—PERSONAL SERVICE ITEM OF TRANSPORTATION EXPENSE OF SCHOOL DISTRICT INCURRED, SHOULD BE REPORTED ONLY ONCE TO COUNTY AUDITOR—NO AUTHORITY TO PROVIDE FOR JOINT EXPENSE OF TRANSPORTATION COSTS—NOR FOR HIGH SCHOOL COMMITTEE IN CHARGE OF MANAGEMENT OF SUCH HIGH SCHOOL TO PROVIDE TRANSPORTATION OF PUPILS TO SUCH HIGH SCHOOL.

1. *Where a pupil attending a joint high school resides more than four miles from such joint high school, the transportation of the pupils to the joint high school should be provided by the board of education of the district in which the child lives* (7764).