tax which is made a charge upon the residuary estate is not to be deducted from the value of that estate is equivalent to a holding that such amount is not to be added to the value of the specific legacy on account of which the tax is assessed.

Turning to the other side of the argument, it does seem reasonable to regard the payment of the tax out of the testator's estate as a direct benefit to the specific legatee and, therefore, as in the nature of a succession to him. See Gleason & Otis on Inheritance Taxation, p. 87, where this view seems to be favored, though the learned authors are unable to point to any case where it has been actually carried out with logical accuracy in practice. However, there are certain mathematical difficulties connected with the application of any such theory. If we are to take $5,000.00 as the basis of the computation of the tax to be paid out of the residuary estate, as the commission does in its letter, and if we thereby determine the tax to be in the first instance $350.00 on the $5,000.00 succession in the seven per cent class; and if we then proceed to add the $350.00 to the $5,000.00, we have $5,350.00 as the taxable value of the specific legacy. But if that is to be taken as the basis, then we must also assess a seven per cent tax on the $350.00 or, rather, recalculate the tax on a legacy worth $5,350.00; we now have $374.50 as the tax due on the enhanced specific legacy. But this tax also must be paid under the terms of the will from the residuary estate. This process would have to be repeated an infinite number of times, although the amount of the additional tax on each process would tend to approach zero. In view of this difficulty, it is the opinion of this department that the rule in *Matter of Swift* should be followed and that the $350.00 should not be added to the value of the specific legacy nor deducted from the value of the residuary bequest; rather, it should be treated as a condition imposed upon the residuary legatee in the nature of a personal obligation, such as might have been imposed by a contract *inter vivos*.

It is the opinion of this department, therefore, that the specific legacy should be assessed on the value of the jewelry alone.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2204.

INHERITANCE TAX LAW—WHEN PROCEEDS OF INSURANCE POLICY OF DECEDENT ARE NOT SUBJECT TO SAID TAX.

Where a decedent takes out an insurance policy payable to a trustee, with written instructions to pay any inheritance taxes that may be assessed against her estate so as to leave the several successions undiminished for her beneficiaries, and to pay any balance to the beneficiaries themselves, no taxable succession under the inheritance tax law arises in respect to the proceeds of such policy.

COLUMBUS, OHIO, June 29, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of the commission's letter of recent date submitting for the opinion of this department the following question:

"Mrs. John Doe takes out an insurance policy payable to a trust company as her trustee with written instructions to such company to pay any inheritance taxes that may be assessed against her estate so as to leave the several successions undiminished for her beneficiaries, any balance of the proceeds of the policy remaining to be thereafter paid over to such distributees. Will you be good enough to advise the commission as to how the fund derived from such policy at the death of the insured should be treated under the inheritance tax act? Will it be subject to or exempt from assessment thereunder? Should the court ascertain the amount paid out of such fund for the benefit of each several distributee and treat it as part of the succession to such distributee? Would it make any difference in your conclusions if the premiums on the policy have been paid by the husband of the insured?"

In opinion No. 2203, addressed to your commission under date of June 29, 1921, it is held that where the testator charges his residuary estate with the payment of all inheritance taxes on specific legacies, the correct rule is to ignore this charge and to appraise each specific legacy without addition on account of the fact that the tax is to be paid for the benefit of the legatee by another; and to appraise the residuary legacy or residuary succession without regard to the fact that the residuary legatee or legal representative is charged with the duty of paying inheritance taxes.

In an earlier opinion of this department it was held that the proceeds of a life insurance policy payable to designated beneficiaries do not constitute a taxable succession, but that if payable to the estate they are subject to the inheritance tax.

In the case stated by the commission the beneficial interests in the proceeds of the policy vest on the death of the decedent in designated persons. They do not become a part of the estate of the decedent in any sense. To be sure, those who are the beneficiaries of the testatrix's bounty, or who are to profit under the intestate laws by her death, are the identical persons who are to reap the benefits of the insurance policy; and moreover, these benefits have direct relation to the imposition of the inheritance tax. Nevertheless, the persons in whom these interests arise acquire them by contract, and not as distributees of the estate of the decedent in any sense. The property rights which they enjoy under the insurance policy do not pass to them from her by will, by intestacy or by gift.

It is accordingly the opinion of this department that no account is to be taken of the proceeds of the insurance policy in the ascertainment of the value of the taxable successions in the estate of Mrs. John Doe. The reasons assigned will make it obvious that no difference in the conclusion could be predicated upon the fact that the premiums on the policy have been paid by the husband of the insured.

Respectfully,
JOHN G. PRICE,
Attorney-General.