COMMITTEE REPORT

HOUSE

(11) FURTHER:

5/19/83 Date: 4-18-84

Mr. Speaker:

The Committee on FINANCE has had HB 388

"An Act repealing the state estate tax; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 388 (Finance) [X] same title [ ] new title

and recommends individual recommendations

[ ] AND attaches a "Letter of Intent" [X] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the ______ Committee

MEMBERS SIGNING DO PASS

Albert P. Adams

[illegible]

[illegible]

[illegible]

MILO HERITZ

MEMBERS HAVING OTHER RECOMMENDATIONS:

[illegible] - amend to get more for [illegible]

[illegible]

Albert P. Adams

CHAIRMAN

H 60

Original sponsors: Tischer, Barnes, Bettisworth, et al

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 388 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act repealing the state estate tax; and providing

7 for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 13.16.610 and AS 43.31 are repealed.

10 * Sec. 2. Estates of decedents dying before the effective date of this

11 Act shall be taxed under the laws in effect before that date.

12 * Sec. 3. This Act takes effect on the effective date of repeal of the

13 federal estate tax.

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STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date April 18, 1984

REQUEST
Bill/Resolution No: CSHB 388 (FIN)
Title: Repeal of state estate tax

Sponsor: Tischer
Requestor: House Finance
Date of Request: April 18, 1984

FISCAL DETAIL
Agency Affected: Department of Revenue
Program Category Affected: Collection and Management
BRU, Program of Subprogram(s) Affected:
Audit Division
Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Maureen O'Brien *Maureen O'Brien*
Division: Audit Division
Phone: 465-2320
Date: April 18, 1984

Approved by Commissioner: *[signature]*
Agency: *Revenue*
Date: *4/18/84*

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

IV Analysis of HB 388

There will be no reduction in state revenues until such time as the federal government repeals its estate tax. Based on a five year average, should the federal tax be repealed Alaska revenues would be reduced approximately $350,000 per year.

This bill will not materially reduce the workload of the Division since effort expended on administering this tax is minimal.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date April 18, 1984

REQUEST
Bill/Resolution No: CSHB 388
Title: Repeal of state estate tax

Sponsor: Tischer
Requestor: House Finance
Date of Request: April 18, 1984

FISCAL DETAIL
Agency Affected: Department of Revenue
Program Category Affected: Collection and Management
BRU, Program of Subprogram(s) Affected:
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Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Maureen O'Brien *Maureen O'Brien* Phone: 465-2320
Division: Audit Division Date: April 18, 1984

Approved by Commissioner: *[signature]* Date: 4/18/84
Agency: Revenue

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

IV Analvsis of HB 388

There will be no reduction in state revenues until such time as the federal government repeals its estate tax. Based on a five year average, should the federal tax be repealed Alaska revenues would be reduced approximately $350,000 per year.

This bill will not materially reduce the workload of the Division since effort expended on administering this tax is minimal.

Offered: 4/19/84
Referred: Rules

Original sponsors: Tischer, Barnes,
Bettisworth, et al

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 388 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act repealing the state estate tax; and providing

7 for an effective date."

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9 * Section 1. AS 13.16.610 and AS 43.31 are repealed.

10 * Sec. 2. Estates of decedents dying before the effective date of this

11 Act shall be taxed under the laws in effect before that date.

12 * Sec. 3. This Act takes effect on the effective date of repeal of the

13 federal estate tax.

for original bill

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STATE OF ALASKA
FISCAL NOTE

Revision Date Dec., 1983

I. REQUEST
Bill/Resolution No: HB 388
Title: Repeal of state estate tax
Sponsor: Tischer
Requestor: House Finance

II. FISCAL DETAIL
Agency Affected: Revenue
Program Category Affected: Coll & Mgmt
BRU, Program of Subprogram(s) Affected:
Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	(350.0)	(350.0)	(350.0)	-	-

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	-	(350.0)	(350.0)	(350.0)	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-
	-	-	-	-	-	-

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-
	-	-	-	-	-	-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Robert W. Elliott Phone: 465-2173
Division: Revenue - Research Date: 12/01/83

Approved by Commissioner: [signature] Date: 12/19/83
Department: Revenue

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

IV. Analysis of HB 388

None of AS 13.16.610 should be repealed as there still is an apportionment of federal estate taxes required.

The repeal of AS 43.31 would reduce general fund tax receipts by approximately $350,000 per year based on the past five-year average. However, there would be no reduction in the tax paid by the estate. The repeal would only result in the tax being paid to the federal government rather than the Department of Revenue.

This bill would not materially reduce the workload of the Division since effort expended on collecting the tax is minimal.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No: HB 388
Title: Repeal of state estate tax.
Sponsor: Fischer
Requestor: Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Revenue
Program Category Affected:
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	(300.0)	(300.0)	(300.0)	-	-

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	-				-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-
	-	-	-	-	-	-

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-
	-	-	-	-	-	-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The repeal of AS 43.31 would reduce general fund tax receipts by approximately $300,000 per year based on past the five-year average. However, there would be no reduction in the tax paid by the estate. The repeal would only result in the tax being paid to the Federal Government rather than the Department of Revenue.

IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Robert W. Elliott Phone: 465-2173
Division: Revenue - Research Date: 5/12/83

Approved by Commissioner: [signature] Date:
Department: Revenue

Distribution:

Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

IV. Analysis

None of AS 13.16.610 should be repealed as there still is an apportionment of federal estate taxes required.

Chapter 30. Inheritance and Transfer Taxes.

[Repealed, § 1 ch 24 SLA 1970.]

Chapter 31. Alaska Estate Tax.

Section

11. Tax upon estates of resident decedents
21. Tax upon estates of nonresident decedents
31. Tax upon estates of alien decedents
41. Administration by Department of Revenue
51. Examination of books, papers, records, etc.
61. Appointment, bonds and credentials of agents
71. Regulations
91. Actions by or against department
111. Notice of death or tax return
121. Tax return in certain cases
131. Failure to make return and extension
141. When tax due, extension and interest
151. Notice of deficiency in federal estate tax
181. Receipts for taxes
191. Failure to pay tax
201. Tax payable from entire estates and third persons

Section

221. Personal liability of executor
230. Sale of real estate by executor to pay tax
240. Actions to enforce payment
250. No discharge of executor until tax paid
260. Agreements as to tax due
280. Refunds of excess tax paid
290. Superior court judge to furnish names of decedents
300. Corporate executors of nonresident decedents
310. Prima facie liability for tax
320. Discharge of estate; notice of lien, limitation, etc.
330. Disposition of proceeds
340. Interpretation and construction
350. Failure to produce records
400. Effectiveness of chapter
410. Exemptions
420. Definitions
430. Short title

Revisor's notes.— Enacted as AS 43.30 Renumbered in 1970.

Collateral references. — 72 Am. Jur. 2d, State and Local Taxation, §§ 750 — 752.

85 C.J.S., Taxation, §§ 1111 — 1230.

Constitutionality, construction, and effect of legislative definition of gift or transfer in "contemplation of death," 4 ALR 1523; 7 ALR 1028; 21 ALR 1335; 41 ALR 989; 75 ALR 544; 120 ALR 170; 148 ALR 1051.

Inheritance, succession or estate tax on property covered by power of appointment, 18 ALR 1470; 28 ALR2d 446.

Inheritance tax on absentee's estate, 24 ALR 854.

Tax in state in which personal property (or evidence thereof) belonging to estate of nonresident decedent is found as double taxation, 42 ALR 378; 86 ALR 760.

Business situs of intangibles in state other than domicile of owner as excluding tax at domicile, 79 ALR 344.

Situs of intangibles placed by a trustor domiciled in one jurisdiction with a trustee domiciled in another jurisdiction, 96 ALR 674.

Danger of multiple taxation of decedent's estate inherent in diverse adjudication by courts of different states as to domicile of decedent, 121 ALR 1220.

Rights and remedies as regards estate or succession tax paid or payable by executor or administrator on property not passing under will or coming into his possession, 1 ALR2d 178.

Deductions and credits with respect to succession or estate tax as affected by estate by entirety or other joint estate with right of survivorship, 1 ALR2d 1101.

Illegitimate child as "lineal descendant" and "child" within the provisions of inheritance, succession, or estate tax statutes respecting tax rates, 3 ALR2d 166.

Valuation of property for purposes of estate, succession, or gift tax as affected by contract or bylaw specifying price at which property may or must be sold, purchased, or offered, 5 ALR2d 1122.

Liability of life insurer which pays proceeds of policy direct to beneficiary, for the portion of estate or succession tax attributable to such proceeds, 10 ALR2d 657.

What law governs apportionment of estate taxes among persons interested in estate, 16 ALR2d 1282.

Valuation of corporate stock for purposes of succession, inheritance of estate tax, as affected by quantity involved, 23 ALR2d 775.

Death or divorce of blood relative as affecting relationship by affinity for purposes of inheritance, succession or estate tax, 26 ALR2d 271.

Statutes apportioning or prorating estate taxes, 37 ALR2d 199.

Estate tax consequences of reciprocal trusts, 38 ALR2d 522.

Statutory provision that specified fund or property shall be "exempt from taxation," "exempt from any tax," or the like, as exempting such property from estate or succession taxes, 47 ALR2d 999.

Children of adopted child, or adopted children of natural child, as "lineal descendants" within provisions of inheritance, succession, or estate tax statutes respecting exemption, 541 ALR2d 853.

Accumulations of income in inter vivos trust in favor of third person as subject to estate or succession tax at settlor's death, 55 ALR2d 415.

Dead man statute as applicable to proceedings to determine liability for succession, estate, or inheritance tax, 66 ALR2d 714.

Surviving husband or wife of child who died before decedent as "husband" or "wife" within succession tax law provision as to rates or exemptions, 81 ALR2d 1230.

Interest on refund or credit in absence of specific controlling statute, 88 ALR2d 825.

Inter vivos settlement of disputed claim as consideration within statutes excepting transfers for consideration from estate, succession, or inheritance tax, 13 ALR3d 657.

Renunciation of inheritance, devise, or legacy as affecting state inheritance, estate, or succession tax, 27 ALR3d 1354.

Valuation of corporate stock for purposes of state gift, inheritance or estate tax, as affected by predetermined price in buy-out or first option agreement among stockholders or with corporation, 58 ALR3d 1104.

Devise or bequest pursuant to testator's contractual obligation as subject to estate, succession, or inheritance tax, 59 ALR3d 969.

Valuation of United States Treasury bonds for state inheritance or estate tax purposes, 62 ALR3d 1272.

Refund of state inheritance or estate tax where claims are proven against estate after tax was paid, 63 ALR3d 924.

Surviving spouse taking elective share as chargeable with estate or inheritance tax, 67 ALR3d 199.

Liability of income beneficiary of trust for proportionate share of estate or inheritance tax in absence of specific direction in statute, will, or other instrument, 67 ALR3d 273.

Ultimate burden of estate tax in absence of statute, will or other provisions, 68 ALR3d 714.

Liability of testamentary trustee for failure to assert claim against executor of testator's estate for mistake resulting in overpayment of taxes, 68 ALR3d 1265.

Construction and effect of will provisions expressly relating to the burden of estate or inheritance taxes, 69 ALR3d 122.

Construction and effect of will provisions not expressly mentioning payment of death taxes but relied on as affecting the burden of estate or inheritance taxes, 70 ALR3d 630.

Construction and effect of provisions in nontestamentary instrument relied upon as affecting the burden of estate or inheritance taxes, 70 ALR3d 691.

Construction and application of statutes apportioning or prorating estate taxes, 71 ALR3d 247.

Remedies and practices under estate tax apportionment statutes, 71 ALR3d 371.

Sec. 43.31.011. Tax upon estates of resident decedents. A tax is imposed upon the transfer of the estate of a person who, at the time of death, was a resident of this state, the amount of which shall be computed as follows:

(1) Determine the amount of the credit allowable under the applicable federal revenue Act for estate, inheritance, legacy and succession taxes actually paid to the several states.

(2) Determine for each of the other states the amount of all constitutionally valid estate, inheritance, legacy and succession taxes, actually paid to each of the other states in respect to property owned by the decedent or subject to these taxes as a part of or in connection with the decedent's estate.

(3) Determine for each other state in which property is located that is owned by the decedent or subject to estate, inheritance, legacy or succession taxes as a part of or in connection with the decedent's estate the proportion of the amount of the credit allowable under the applicable federal revenue Act for estate, inheritance, legacy and succession taxes actually paid to the several states, as the value of the property taxable in that state bears to the value of the entire gross estate wherever situated.

(4) The amount of the tax is the amount of the allowable credit as determined in (1) of this section less the sum of the smaller figures of (2) or (3) of this section for each of the other states in which the decedent's property is situated. For example: The amount of allowable credit under the federal Act is $10,000 (relating to (1) in this section)

	Amount of Tax Actually Paid (relating to (2) of this section)	Proportion of Credit from Situs of Property (relating to (3) of this section)	Smaller of (2) and (3) of this section
State X	$3,000	10%—$1,000	$1,000
State Y	$1,000	15%—$1,500	$1,000
			$2,000

The Alaska estate tax is $10,000 minus $2,000 equalling $8,000. (§ 2 ch 24 SLA 1970)

Cross references. — For priority of claims against estate, see AS 13.16.470; for payment of claims, see AS 13.16.480; for apportionment of taxes, see AS 13.16.610.

Sec. 43.31.021. Tax upon estates of nonresident decedents. A tax is imposed upon the transfer of real property situated in this state, upon tangible personal property having an actual situs in this state, upon intangible personal property having a business situs in this state and upon stocks, bonds, debentures, notes and other securities or obligations of corporations organized under the laws of this state, of a person who at the time of death was not a resident of this state but was a resident of the United States, the amount of which shall be a sum equal to that proportion of the amount of the credit allowable under the applicable federal revenue Act for estate, inheritance, legacy and succession taxes actually paid to the several states, as the value of the property taxable in this state bears to the value of the entire gross estate wherever situated. (§ 2 ch 24 SLA 1970)

Sec. 43.31.031. Tax upon estates of alien decedents. (a) A tax is imposed upon the transfer of real property situated and tangible personal property having an actual situs in this state and upon intangible personal property physically present in this state of a person who at the time of death was not a resident of the United States, the amount of which is a sum equal to that proportion of the credit allowable under the applicable federal revenue Act for estate, inheritance, legacy and succession taxes actually paid to the several states, as the value of the property taxable in this state bears to the value of the estate taxable by the United States wherever situated.

(b) For the purpose of this section, stock in a corporation organized under the laws of this state shall be considered physically present in this state. The amount receivable as insurance upon the life of a decedent who at the time of death was not a resident of the United States, and any money deposited with a person carrying on the banking business by or for the decedent who was not engaged in business in the United States at the time of death, is not for the purpose of this section, considered to be physically present in this state. (§ 2 ch 24 SLA 1970)

Sec. 43.31.041. Administration by Department of Revenue. The Department of Revenue, except as otherwise provided, has jurisdiction and is charged with the administration and enforcement of the provisions of this chapter. (§ 2 ch 24 SLA 1970)

Sec. 43.31.051. Examination of books, papers, records, etc. (a) The department, for the purpose of ascertaining the correctness of a return, or for the purpose of making a return where none has been made, may examine books, papers, records or memoranda, bearing upon the matter required to be included in the return; may require the attendance of persons rendering the return or of an officer or employee of those persons, or of any person having knowledge in the premises, at a convenient place in the superior court in the judicial district in which the person resides, and may take testimony with reference to the matter required by law to be included in the return, and may administer oaths to these persons.

(b) If a person summoned to appear under this chapter to testify, or to produce books, papers, or other data, refuses to do so, the superior court in the judicial district in which the person resides has jurisdiction by appropriate process to compel the attendance, testimony, or production of books, papers, or other data. (§ 2 ch 24 SLA 1970)

Sec. 43.31.061. Appointment, bonds and credentials of agents. (a) The department may appoint and remove examiners and appraisers it considers necessary, these persons to have those duties and powers the department prescribes. The compensation of these examiners and appraisers shall be as the department prescribes, and they shall be reimbursed for travel expenses as provided for state employees.

(b) The department may require the examiners, appraisers and employees as it designates to give bond payable to the state for the faithful performance of their duties in that form and with those sureties as it determines, and all premiums on these bonds shall be paid by the state.

(c) All officers empowered by law to administer oaths or employees, examiners and appraisers appointed by the department may administer an oath to persons giving testimony before them or to take the acknowledgment of a person in respect to the returns or reports required under this chapter.

(d) All employees, examiners and appraisers appointed by the department shall have for identification purposes proper credentials issued by the department and exhibit them upon demand. (§ 2 ch 24 SLA 1970; am § 55 ch 32 SLA 1971)

Sec. 43.31.071. Regulations. The department may adopt regulations not inconsistent with this chapter as it considers necessary to enforce its provisions, and may adopt regulations as are or may be promulgated with respect to the estate tax provisions of the revenue Act of the United States insofar as they are applicable. The department may prescribe forms it considers proper for the administration of this chapter. (§ 2 ch 24 SLA 1970)

Sec. 43.31.081. Information confidential. [Repealed, § 3 ch 166 SLA 1976. For current law, see AS 43.05.230.]

Sec. 43.31.091. Actions by or against department. The department may sue and be sued but may not be required to give supersedeas or other bond in any cause or court of this state. (§ 2 ch 24 SLA 1970)

Sec. 43.31.101. Special appraisers. [Repealed, § 56 ch 32 SLA 1971.]

Sec. 43.31.111. Notice of death or tax return. The executor, within two months after the decedent's death, or within a like period after qualifying as executor, shall give written notice of the death to the department on the form prepared and published by the department known as the preliminary notice and report. If a federal estate tax return is required by the applicable federal revenue Act, a copy of the preliminary notice filed with the federal government may be filed with the department in place of the preliminary notice and report. (§ 2 ch 24 SLA 1970)

Sec. 43.31.121. Tax return in certain cases. The executor of an estate required by the laws of the United States to file a federal estate tax return shall file with the department within 15 months from the date of death a return consisting of an executed copy of the federal estate tax return, and shall file with this return all supplemental data, if any, as may be necessary to determine and establish the correct tax

under this chapter. This return shall be made in the case of every decedent who at the time of death was not a resident of the United States and whose gross estate includes any real property situated and tangible personal property having an actual situs in the state and intangible personal property physically present in the state. (§ 2 ch 24 SLA 1970)

Sec. 43.31.131. Failure to make return and extension. If the federal taxing authorities grant an extension of time for filing a return the department shall allow a like extension of time for filing upon the filing by the executor of a copy of the federal extension with the department. An extension of time for filing a return does not operate to extend the time for payment of the tax. If a person fails to file a return at the time prescribed by law or files, wilfully or otherwise, a false or fraudulent return, the department shall make the return from its own knowledge and from information it can obtain through testimony or otherwise. A return so made by the department shall be prima facie good and sufficient for all legal purposes. (§ 2 ch 24 SLA 1970)

Sec. 43.31.141. When tax due, extension and interest. The tax imposed by this chapter is due and payable 15 months after the decedent's death, and shall be paid by the executor to the department. If the department finds that the payment on the due date of tax or any part of the tax would impose undue hardship upon the estate, the department may extend the time for payment of any part, but no extension may be for more than one year and the aggregate of extensions with respect to an estate may not exceed five years from the due date. In that case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension unless a further extension is granted. If the time for the payment is extended there shall be collected, as part of this amount, interest on the tax at the rate provided in AS 43.05.225 from the due date of the tax to the date the tax is paid. (§ 2 ch 24 SLA 1970; am § 34 ch 113 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "provided in AS 43.05.225" for "of seven percent a year" near the end of the section.

Sec. 43.31.151. Notice of deficiency in federal estate tax. It is the duty of the executor to file with the department within 60 days after a final determination of a deficiency in federal estate tax has been made, written notice of the deficiency. If, based upon this deficiency and the ground for it, it appears that the amount of tax previously paid is less than the amount of tax owing, the difference together with interest at the rate of seven per cent a year from the due date of the tax shall be paid upon notice and demand by the department. If the executor fails to give the notice required by this section, any additional tax owing may be assessed, or a proceeding in court for the collection of the

tax may be begun without assessment at any time before the filing of notice or within 30 days after the delinquent filing of notice, notwithstanding the provisions of AS 43.31.270. (§ 2 ch 24 SLA 1970)

Editor's notes. — AS 43.31.270, referred to at the end of this section, was repealed by § 4, ch. 94, SLA 1976. For current law, see AS 43.05.260.

Sec. 43.31.161. Deficiency, hearing, and procedure. [Repealed, § 3 ch 166 SLA 1976. For taxpayer remedies, see AS 43.05.240.]

Sec. 43.31.171. Civil penalties. [Repealed, § 45 ch 113 SLA 1980. For current law, see AS 43.05.220.]

Sec. 43.31.181. Receipts for taxes. The department shall issue to the executor, upon payment of the tax imposed by this chapter, receipts in triplicate, any of which is sufficient evidence of payment, and shall entitle the executor to be credited and allowed the amount of the receipt by a court having jurisdiction to audit or settle the accounts of the executor. If the executor files a complete return and makes written application to the department for determination of the amount of the tax and discharge from personal liability, the department, as soon as possible, and in any event within one year after receipt of the application, shall notify the executor of the amount of the tax, and upon payment of the tax the executor shall be discharged from personal liability for any additional tax thereafter found to be due, and is entitled to receive from the department a receipt in writing showing the discharge; however, the discharge does not operate to release the gross estate of the lien of additional tax that may thereafter be found to be due, while the title to the gross estate remains in the executor or in the heirs, devisees, or distributees; but after the discharge is given, no part of the gross estate is subject to lien or to any claim or demand for tax after the title to the estate has passed to a bona fide purchaser for value. (§ 2 ch 24 SLA 1970)

Sec. 43.31.191. Failure to pay tax. (a) If a tax imposed by this chapter or any portion of the tax is unpaid within 90 days after it becomes due, and the time for payment is not extended, the department shall collect the tax, penalty and interest by using the remedy of distraint on real and personal property as set out in AS 43.20.270 or by issuing a warrant directed to the commissioner of public safety commanding the commissioner to

(1) levy upon and sell the real and personal property of the estate found in the state for the payment of the amount of the unpaid tax with interest and penalties, if any, as may have accrued or been assessed against it, together with the cost of executing the warrant; and

(2) return the warrant to the department and pay to it the money collected under it by a time to be specified in the warrant, not less than 60 days from the date of the warrant.

(b) The commissioner of public safety shall proceed upon the warrant in all respects, with like effect, in the manner prescribed by law for executions issued against property upon judgments of a court of record. Alias and pluries warrants may issue from time to time as the department considers proper until the entire amount of the tax, deficiency, interest, penalties and costs have been recovered. (§ 2 ch 24 SLA 1970; am § 58 ch 32 SLA 1971)

Sec. 43.31.201. Tax payable from entire estates and third persons. If the tax or a part of the tax is paid or collected out of that part of the estate passing to or in possession of a person other than the executor in the capacity of executor, the person is entitled to a reimbursement out of a part of the estate still undistributed or by a just and equitable contribution by the person whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest in the estate is subject to an equal or prior liability for the payment of tax, debts, or other charges against the estate, it being the purpose and intent of this section that so far as is practical and unless otherwise directed by the will of the decedent, the tax shall be paid out of the estate before its distribution; but the department is not charged with enforcing contribution from a person. (§ 2 ch 24 SLA 1970)

Sec. 43.31.211. Lien for unpaid taxes. [Repealed, § 4 ch 94 SLA 1976. For current law, see AS 43.10.035(a).]

Sec. 43.31.221. Personal liability of executor. If an executor makes distribution either in whole or in part of any of the property of an estate to the heirs, next of kin, distributees, legatees or devisees without having paid or secured the tax due the state under this chapter, or obtained the release of the property from the lien of the tax the executor becomes personally liable for the tax so due the state, or so much of it as remains due and unpaid, to the full extent of the full value of any property belonging to the person or estate which may come into the hands, custody or control of the executor. (§ 2 ch 24 SLA 1970)

Sec. 43.31.230. Sale of real estate by executor to pay tax. Every executor has the same right and power to take possession of or sell, convey and dispose of real estate as assets of the estate for the payment of the tax imposed by this chapter as the executor may have for the payment of the debts of the decedent. (§ 2 ch 24 SLA 1970)

Sec. 43.31.240. Actions to enforce payment. Actions may be brought within the time or times specified in this chapter by the department to recover the amount of taxes, penalties and interest due under this chapter. The action shall be brought in the superior court where the estate is being or has been administered, or if no administration is had in this state, then in the appropriate court of the jurisdiction where any of the property of the estate is situated. (§ 2 ch 24 SLA 1970; am § 59 ch 32 SLA 1971)

Sec. 43.31.250. No discharge of executor until tax paid. No final account of an executor of the estate of a nonresident, nor of the estate of a resident where the value of the gross estate wherever situated exceeds $60,000 may be allowed by any court until the account shows, and the judge of the court finds, that the tax imposed by the provisions of this chapter upon the executor, which has become payable, has been paid. The certificate of the department of nonliability for tax or its receipt for the amount of tax certified is conclusive in proceedings as to the liability or the payment of the tax to the extent of the certificate. (§ 2 ch 24 SLA 1970)

Sec. 43.31.260. Agreements as to tax due. For the purpose of facilitating the settlement and distribution of estates held by executors, the department may, on behalf of the state, agree upon the amount of taxes at any time due or to become due from the executor under the provisions of this chapter, and payment in accordance with the agreement is full satisfaction of the taxes to which the agreement relates. (§ 2 ch 24 SLA 1970)

Sec. 43.31.270. Time for assessment of tax. [Repealed, § 4 ch 94 SLA 1976. For current law, see AS 43.05.260.]

Sec. 43.31.280. Refunds of excess tax paid. (a) When it appears upon the examination of a return made under this chapter or upon proof submitted to the department by the executor, that an amount of estate tax has been paid in excess of the tax legally due under this chapter, then the amount of overpayment, together with any overpayment of interest on it shall be refunded to the executor and this refund shall be made by the department as a matter of course regardless of whether the executor has filed a written claim for it, except that upon request of the department, the executor shall file with the department a conformed copy of any written claim for refund of federal estate tax which has been filed with the United States.

(b) Notwithstanding (a) of this section, no refund of estate tax may be made nor is any executor entitled to bring an action for refund of estate tax after the expiration of two years from the date of payment of the tax to be refunded unless there has been filed with the department written notice of administrative or judicial determination of the federal estate tax liability of the estate, whichever occurs last, and notice shall have been so filed not later than 60 days after determination has become final.

(c) In this section, an administrative determination shall be considered to have become final on the date of receipt by the executor or other interested party of the final payment to be made refunding federal estate tax or upon the last date on which the executor or any other interested party receives notice from the United States that an overpayment of federal estate tax has been credited by the United States against any liability other than federal estate tax of the estate.

A final judicial determination shall be considered to have occurred on the date on which a judgment entered by a court of competent jurisdiction and determining that there has been an overpayment of federal estate tax becomes final.

(d) Nothing in this section prevents an executor from bringing or maintaining an action in a court of competent jurisdiction within a period otherwise prescribed by law to determine any question bearing upon the taxable situs of property, the domicile of a decedent, or otherwise affecting the jurisdiction of the state to impose an inheritance or estate tax with respect to a particular item of property. (§ 2 ch 24 SLA 1970)

Sec. 43.31.290. Superior court judge to furnish names of decedents. Each superior court judge shall, on or before the 10th day of every month, notify the department of the names of all decedents, the names and addresses of the respective executors, administrators or curators appointed, the amount of the bonds, if any, required by the court, and the probable value of the estates, in all estates of decedents whose wills have been probated or propounded for probate before the judge or upon which letters testamentary or upon whose estates letters of administration or curatorship have been sought or granted, during the preceding months. The report shall contain any other information which the judge may have concerning the estate of these decedents. The judge shall also furnish immediately further information, from the records and files of the judge's office in regard to the estates, which the department may from time to time require. (§ 2 ch 24 SLA 1970)

Sec. 43.31.300. Corporate executors of nonresident decedents. If the executor of the estate of a nonresident is a corporation duly authorized, qualified and acting as an executor in the jurisdiction of the domicile of the decedent, it is under the duties and obligations as to the giving of notices and filing of returns required by this chapter, and may bring and defend actions and suits as authorized or permitted by this chapter, to the same extent as an individual executor, notwithstanding that the corporation may be prohibited from exercising, in this state, any powers as executor, but nothing in this section authorizes corporations not authorized to do business in this state to qualify or act as executor, administrator or in any other fiduciary capacity, if otherwise prohibited by the laws of this state, except to the extent expressly provided. (§ 2 ch 24 SLA 1970)

Sec. 43.31.310. Prima facie liability for tax. The estate of each decedent whose property is subject to the laws of the state is considered prima facie liable for estate taxes under this chapter, and is subject to a lien for them in an amount which may be later determined to be due and payable on the estate as provided in this chapter. The presumption of liability begins on the date of the death of the decedent and continues until the full settlement of all taxes which may be found to be due

under this chapter, the settlement to be shown by receipts for all taxes due to be issued by the department as provided for in this chapter. Whenever it appears to the department that an estate is not subject to a tax under this chapter the department shall issue to the executor, administrator, curator or other personal representative, or to the heirs, devisees, or legatees of the decedent, a certificate in writing to that effect, showing nonliability to tax, which certificate of nonliability has the same effect as a receipt showing payment. The certificate of nonliability is subject to record and admissible in evidence in like manner as receipts showing payment of taxes. There shall be paid to the department a fee of $2.50 for each certificate so issued. (§ 2 ch 24 SLA 1970)

Sec. 43.31.320. Discharge of estate; notice of lien, limitation, etc. (a) If no receipt for the payment of taxes, or no receipt of nonliability for taxes has been issued or recorded as provided for in this chapter, the property constituting the estate of the decedent in this state shall be considered fully acquitted and discharged of all liability for estate and inheritance taxes under this chapter after a lapse of 10 years from the date of the filing with the department of notice of the decedent's death, or after a lapse of 10 years from the date of the filing with the department of an estate tax return, whichever date is earlier, unless the department makes out, files and has recorded with the appropriate recorder wherein any part of the estate of the decedent may be situated in this state, a notice of lien against the property of the estate, specifying the amount or approximate amount of taxes claimed to be due to the state under this chapter, which notice of lien continues the lien in force for an additional period of five years or until payment is made. Notice of lien shall be filed and recorded; however, if no receipt for the payment of taxes, or no certificate of nonliability for taxes, has been issued or recorded as provided for in this chapter, the property constituting the estate of the decedent in this state, if the decedent was a resident of this state at the time of death, shall be considered fully acquitted and discharged of all liability for tax under this chapter after a lapse of 10 years from the date of the death of the decedent, unless the department makes out, files and has recorded notice of lien as provided in this chapter, which notice continues the lien in force against the property of the estate for an additional period of five years or until payment is made.

(b) Notwithstanding anything to the contrary in this section or this chapter, no lien for estate and inheritance taxes under this chapter may continue for more than 20 years from the date of death of the decedent, whether the decedent is a resident or nonresident of this state. (§ 2 ch 24 SLA 1970)

Sec. 43.31.330. Disposition of proceeds. All taxes and fees levied and collected under this chapter shall be paid into the general fund. (§ 2 ch 24 SLA 1970)

Sec. 43.31.340. Interpretation and construction. When not otherwise provided for in this chapter, the rules of interpretation and construction applicable to the estate and inheritance tax laws of the United States apply to and shall be followed in the interpretation of this chapter. (§ 2 ch 24 SLA 1970)

Sec. 43.31.350. Failure to produce records. A person who fails to comply with any duty imposed upon the person by this chapter, or who, having possession or control of any record, file or paper, containing or supposed to contain information concerning the estate of the decedent, or having possession or control of any property comprised in the gross estate of the decedent, fails to exhibit it upon request to the department or an examiner or appraiser, appointed under this chapter, who desires to examine it in the performance of official duties under this chapter, is liable to a penalty of not more than $1,000, with costs of suit, in a civil action in the name of the state. (§ 2 ch 24 SLA 1970)

Secs. 43.31.360 — 43.31.390. Failure to make return; false return or return statement; tax evasion. [Repealed, § 46 ch 113 SLA 1980. For criminal penalties, see AS 43.05.290.]

Sec. 43.31.400. Effectiveness of chapter. This chapter shall remain in force and effect so long as the government of the United States retains in full force and effect as a part of the revenue laws of the United States a federal estate tax, and this chapter shall cease to be operative when the government of the United States ceases to impose an estate tax of the United States. (§ 2 ch 24 SLA 1970)

Sec. 43.31.410. Exemptions. The tax imposed under the inheritance and estate tax laws of this state in respect to personal property, except tangible property having an actual situs in this state, is not payable

(1) if the transferer at the time of death was a resident of a state or territory of the United States, or the District of Columbia, which at the time of death did not impose a death tax of any character in respect to property of residents of this state, except tangible personal property having an actual situs in the state, territory or district; or

(2) if the laws of the state, territory or district of the residence of the transferer at the time of death contained a reciprocal exemption provision under which nonresidents were exempted from death taxes of every character in respect to personal property, except tangible personal property having an actual situs therein, and if the state, territory or district of the residence of the nonresident decedent allowed a similar exemption to residents of the state, territory or district of residence of the decedent. (§ 2 ch 24 SLA 1970)

Sec. 43.31.420. Definitions. In this chapter

(1) "decedent" includes the testator, intestate grantor, bargainor, vendor, or donor;

(2) "department" means the Department of Revenue;

(3) "executor" means the executor, administrator or curator of the decedent, or if there is no executor, administrator or curator appointed qualified and acting, then any person who is in the actual or constructive possession of any property included in the gross estate of the decedent;

(4) "gross estate" means the gross estate as determined under the provisions of the applicable federal revenue Act;

(5) "net estate" means the net estate as determined under the provisions of the applicable federal revenue Act;

(6) "nonresident" means a natural person domiciled outside the state;

(7) "person" means persons, corporations, associations, joint stock companies and business trusts;

(8) "real property" means real property as it is commonly understood and includes real property whose legal title is in the decedent but which is subject to a contract of sale to a third party;

(9) "resident" means a natural person domiciled in the state;

(10) "tangible personal property" means corporeal personal property, including money; and the term "intangible personal property" means incorporeal personal property including deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt and choses in action generally;

(11) "transfer" includes the passing of property or any interest in property, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner described in this chapter;

(12) "United States" used in a geographical sense includes only the 50 states and the District of Columbia. (§ 2 ch 24 SLA 1970)

Sec. 43.31.430. Short title. This chapter may be cited as the Estate Tax Law of Alaska. (§ 2 ch 24 SLA 1970)

Chapter 35. Coin-Operated Devices and Punchboards.

Article

1. Coin-Operated Amusement and Gaming Devices (§§ 43.35.010 — 43.35.090)
2. Punchboards (§§ 43.35.100 — 43.35.150)

Article 1. Coin-Operated Amusement and Gaming Devices.

Section

10. Amount of tax
20. Administration
30. Distributor fees
40. Operation by a minor
50. Distribution of tax
60. Orders and regulations
70. Gambling not legalized
90. Definitions

Sec. 13.16.575. Improper distribution; liability of distributee.

NOTES TO DECISIONS

Applied in In re Estate of Hutchinson, Sup. Ct. Op. No. 1618 (File No. 3570), 577 P.2d 1074 (1978).

Sec. 13.16.580. Purchasers from distributees protected. If property distributed in kind or a security interest in it is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order and whether or not the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any instrument described in this section which is recorded under AS 34.15.010 — 34.15.350 or 45.05.101 — 45.05.117 and which bears a notation of that recordation is prima facie evidence that the transfer described in it was made for value. (§ 1 ch 78 SLA 1972; am § 17 ch 154 SLA 1976)

Effect of amendments. — The 1976 amendment, in the first sentence, substituted "for value by a purchaser from or lender to" for "by a purchaser, or lender, for value from" and "rights of any interested person in the estate" for "any claims of the estate," inserted "or to any interested person," and added the language beginning "or supported by court order" to the end. The amendment also added the present second and fourth sentences and added the language beginning "even if the personal representative" to the end of the present third sentence.

Legislative history reports. — For report on ch. 154, SLA 1976 (SB 717), see 1976 House Journal, p. 1569.

Sec. 13.16.610. Apportionment of estate taxes. (a) For purposes of this section

(1) "estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state;

(2) "person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

(3) "person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death

of a decedent any property or interest in the property included in the decedent's estate; it includes a personal representative, conservator, and trustee;

(4) "state" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

(5) "tax" means the federal estate tax and the additional inheritance tax imposed by AS 43.31.011 — 43.31.430 and interest and penalties imposed in addition to the tax;

(6) "fiduciary" means personal representative or trustee.

(b) Unless the will provides otherwise, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent's will directs a method of apportionment of tax different from the method described in this code, the method described in the will controls.

(c) The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose may determine the apportionment of the tax.

(d) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in (b) of this section, because of special circumstances, it may direct apportionment of them in the manner it finds equitable.

(e) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.

(f) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this code the determination of the court in respect thereto shall be prima facie correct.

(g) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with AS 13.16.005 — 13.16.705.

(h) If property held by the personal representative is distributed before final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

(i) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax.

(j) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing the relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(k) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(*l*) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

(m) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or devisee is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in (b) of this section, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(n) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

(o) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months next following final determination of the tax. A personal representative or other per-

son required to pay the tax who institutes the action within a reasonable time after the three months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectable at a time following the death of the decedent but thereafter became uncollectable. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

(p) A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct. (§ 1 ch 78 SLA 1972; am § 17 ch 56 SLA 1973)

Effect of amendments. — The 1973 amendment substituted "shall be" for "is" in subsection (f).

Legislative history reports. — For report on ch. 56, SLA 1973 (HCS SB 140), see 1973 Senate Journal Supplement No. 9; 1973 House Journal, p. 819.

Article 10. Closing Estates.

Section
635. Liability of distributees to claimants

Sec. 13.16.620. Formal proceedings terminating administration; testate or intestate; order of general protection.

NOTES TO DECISIONS

Estates consisting of wrongful death recovery not exempted from procedures for presentation, etc., of claims against estate. — See In re Estate of Pushruk, Sup. Ct. Op. No. 1398 (File No. 2974), 562 P.2d 329 (1977).

Sec. 13.16.630. Closing estates; by sworn statement of personal representative.

NOTES TO DECISIONS

Estates consisting of wrongful death recovery not exempted from procedures for presentation, etc., of claims against estate. — See In re Estate of Pushruk, Sup. Ct. Op. No. 1398 (File No. 2974), 562 P.2d 329 (1977).

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

May 10, 1983

MEMORANDUM

To: Representative Mae Tischer

From: Leonard Steinberg, Research Staff

Re: Estate Taxes -- Research Request 83-154

Gail Thibodeau of your office asked for the following state and federal estate tax information:

1) the justification for the taxes;

2) the amount of income received from these taxes for the last four years;

3) the percentage of total revenue represented by estate taxes;

4) the amount of estate tax revenue collected by Alaska from residents and non-residents; and

5) the hardships that may result from estate taxes.

<u>Justification for Estate Taxes</u>

Estate taxes originated with the Populist political movement in the United States; the goal was to reduce certain excise taxes by taxing the wealthy. The federal government has levied a tax on the transfer of wealth at death continuously since 1916.

The primary reasons Congress passed the estate tax in 1916 were:

1) redistribution of wealth by breaking up large concentrations of wealth at the time of death; and

2) raising additional revenue for the federal government.

Another justification for estate taxes is that the appreciation in value that occurs between the time property is acquired and a person's death is income which normally escapes income taxation; estate taxes recoup part of this loss.

Following its imposition, individuals avoided the new estate tax by giving away large portions of their wealth prior to their death. Consequently, Congress has imposed a gift tax since 1932. The gift tax rate was substantially less than the estate tax rate until the two were unified by the Tax Reform Act of 1976.

The justifications for state estate taxes are the same as for federal estate taxes. However, according to Mr. Joe Donohue, Deputy Commissioner of Revenue, Alaska has the additional justification that its tax brings in revenue to the State without increasing the tax liability of an estate. Mr. Donohue explained that Alaska's estate taxes are credited, dollar for dollar, against the taxes that would otherwise be paid to the federal government. Therefore, until federal estate tax law is changed, a reduction in Alaska's estate taxes will not present a savings to the estate but only increase the revenues paid to the federal government.

Estate Tax Revenues

The amount and number of State estate tax collections, their percentage of total State revenue, and the amount of State revenues are listed below in Table 1. In fiscal year 1982, 325 estates filed tax returns with the Department of Revenue; 317 (86 percent) of the filed returns received a certificate of non-tax liability while 52 (14 percent) had taxes to pay. The estate tax revenues received in 1982 are not directly related to the 1982 returns because estates have 15 months to make their payments and are frequently granted 10-15 year extensions. Estate taxes during the period 1978-1982 have always been substantially less than one-half of one percent of the State's total unrestricted revenues.

Table 1

State Estate Taxes and Unrestricted State Revenues -- FY1978-1982

	1982	1981	1980	1979	1978
# of State Estate Tax Returns*	325	369	382	407	334
# of Paying Returns* †	52	42	N/A	57	55
State Estate Taxes Collected	$334,676	$453,492	$197,592	$136,685	$244,143
State Unrestricted Revenues($millions)	$4,108.4	$3,718.2	$2,501.2	$1,133.0	$764.9
Estate Taxes as a % of State Revenues	.008%	.012%	.008%	.012%	.032%

* These figures are for calender years and are based on the number of certificates issued for tax and non-tax liability.

† Eighty to ninety percent of state estate tax returns result in the the Department of Revenue issuing certificates of non-tax liability; those returns which actually impose State estate tax liability are listed in this column.

According to Ms. Eloise Herrick of the Department of Revenue, State estate tax records do not break down the revenues collected by residency status. However, Ms. Herrick stated that in her opinion, very little revenue is collected from non-residents. A more accurate determination of how much money was collected from residents and non-residents would require corrolating the revenues received with individual returns and reviewing each individual return to determine residency status; because this would require substantial time and effort, we have not pursued this information at this time.

Table 2 below illustrates the number of federal estate tax returns and the revenues collected by the federal government from both Alaska and the nation. The table also shows the percentage of total federal revenue represented by estate taxes. For example, in federal fiscal year 1982, 159 estate tax returns were filed with the federal government from Alaska and 134,965 were filed nationally. The federal government collected approximately three million dollars in estate taxes from Alaskans and eight billion dollars nationally in 1982. Estate taxes contributed 1.3 percent of the total federal revenue received in 1982.

Table 2

Federal Estate Taxes -- Federal FY1978-1982

($ in thousands)

	1982	1981	1980	1979	1978
# of Alaska Federal Estate Tax Returns	159	152	145	156	129
Total # of Estate Tax Returns Filed	134,965	145,617	148,228	159,404	160,152
Estate Taxes Paid by Alaskans	$3,081	$2,097	$2,285	$2,689	$2,412
Total Estate Taxes Paid	$8,035,335	$6,694,641	$6,282,247	$5,344,176	$5,242,080
Estate Taxes as a % of Total Revenue	1.3%	1.1%	1.2%	1.2%	1.3%
Total Federal Revenue	$626.8* (bil.)	$599.3 (bil.)	$517.1 (bil.)	$463.3 (bil.)	$399.6 (bil.)

* Estimate

Federal gift taxes, because they were created to stop estate tax avoidance, are often evaluated in conjunction with federal estate taxes. Table 3 presents information on federal gift taxes. As Table 3 illustrates, gift taxes add relatively little to federal revenue collections.

Table 3

Federal Gift and Estate Taxes and Total Revenues -- 1978-1982

($ in thousands)

	1982	1981	1980	1979	1978
# of Alaska Gift Tax Returns	98	252	252	260	193
Total # of Gift Tax Returns Filed	99,533	198,620	215,983	201,785	195,194
Gift Taxes Paid by Alaskans	$37	$15	$66	$117	$60
Total Gift Taxes Paid	$108,038	$215,745	$216,134	$174,899	$139,419
Total Gift Taxes as a % of Total Revenue	.02%	.04%	.04%	.04%	.03%
Total Federal Revenue	$626.8* (bil.)	$599.3 (bil.)	$517.1 (bil.)	$463.3 (bil.)	$399.6 (bil.)

* Estimate

Hardship Cases

Information regarding the frequency of cases in which a family must sell everything to pay estate taxes is not readily available. Large real estate holdings, such as farms, pose the most common hardships; families have reportedly been required to sell farms to pay estate taxes. However, due to the urgency of completing this request, we have not been able to provide a substantive response to this question. Please let us know if you would like additional research performed on this issue.

Several changes to federal tax laws have attempted to reduce the hardships that may result from estate taxes. The Tax Reform Act of 1976 made the following changes:

- increased the value of estates which can escape taxation from $60,000 to $175,000;

- allowed farms and other closely held businesses to be valued at less than fair market value; and

- increased marital deductions.

The Economic Recovery Tax Act of 1981 also attempted to reduce hard ships by:

- further increasing the value of estates exempt from taxation to $600,000;

- increasing the amount by which farms and closely held businesses can be undervalued; and

- allowing for unlimited transfers of property among spouses.

Furthermore, the 1981 Act extended the payment period for certain estate taxes to 15 years, and lowered the tax rates from a maximum of 70 to 50 percent.

* * * * *

We hope this information is helpful to you. Please let us know if you would like us to do any additional research.

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There are ways to get around one unavoidable fact of life if not the other. Sometimes the methods work, sometimes not.

DEATH AND TAXES

By John Train

JAKE FISHER spent over 30 years in the Internal Revenue Service, ending his career as a supervisor of an estate and gift tax unit.

Not surprisingly, he has many stories to tell about the complicated world of taxes, and tell them he does in his curious book, *Human Drama in Death and Taxes* ($12.95, Communication Channels, 185 Madison Avenue, New York City).

The volume may be too arcane for the general reader, but should be of interest to trust officers, tax accountants and Internal Revenue agents. To pique their curiosity, here are three of Mr. Fisher's more singular tales:

The timber magnate

A West Coast forest owner was killed by a taxi early in the morning of Jan. 4, 1966, shortly after emerging from a nightclub in New York City.

Within a few months after his death, his property was ravaged by a forest fire.

The executor decided to use the alternate valuation date—Jan. 4, 1967—because of the reduced value of the estate as a result of the fire.

On Apr. 4, 1967, the 15th month to the day from the date of death, the attorney for the estate personally presented the estate tax return at the office of the Internal Revenue Service District Director where the magnate had resided.

At the audit, the examiner produced New York City hospital records indicating that the timber magnate had been pronounced dead at 1:30 a.m. on Jan. 4, 1966. He then directed the estate's lawyer to Section 2031(C) of the Internal Revenue Code, which provides that the alternate valuation date can be elected *if the return is filed within the time prescribed by law.*

However, the time of death is the time at the decedent's *domicile*; if he dies at any other place, the time at that moment back home governs. As it happened, 1:30 a.m. in New York on Jan. 4, 1966 was 10:30 p.m. on Jan. 3, 1966 at the decedent's home.

So the return was not filed "timely," as they say. Thus, the estate could not use the alternate valuation, and, as a result, it lost a fortune. However, the IRS auditor was magnanimous. He waived the late-filing penalty.

The prodigal

A father had a deadbeat son who was periodically arrested. The father, to his great vexation, found himself obliged to furnish bail and to make good his son's debts.

Finally, the father declared that he was through: He was going to disinherit his son and never wanted to see him again. The son replied that if that happened, he would fight the will in every court, however long it took, so that no one else in the family would get anything for years. Undaunted, the father did disinherit him.

When the father died, sure enough the son came to town to contest the will. The attorneys for the bank that was acting as executor called in the son's lawyer. The lawyer went back to the son and advised him to give up. He himself withdrew from the case then and there.

What had happened? It turned out that while still alive, although ailing, the father had assembled in his hospital room his lawyer, doctor, clergyman, a psychiatrist and the manager of his construction firm, with a movie camera complete with crew on hand to record the proceedings.

The father introduced all those present to the "live" camera, and asked them to comment on the situation. Each spoke at some length.

After that, the father carefully recited the provisions of his will before the camera. He then detailed the painful history of his relationship with his son, ending with the solemn words: "It is my wish and desire that my son share no portion of my estate."

With that, the testator and the witnesses signed the instrument.

The evidence was so clear and so powerful as to preclude any contention that the testator was incapacitated, unduly influenced, or any of the other allegations typically advanced in attacking a will. The wastrel son was stymied.

You can't beat city hall

An official of a northeastern city took frequent junkets on "city business." He was accompanied by his secretary in her capacity as a municipal employee.

The secretary was in on all of her boss's doings, and as one of her perquisites had a key to the politician's safe deposit box, which received regular additions that were not declared to any tax authority.

One winter the pair visited Miami to "represent the city government" at an air pollution conference.

They had a sensational weekend, perhaps too sensational. At the end of it, the politician was carried off by a heart attack.

The secretary checked out of the hotel forthwith, flew north, and at opening time the following morning appeared at the bank with her key to the safe deposit box.

The obituary had not yet run in the local morning papers, so she had no trouble gaining access to the box.

Some days later, when the box was officially opened, nothing was discovered in it except the owner's will and some other documents: no cash.

When the tax authorities questioned the secretary, she said that she hadn't known that a safe deposit box was supposed to be sealed after the owner's death, and had removed only some of her personal papers.

However, among the politician's effects at home were found three more sets of the special keys used for safe deposit boxes. The authorities questioned the secretary about those keys. She knew nothing about them. Aha, the agents replied, he must have been keeping boxes under false names in other cities.

Two words escaped the secretary's lips: "The rat!" ■

John Train is president of Train, Smith, Investment Counsel, New York, and the author of The Money Masters *and* Dance of the Money Bees.

FORBES JUNE 22, 1981

 Edited By Richard Greene

Everybody knows you can't take it with you—but if you own your own business, you might not be able to leave it behind either.

The death tax

By Jon Schriber

When Wilbur Doyle got out of the service in 1947 and founded Doyle Lumber in Martinsville, Va., he didn't know he would someday wind up paying, on average, 20% of his earnings on a life insurance policy—with Uncle Sam the ultimate beneficiary. Doyle's little business has prospered—with $6 million in annual sales, it's now the fifth-largest lumber company in Virginia and is worth about $3 million. Yet to insure that his sons won't have to sell it to pay estate taxes, Doyle keeps paying those premiums. This year—an off year for the business—Doyle predicts they'll amount to more than the company's total earnings.

In Mars, Penna., Harry G. Austin, 65, and his brother John, 55, the only stockholders in $8 million (sales) James Austin Co., a soap manufacturer, pay around $20,000 each in premiums so their 92-year-old company can be passed down to the fourth generation. "Sometimes I think we're really working for the insurance company," says Harry.

Wilbur Doyle and the Austin brothers aren't alone in worrying about the future of their businesses when they're gone. A survey by the National Federation of Independent Business found that among its 539,000 members, death taxes are a close second to concerns about changes in individual income taxes. Says Mike McKevitt, a lobbyist at the federation: "At any small business group, if you want to see them come right up out of their chairs, start talking about death taxes." No wonder. In many cases—perhaps most—if the founder can't afford the premiums Wilbur Doyle pays, his heirs will not be able to keep the company when he dies.

Small businessmen and their supporters *have* already gotten to their feet and are taking their case to Washington. Senator Steve Symms (R-Idaho) has introduced a bill to repeal current estate and gift tax laws. The Reagan Administration originally came out in favor of repeal but recently backed off, citing budgetary restraints. Still, it's a safe bet that the Administration will have some recommendations next fall.

Moreover, this month the House Ways & Means Committee may consider a bill to increase individual estate tax exemptions to $600,000 and to cut the taxable value of qualified businesses by 50%. The measure also would broaden the definition of what qualifies as a closely held business. Former Ways & Means Chairman Al Ullman, who helped organize a lobbying group for the bill after he left Congress this year, thinks "the chances are excellent" the measure will pass.

About $6 billion a year goes into the U.S. Treasury from estate and gift taxes. Ullman and other champions of death-tax reform argue that the breakup of family businesses, the loss of jobs and other dislocations, can cause an ultimate tax loss that could offset this revenue. David Raboy, director of research at the Institute for Research on the Economics of Taxation, contends the tax forces people into "uneconomic decision making." Says he: "It discourages people from investing in the things that are productive."

As an example he mentions a small foundry: that may be a very good productive investment, but an entrepreneur will be reluctant to make the necessary capital commitment. "He knows that if he dies they're going to have to sell off part of it to settle the estate. Clearly that's going to discourage you."

Besides the negative impact on the economy, Raboy points out, the taxes are not fulfilling their original purpose. That purpose, of course, was to prevent great concentrations of wealth, like the Rockefellers' or du Ponts', from being passed on from generation to generation. But the great fortunes remain, while the impact of the tax, at least initially, is falling right on the middle class. Inflation puts it there, of course.

But, while waiting for reform, what are folks like Wilbur Doyle going to do? There are some solutions. For example, each year you can give up to $3,000 away to anyone you want, and to as many recipients as you want,

Wilbur Doyle thinks it's necessary to go on paying those crushing life insurance premiums. "During my years in business I've seen some 25 good companies become nonviable when the principal died. They just didn't have the cash flow to pay their bills."

without paying gift taxes—a married couple can give $6,000 a year. Over and above that, there's a lifetime maximum of $175,000 for an individual or $350,000 per couple. So theoretically, a couple can give $6,000 a year to their heirs for 40 years, with each child winding up with a quarter of a million dollars and the estate with an additional exemption of $350,000. The problem with this—apart from whether a young couple can afford to give away $6,000, $12,000 or $18,000 a year, is that many people are reluctant to give. "They get cold feet," says Warren Shine, a tax principal at the accounting firm of Ernst & Whinney. "They say, 'maybe next year.' "

So what if this $350,000 allowance is not used and the husband dies? Assuming the business is in his name, the estate is allowed to take a marital deduction of $250,000 or 50% of the adjusted gross estate, whichever is more. Take an estate valued at $1 million. First the administration and funeral expenses as well as claims against the estate can be deducted—in this instance, say $100,000. Half the remaining $900,000 adjusted gross estate is subtracted, leaving $450,000. After deducting a unified tax credit of $47,000, the tax due is $91,800.

But all this—plus deferred payment provisions which may help stretch out the taxes—frequently leaves the business with a severe drain on cash flow. One solution is recapitalization, in which the founder or owner issues preferred stock to himself in return for his common shares. It works like this: The owner gets the company appraised for market value, let's say $1 million. Assume he has 75% of the common, and through gifts over the years, his son has 25%. The father exchanges his $750,000 worth of common for a like amount of preferred, which pays a dividend, say 15% of par, cumulative.

The father's share in the company is now locked in at three-quarters of a million dollars. If he dies ten years later estate taxes will be due on only that amount. All the *growth* in the company has become the property of the son, so that even if the company quadruples in value the father's estate is still only $750,000.

There are some pitfalls to this. The IRS may disagree with the original valuation, and the father may have to pay some gift taxes (if the father did not take out enough value in his preferred stock, in effect he gave his son a gift). Some people can have second thoughts, too. Charles Bogen of Ernst & Whinney tells of a client for whom he did a recapitalization 12 years ago. The business, valued at $1 million then, is now worth about $12 million. Says Bogen: "The old man said, 'Look what you did to me. You took all my money.' I told him, 'Yes, but we also took it away from Uncle Sam, and we took more away from him than we took from you.' He's still mad at me. But the sons love it."

All this may help, but for many small businessmen, perhaps not enough. Wilbur Doyle, for example, thinks it's necessary to go on paying those crushing life insurance premiums even though he has recapitalized his business. "During my years in business I've seen some 25 good companies become nonviable when the principal died," he says. "They just didn't have the cash flow to pay their bills."

The Austin brothers haven't recapitalized their soap company at all. "My brother and I each have children working in the business," Harry says. "How do you know 20 years from now which one is going to be in and which one is going to be out?"

In the meantime, the Austins continue to pay those hefty insurance premiums, adamant that the firm remain a family business. But the real truth is that with the Austins—as with so many others—the family is not really the most injured party if the taxes force the firm to be sold out or closed. Elder brother Harry says that if the worst were to happen and the firm had to be put on the block, the heirs would be all right, they would still have enough to live on.

It would be the town of Mars (pop. 1,400), where Austin's soap company is the single largest employer, that would suffer the most. Why? "Certainly if a national firm, any of the big soap companies, bought the company to get the label franchise, why, I doubt they would operate here," Austin explains. "The little town would economically go down the tube." There have been offers already from large corporations for Austin's company, which serves a 500-mile radius of Pittsburgh. Indeed, you could hardly expect a conglomerate like Gulf & Western or Litton to have any kind of emotional attachment or loyalty to Mars. Small family businesses aren't just moneymakers for families—they are an integral part of the economies of small towns from coast to coast.

Wilbur Doyle knows that. But sometimes he wearies of the whole mess. "Once in a while," he says, "I think, why shouldn't I just blow the money and have a good time?" ■

Farm and ranch people are in estate tax trouble again because of increased values of land, equipment and livestock. These examples show why it has become harder to save the family farm business and why estate tax laws need updating:

- *"We have just been through the long three-year settlement of my mother-in-law's estate . . . On the 320-acre farm where my husband and I live, over $1 million dollars has been paid in estate taxes in less than 100 years."*—Betty Brand in April 1981 newsletter of Illinois Women for Agriculture.
- *"My husband's family and mine have been farmers for generations. The inheritance tax has broken up farms belonging to both families. We are victims, and if our income doesn't improve, my husband and I won't own a farm to pass along.*

Why you should work to rewrite tax law

LAURA LANE

"My grandfather died just 10 months before my father, so the estate had to pass through the courts twice before anyone could benefit. The land in my grandfather's estate had to be sold to pay the tax.

"When my father-in-law died, my mother-in-law had to mortgage the farm to pay the estate tax. She was in her 60s, alone, without income or job skills.

"In each of these instances, if the women had died first, the surviving husbands would have paid no estate tax. It is my firm belief that property should pass untaxed from husband to wife, as it does from wife to husband."—Peggy Arensman, Kansas Women Involved in Farm Economics (WIFE).

Key points made at recent hearings on estate and gift taxation:

The revenue issue: "The quote most often heard from members of Congress who favor continuation of the estate tax is, 'We cannot lose the revenue.' In 1980, the revenues from estate taxes amounted to about $6 billion of the total federal collection of $466 billion (about 1.4%). Those who emphasize revenue usually quote the gross amount received. The cost of administration (by IRS) is never subtracted. Is the government netting revenue or just exchanging dollars?"—Doris Royal, Nebraska, co-chairman, taxation committee, American Agri-Women.

Effects of inflation: "Most farmers never thought their modest holdings would be affected by federal estate tax law. We are just beginning to realize what inflation of land values has done to us, resulting in bracket leap of estate taxes when an owner dies. That's why Washington Women for the Survival of Agriculture are for the greatest simplification of the estate tax system, tax-free transfers between spouses, and eventually total repeal." —Janet Allison, chairman of government relations.

Endangered: "Today family businesses are an endangered species. We have spent billions to preserve endangered plants, animals, fish and birds. If individuals really are important, this is one of the best chances Congress will ever have to prove it."—Ben Wallis Jr., Texas attorney and rancher.

Proposal to Congress: "With a fixed estate and gift tax credit such as we have now, Congress has to tinker constantly with tax laws and rates just as you have done in 1976, 1978 and 1980. This is an expensive way to govern people's financial affairs, and it puts a costly burden on tax-paying citizens who in good faith revise their wills, break up joint tenancies, incorporate, create trusts and then have to do it over again because Congress changes the rules. The simplest solution would be to set an ample unified credit and peg it to the rate of inflation. That would save the family farm for now and for the future."—Laura Lane, contributing editor, FARM JOURNAL.

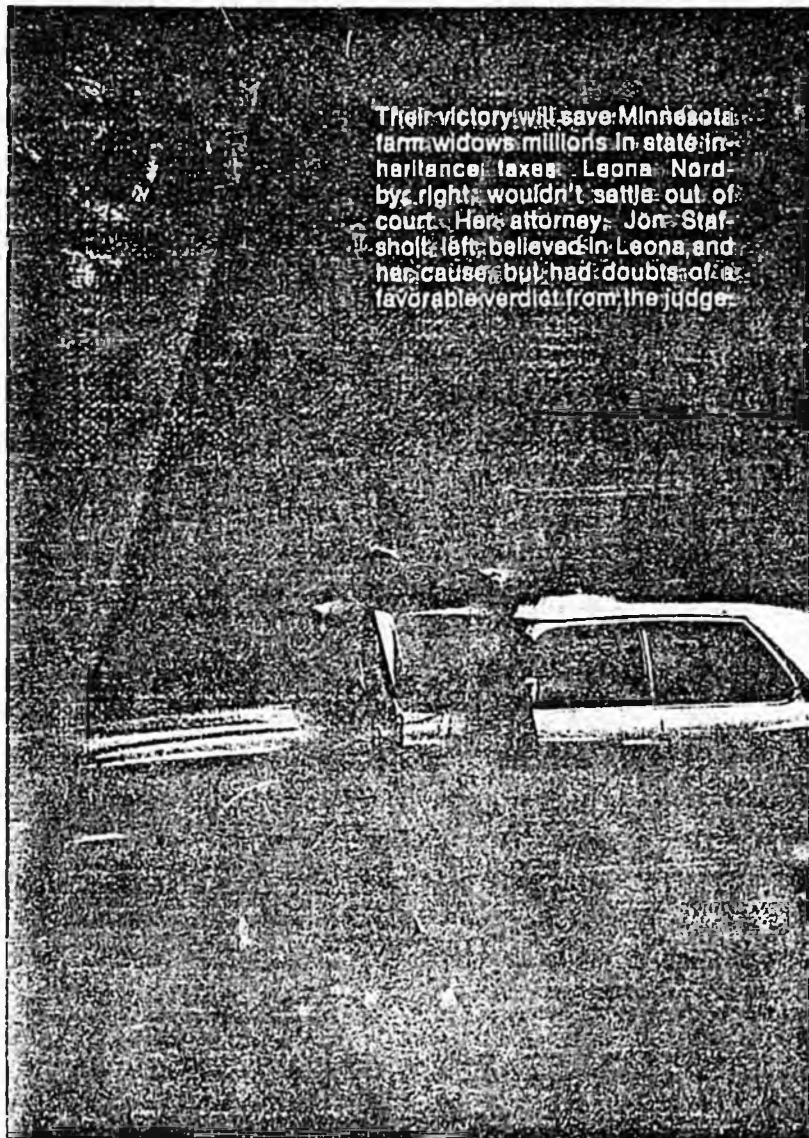
Recent history proves you can influence Congress if you speak up emphatically.

- The collection of 236,248 signatures of farm people on petitions to Congress was a big factor in passage of the Tax Reform Act of 1976. These petitions were printed in FARM JOURNAL and delivered to Washington. The kickoff to this big campaign was the article "Let's Get Rid of the Widow's Tax," Sept. 1975.
- More pressure by farm people helped kill the carry-over-basis provision ("Let's Get Carry-over Basis Repealed," Mid-February 1979). Congress repealed it in the Windfall Profits Tax Act.

In the past six years, FARM JOURNAL has published 61 separate articles on estate taxation and estate planning. The magazine can supply the ammunition, but vocal, persistent farm and ranch voters are the ones who get the job done in Washington. ◁

We make it easy for you to urge Congress!

To make your voice heard where it counts, all you need to do is tear out the card insert to the right of this page, fill it out, put a stamp on it and put it in the mail. ☐ But do this today so FARM JOURNAL can compile totals fast and pass along the results of our poll to Congress and to President Reagan. ☐ This card can help save your family business.



Their victory will save Minnesota farm widows millions in state inheritance taxes. Leona Nordby, right, wouldn't settle out of court. Her attorney, Jon Stafsholt, left, believed in Leona and her cause, but had doubts of a favorable verdict from the judge.

Photos Felix Farrar

Two states recognize a farm wife's worth

Landmark court victories in Minnesota and Wisconsin may help more women win estate tax cases

By LAURA LANE

Late in the Twentieth Century we still have pioneers, and I am fortunate to know one. Her name is Leona Nordby, and she is a soft-spoken, well-groomed, fiftyish farm widow who lives in Grant County, Minn. Leona did something no Minnesota farm woman had ever done before: She won a fight with the state's Commissioner of Revenue in an inheritance tax case.

You can even put a price tag on what her victory means to other farm women—$2,500,000 is the amount of revenue the state will not collect this biennium because of the decision in Leona's favor. That's money which in the past has been paid by farm widows who had held farm property in joint tenancy with their husbands. Add another $1.7 million usually forked over by widows who have been deeply involved in other kinds of family businesses.

This is the second of two articles about farm widows who have won court battles in estate tax cases.

Money (about $4,000 in taxes) was important, but it wasn't the prime consideration in the case of *Leona Nordby vs. Commissioner of Revenue*. Her fight was for justice for herself and others.

The principal issue was whether the full value of the joint property was subject to inheritance tax at the death of Leona's husband, Lewis M. Nordby. Leona had contributed equal effort to earning income that enabled the couple to buy the property in the first place, so Leona contended she owed inheritance tax on only half—her husband's half. FARM JOURNAL readers have known for years about this legalized discrimination that puts no financial value on a woman's farm work in field, barn or office. It isn't recognized as "money or money's worth" in common-law states (42 of the 50).

When Leona filed her state inheritance tax return following her husband's death, she based her payment on half-ownership plus a widow's exemption, with full knowledge that she was asking for trouble. As her attorney, Jon Stafsholt of Elbow Lake, had ▷

foreseen, the Commission of Revenue rejected Leona's claim. The next step was to appeal to the state Tax Court.

Stafsholt felt the Minnesota statute discriminated against women in practice if not in language and was eager to challenge the interpretation.

Several factors favorable to Leona's case were listed for me by attorney Stafsholt:

- The case could be heard on home ground—in the courthouse at Elbow Lake, thanks to new Minnesota Tax Court procedure.
- The presiding judge had been a country lawyer earlier in his career, so he knew something about farm women's work habits.
- The Minnesota Legislature was considering an Equal Rights Amendment at the time.
- A few months before, a Wisconsin widow, Doris Kersten, had won a similar action against the Department of Revenue in her neighboring state (more about this case later). Attorney Stafsholt says: "Actually, the Kersten case has almost no bearing on Minnesota law, but knowledge of a decision like that puts the judges in tune with the trends."

The gloomy factor was that no one had ever successfully challenged Minnesota's Inheritance Tax Department on "the widow's tax."

Revenue Department officials tried to settle out of court with Leona before the case came to trial. First they offered to exclude 20% of the estate from Minnesota inheritance tax, then 25%, then 30% and finally 35%. That posed a real dilemma. Stafsholt explained to me:

"I told Mrs. Nordby it was probably in her own interest to accept that offer—the dollar amount wasn't significantly less and it was a sure thing. Taking the appeal to court was risky, as I had warned her.

"She thought about the offer for a week and then asked again: 'If I settle out of court, will this help other farm women?' I told her, no it wouldn't. That settled the matter. She said, 'Let's go to court then.' It was a courageous decision."

Testifying in Leona's behalf were people who knew her well: two farmers—a neighbor and her husband's brother; her own brother and Leona herself... "an excellent, soft-spoken witness," Stafsholt describes her. She

Stafsholt considers *Leona Nordby vs. Commissioner of Revenue* the most important case of his career thus far. His client, Nordby, now rents out the farm and works as a nurse's aide in an Elbow Lake Hospital. She says the case has changed her life and views in several respects.

followed his two bits of advice: "Think before you reply to a question. Tell the truth."

What the testimony revealed: Shortly after Leona and Lewis married, both were employed by an elderly bachelor farmer—Lewis as a hired man and Leona as a housekeeper. That was in 1936. They rented a place in 1939 and borrowed to buy their own 160 acres in 1947, after a lot of worry and pencil pushing. Sometimes they had dairy cows, sometimes sheep and beef cattle, usually hogs, chickens and turkeys, often ducks and geese.

The work and worries of farming—as well as the rewards—were always shared. Leona milked and helped care for animals and poultry, prepared meals for hired help, treated seed, loaded fertilizer, cleaned and repaired buildings and equipment, operated farm machinery, helped with bookkeeping and tax returns. She and Lewis borrowed money together and they shared a bank account.

When Lewis was incapacitated, Leona became the farm operator—for about a year at a time. Once was when Lewis had an operation for a slipped disc and again later when he was injured in an accident with a tractor-pulled spray rig. Later she took over when Lewis became too ill to work. He died of cancer in 1976.

A key point that attorney Stafsholt made in the court proceedings: If Leona had divorced Lewis instead of nursing him and carrying on the farm operation, she would have been entitled to half of his assets under Minnesota law. Why should she be financially penalized for 40 years as a working partner in a good marriage? "The legislature certainly did not mean to reward divorcees and penalize widows," Stafsholt says.

Judge John Knapp, who wrote the unanimous opinion of the Tax Court, picked up this point: "If the rights of ownership in jointly owned property are recognized in divorce proceedings, there is no reason in logic or equity to ignore these same rights in inheritance tax cases.

"The work and contributions made by each spouse in operating a family farm should be recognized as being adequate consideration in money or money's worth in considering a claim of ownership in at least a portion of the property which passes to the surviving spouse upon death. In the instant case, we have found that the contributions of each spouse were substantially equal."

That was on Feb. 17, 1978. In April, then Governor Rudy Perpich announced that the state would not appeal the ruling, and that the Department of Revenue would "extend the principle to women who participate in any family business."

A landmark case has repercussions for client and attorney.

Leona Nordby's victory saved her

some inheritance tax money, and she gladly used part of it to pay attorney's fees. She remains an unassuming woman though she has been much photographed and interviewed by the Minnesota press. What changed?

1. Estate and inheritance taxes and laws that discriminate against women have become a consuming interest. She values the praise of those who recognize the magnitude of her contribution, and accepts philosophically the criticism of "some people who don't approve of what I did."

Leona's decision to engage in a legal struggle was prompted in part by the experiences of a widowed cousin in another state who, because of lack of documentation, had been obliged to pay inheritance tax on her own property as well as on property jointly owned. The cousin never fought her case. Leona considered for several months whether to go to court.

"I kept thinking, 'Boy, how I had worked.' To say that the results of 40 years' labor belong only to one is an insult to both members of a marriage. I felt it was the right thing to do [to go to court] and the right time to do it, and I proved to be right."

2. Leona lost her prejudice against lawyers. She credits a daughter-in-law, Marlyce Nordby, a paralegal aide in Minneapolis, with her change in ideas, and says, "An attorney can be as eager as a client to get justice and to help you in the process."

Jon Stafsholt considers the Nordby case the most significant in his career thus far, because of its widespread social impact: "It's the beginning of the end of farm wife discrimination." He was asked to write about it for a Minnesota legal journal, and he has conducted three seminars for the Minnesota Bar Association. He also has received appreciative letters from farm wives and from attorneys.

More farm women should use the courts to get their just due, Stafsholt believes. He says: "Legislative bodies and the executive branch of our government are sensitive to the pressure of majorities, but our courts still are sensitive to the rights of minorities." That's what farm and ranch women are—a minority.

A favorable decision helps other cases—in fact, there's a slow-but-sure domino effect.

Numbers of Wisconsin women have profited from Doris Kersten's victory in the state's Supreme Court, March 2, 1976 (In re Estate of Kersten, 71 Wis. 2d 757).

Records of the court proceedings give these facts:

"Lester and Doris Kersten devoted all their working efforts during marriage to operating the farm. Almost all that was owned by the couple at the death of Lester Kersten had been acquired by them during marriage. Neither inherited anything. Lester and Doris Kersten made substantial capital improvements to the farm, all of which were paid for from farm profits... expansion of milking facilities, remodeling of the house, and addition of several structures, including a silo, machine sheds, milk house, heifer barn and garage.

"In addition to maintaining the household (the couple raised four children), Doris helped keep the farm books, cared for and trained the calves, helped with the milking, operated the tractor during [hay] baling, and generally assisted her husband in the farm work.

"Additionally, Doris Kersten ran the farm alone for two periods of time during which her husband was ill. However, she testified that neither would have successfully operated the farm without the continuing assistance of the other.

"On cross-examination, Doris Kersten testified that there was never a written partnership or joint venture agreement between herself and her husband.

"Doris Kersten never reported personal income for either federal or state income tax purposes. The milk check, the primary source of farm income, was made out to Lester Kersten. Farm income was reported by Lester Kersten as his income for Social Security purposes."

The trial court (Marathon County Court) had determined that, with two exceptions (property Lester already owned when he married Doris and one certificate of deposit), the balance of the jointly owned property should be taxed on a "50/50 basis." It ordered the Commissioner of Revenue to refund $2,911.01 of inheritance tax to Doris, the personal representative (executrix) of Lester's estate. That's when the Department of Revenue appealed the case.

In his decision favoring Doris, Wisconsin Supreme Court Judge Robert W. Hansen said: "So the issue in this case narrows to whether Doris Kersten's personal services on the family-operated farm constituted 'consideration in money or money's worth' in return for her interest in the property jointly held by her and her husband...

"We agree with the trial court and affirm its holding that Doris Kersten was entitled to credit for inheritance tax purposes for such contribution on her part to the jointly held property ..." Victory for Doris!

Elsewhere in his decision Judge Hansen quoted extensively from the federal Tax Court case *Estate of Everett Otte vs. Commissioner of Internal Revenue* (see "They sued the IRS and won," FARM JOURNAL, Aug., 1979). This case established that the contribution by Lura Otte of personal service as a wife "who kept the farm records and took an active part in the day-to-day operation of the farm, fairly justifies a division of the property acquired during her marriage."

To sum up, Lura Otte helped Doris Kersten.

Both Lura Otte and Doris Kersten helped Leona Nordby.

And Leona Nordby's case was cited in the successful suit of *Bessie Craig vs. The United States of America* (District Court, South Dakota, 1978).

None of these four women knows the other. None was aware she was helping anyone but herself. But the collective heroism of these four may benefit every wife who is a working partner with her husband ... for all time to come. ◁

MORE ON ESTATE PLANNING

Laura Lane's detailed report, "How the Revenue Act of 1978 Affects Your Estate Plan," is just off the press.

To order, send $1 plus 40¢ delivery charge to: Revenue Act, FARM JOURNAL, Box 1927, Philadelphia, Pa. 19105. Or get the report free with your order of *FARM JOURNAL's Estate Planning Idea Book* by Laura Lane, available from the same address for $14.95 plus 70¢ delivery charge. Both items are tax-deductible.

FARM JOURNAL
AUGUST 1979

FARM *Family Living*®

By LAURA LANE

Probably you have never heard of Bessie Craig or Lura Otte, but these unassuming farm women are true heroines. Both are widows, courageous in a special way.

They pioneered in a setting unfamiliar to them—the federal courts. Both hired competent attorneys to help them press for justice in estate tax cases. Each won—not just for herself but for other farm wives who have worked along with their husbands, managed and sometimes scrimped to have a good life and, in the process, build a farm estate to pass along to their children. Here are their stories:

Bessie Craig vs. The United States of America

FACTS: Bessie married Clarence Craig in 1925, and they started farming from scratch on rental land in Brown County, S.D. From day one of their 43 years of married life, Bessie was the bookkeeper—she had studied bookkeeping and typing in high school, and she developed her own form of enterprise accounting.

The Craigs were good farmers and good managers. They bought their first farm during the Depression (1930), and from time to time borrowed money to add other parcels to their holdings. They raised wheat, corn, oats, barley and flax, and they had stock, too—a cow-calf operation, hogs, sometimes sheep and a sideline Shetland pony business.

Early in their marriage Bessie worked in the fields, and she was always available to haul grain or stock. Once she trucked a load of horses from Missouri to South Dakota. Somehow she found time to raise a big garden and do a great deal of canning—vegetables, fruit, meat.

The Craigs' five children helped as they grew old enough, but that wasn't sufficient. Clarence and Bessie together hired farm laborers who "lived in." Bessie cooked for them, did their laundry, mended all their clothing, cleaned their quarters.

She had one enterprise of her own—a butter and egg route in town. She churned by hand and molded the butter; and the chickens were her special responsibility. "I'd get up in the middle of the night to see after my baby chicks," she reminisced to me not long ago in her comfortable living room. The money from this and all farm sales went into a single bank account in both names.

When Clarence and Bessie went on cattle-buying trips, she usually wrote the checks. And she was the one who hired truckers to deliver the stock to the farm. A favorite meal of truckers was hamburgers and homemade cherry pie, she says.

The Craigs were fortunate to have an astute attorney, Douglas Bantz of Aberdeen, who persuaded them as early as 1958 to "equalize" their holdings for estate tax purposes. When Clarence died following a car accident in 1968, he held title to 5½ quarter sections of land, Bessie to 7½, and they owned one parcel of pastureland in joint tenancy. In his will Clarence set up a trust, through which his hold-

Her name may appear in countless law books, but Bessie Craig remains an unassuming woman. She has a head for business and in preparation for testimony in her case against the U.S. she was able to produce bank checks written 30 years earlier. Now that sons operate the farm, Mrs. Craig lives in a small town, enjoying family and friends.

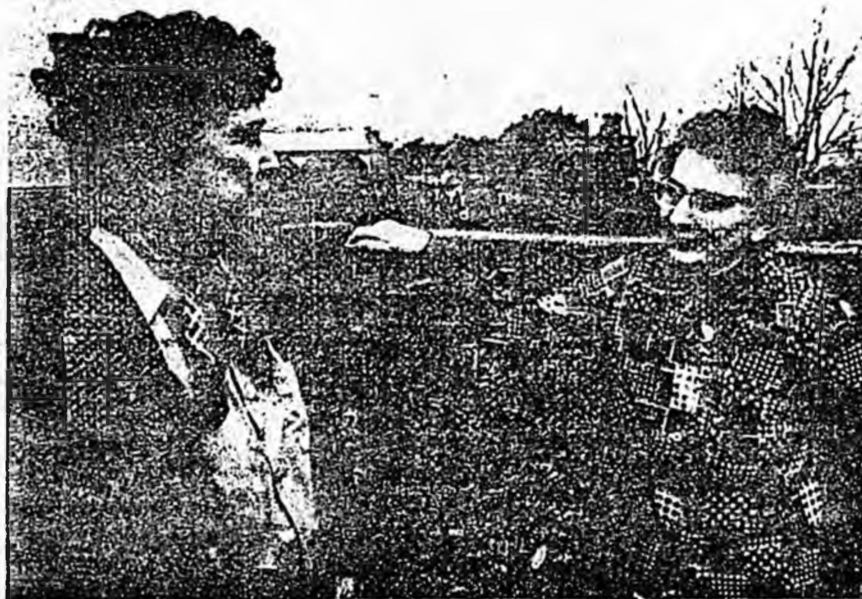
A farm-reared South Dakota attorney, Kennith L. Gosch knows firsthand about "the value of a woman in the family business."

Photos: Ric...tor's House of Portraits

They sued the IRS —and won

Victories by two widows in federal estate tax cases may help other farm women who feel they have been denied justice

This is the first of two articles about farm women who have won court battles in estate tax cases.



Lura Otte, right, keeps up with changes in estate tax laws and alters her estate plan accordingly. "These days a widow needs all the help she can get," she tells the author, Laura Lane, left. Mrs. Otte especially values the continuing support of two sons and three daughters, all in farming. The youngest son, unmarried, lives in the family home with her. Mrs. Otte remains a record-keeper and keen analyst of commodity market trends.

Photos: John Starkey, Black Star

Elmer E. Lyon was the first attorney to sell the Tax Court on the idea that farming can be a team operation, involving both husband and wife.

ings went to the children. Bessie inherited only household goods and the family car, since she already owned half of the farm (966.5 acres). Neither the South Dakota Department of Revenue nor IRS contested her ownership of real property.

THE ISSUE: At stake was personal property valued at $265,405.09—machinery worth $53,938.50; livestock, including 620 head of cattle, valued at $167,864.56; and miscellaneous assets (stored grain, interest in several co-ops, etc.) worth $43,602.03.

Attorneys for the U.S., strictly interpreting the Tax Code, claimed Bessie owned none of this personal property and said she therefore owed IRS an additional $42,318.79 in tax. (A tax she describes as "a whopper" already had been paid by the estate.) Bessie forked over the tax deficiency, but reserved the right, as executrix, to sue to get the money back.

Bessie's attorneys, Kennith L. Gosch and Harry N. Sandstrom (then partners of Mr. Bantz), chose to fight the case on their own home ground—that is, in District Court in Aberdeen. They preferred this to the Tax Court, which they feel often favors IRS.

By the time the case began on a blizzardy day in November, 1977, Bessie had done her homework. In one instance that meant digging up a check she had written in 1946—more than 30 years earlier.

It was easier to find records than to keep her cool when a U.S. tax attorney accused her of "a self-serving assertion not in accordance with the objective facts." She could not deny that on federal income tax returns (which Bessie always prepared for review by a CPA) that "Mr. Craig is listed as a farmer while Mrs. Craig is not listed as having an occupation." Nor had Bessie and Clarence ever filed a partnership income tax return, the government's attorneys pointed out.

Bessie had a chance to testify in her own behalf ("I wasn't scared," she told me), and so did three of the Craig children and the family banker. The Justice Department attorneys from Washington, D.C., were polite to Bessie, but out of her hearing they often chided her counsel on the futility of her case. Nevertheless, attorneys Gosch and Sandstrom kept hammering away at the idea that if it had not been for Bessie's help, Clarence would have had to employ another hired man. And they never let anyone forget that Bessie had been a joint decision-maker with her husband.

"The best point in Bessie's favor was that she and Clarence really did operate as farm partners," attorney Gosch told me.

He explained to me why he and his partner had delayed filing suit against the U.S. for several years. "We felt there was a changing mood in the country. The longer we waited, the more people would realize the value of a woman in a family business."

THE VERDICT: Judge Fred J. Nichol wrote the Court's decision announced on June 14, 1978. Some of his statements were music to a farm wife's ears: "All in all, the efforts of Bessie Craig, in the operation of the family farm, as well as her capital contributions in income derived from her land, can properly be characterized as those of a partner, in the fullest business sense of the word . . .

"The Court will not ignore this farm wife's contribution to the success of the business as the Internal Revenue seeks to do . . . (T)he plaintiff is entitled to the refund sought."

In time, Bessie got back her $42,318.79 plus interest. She had to pay attorneys' fees, of course, but it is a gre[illegible] satisfaction "to get justice," she says with a proud smile.

Now Bessie's place in history is assured—in future law books, later generations will study "Craig vs. The United States of America."

Lura Otte vs. Commissioner of Internal Revenue

FACTS: Everett and Lura Otte farmed in Jackson County, Ind., fol-

lowing their marriage in July 1932. Like the Craigs, they acquired land by the "borrow-then-pay-for" method, using farm income to buy several tracts to add to their 103-acre "homeplace" Everett bought before their marriage. They held title jointly, or as Indiana law puts it, "as tenants by the entireties."

Under Indiana law, income from such joint property belongs to spouses in equal shares, and "each spouse is considered to have paid from his or her separate funds one half of the cost of any property acquired through payment of the income from such property."

In 1947 Everett inherited from his father one-quarter interest in 20 acres. He and Lura then bought out the three other heirs—one brother and two sisters. Lura also received an inheritance—$2,170 from the estate of her mother in 1951. She used most of it to buy an Oliver 66 tractor and the remainder to install running water and a bath in a farm house the Ottes owned.

The Ottes began farming with horses (as the Craigs had done), and Lura would drive a team to harrow, disk, plant or haul hay. Later she learned to drive a truck and made trips to town for feed. When Everett was "working at another place," Lura helped care for the stock and did the milking. She kept chickens, too; premiums for an endowment life insurance policy on Everett were paid with her hen-and-egg money.

One enterprise of the Ottes was raising certified seed. Lura took responsibility for picking out odd kernels, and she also handled most orders and deliveries. She set out cabbages and tomatoes; helped harvest both.

Somehow she managed to keep track of markets to determine "the best day to sell hogs." She was in charge of many financial affairs, including the bookkeeping.

Everett and Lura Otte reared five children—two sons now farm land that Lura owns.

In 1966 Everett had an opportunity to go to Russia as part of a farmer exchange program. Beforehand he decided to get his affairs in order, and that included some estate planning, which he had learned about at Farm Bureau meetings. On the advice of his attorney, Everett transferred approximately 260 acres to Lura separately, of the 636 acres jointly owned. He did this for several reasons: to cut estate taxes in the event of his death, to compensate Lura for her hard work and give her more experience in managing real estate, and to lessen his own responsibilities, even though at age 61 he was in excellent health and had never had any serious illnesses.

About a year after the trip to Russia (Oct. 10, 1967) Everett Otte died of a cerebral hemorrhage.

THE ISSUES: The IRS and Lura Otte had several bones of contention on federal estate taxes due, but the principal one was IRS's contention that none of the real and personal property reported on the estate tax return originally had belonged to Lura, with the exception of the inheritance from her mother. In other words, her contribution had not been of "money or money's worth." IRS billed Lura for an additional $7,943.44. This was "widow's tax," because if Lura had died first, Everett would have been recognized as the owner and not billed for a deliquency.

Lura contended IRS had not given her proper credit and said she was due a refund of federal estate tax amounting to $1,870.29.

"I just felt I had made a considerable contribution to buying, upkeep and farm expenses, but in the eyes of IRS a woman's work counts as nothing," she told me in reviewing her battle in the federal Tax Court in Indianapolis.

Was she frightened? "No, I felt secure with my figures. I had to supply complete records for every year we had farmed, and it was those farm records that convinced the judge."

Her principal attorney, Elmer E. Lyon of Indianapolis, adds: "Mrs. Otte's openness and honesty couldn't be ignored. She had never considered herself as a partner of her husband—women didn't in an earlier era, even if they were outstanding performers like Mrs. Otte. But we were able to sell the court on the idea that Everett and Lura were a husband-and-wife team."

THE VERDICT: The concept of a husband-wife team was recognized by Judge Graydon G. Withey in his memorandum decision of March 28, 1972. He noted that the home farm had been in Everett's name only until 1958, but added: "We believe the enhanced value of the homeplace resulting from (Everett and Lura) working as a team constitutes jointly acquired property subject to equal division for estate tax purposes . . .

"Lura's efforts, industry and skills were not limited to those of an ordinary housewife and contributed to the success and growth of the overall farming operation."

The money involved was not an enormous sum by today's inflated standards, but Lura Otte was satisfied in the knowledge that a woman's contribution was officially recognized, despite strenuous objection by IRS. She keeps up with federal estate tax law and believes it should be changed to give justice to "women up and down the road who are milking cows, driving tractors." When told that her case had helped other women she had never heard of, she said: "Really? Well, I'm happy that is the case."

The 1978 change in the federal tax law that allows a widow or widower to "earn" and exclude from estate tax 2% a year of jointly held property often is referred to as "the Otte Amendment," attorney Lyon says. That's an unexpected reward for Lura Otte.

Many other widows have contributed to farm estate building and conserving, letters to FARM JOURNAL tell us, but whether they could win in the courts depends on individual circumstances. What a woman needs is a sense of her own worth, records to back her up, some money for legal fees, a determination to see justice done—and the courage of a Bessie Craig or a Lura Otte.

More on Estate Planning

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Introduced: 4/29/83
Referred: Judiciary and
Finance

1 IN THE HOUSE — BY TISCHER, BARNES, BETTISWORTH, BUSSELL, LISKA AND WARD

2 HOUSE BILL NO. 388

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act repealing the state estate tax; and providing

7 for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 13.16.610 and AS 43.31 are repealed.

10 * Sec. 2. Estates of decedents dying before the effective date of this

11 Act shall be taxed under the laws in effect before that date.

12 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-

13 10.070(c).