

HJR

45

JR 45

95TH CONGRESS
1ST SESSION

H. J. RES. 23

Proposing an amendment to the Constitution of the United States relative to abolishing personal income, estate, and gift taxes and prohibiting the United States Government from engaging in business in competition with its citizens.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1963

Mr. PAUL (for himself and Mr. McDONALD) introduced the following joint resolution; which was referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relative to abolishing personal income, estate, and gift taxes and prohibiting the United States Government from engaging in business in competition with its citizens.

1 *Resolved by the Senate and House of Representatives of*
2 *the United States of America in Congress assembled (two-*
3 *thirds of each House concurring therein), That the following*
4 *article is proposed as an amendment to the Constitution of*
5 *the United States, which shall be valid to all intents and*
6 *purposes as part of the Constitution when ratified by the leg-*
7 *islatures of three-fourths of the several States:*

1 "ARTICLE —

2 "SECTION 1. The Government of the United States
3 shall not engage in any business, professional, commercial,
4 financial, or industrial enterprise except as specified in the
5 Constitution.

6 "SECTION 2. The constitution or laws of any State, or
7 the laws of the United States, shall not be subject to the
8 terms of any foreign or domestic agreement which would ab-
9 rogate this amendment.

10 "SECTION 3. The activities of the United States Gov-
11 ernment which violate the intent and purposes of this amend-
12 ment shall, within a period of three years from the date of the
13 ratification of this amendment, be liquidated and the proper-
14 ties and facilities affected shall be sold.

15 "SECTION 4. Three years after the ratification of this
16 amendment the sixteenth article of amendments to the Con-
17 stitution of the United States shall stand repealed and there-
18 after Congress shall not levy taxes on personal incomes, es-
19 tates, and/or gifts."

○

98TH CONGRESS
1ST SESSION

H. R. 538

To amend the Internal Revenue Code of 1954 to repeal the estate and gift taxes and the tax on generation-skipping transfers.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1963

Mr. PHILIP M. CRANE introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1954 to repeal the estate and gift taxes and the tax on generation-skipping transfers.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That (a) chapter 11 of the Internal Revenue Code of 1954
- 4 (relating to estate tax) is hereby repealed.
- 5 (b) Chapter 12 of such Code (relating to gift tax) is
- 6 hereby repealed.
- 7 (c) Chapter 13 of such Code (relating to tax on genera-
- 8 tion-skipping transfers) is hereby repealed.

1 (d)(1) The repeal made by subsection (a) shall apply to
2 the estates of decedents dying after the date of the enactment
3 of this Act.

4 (2) The repeals made by subsections (b) and (c) shall
5 apply with respect to transfers made after the date of the
6 enactment of this Act.

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, Kenneth L. Gosch knows firsthand about "the value of a woman in the family business."



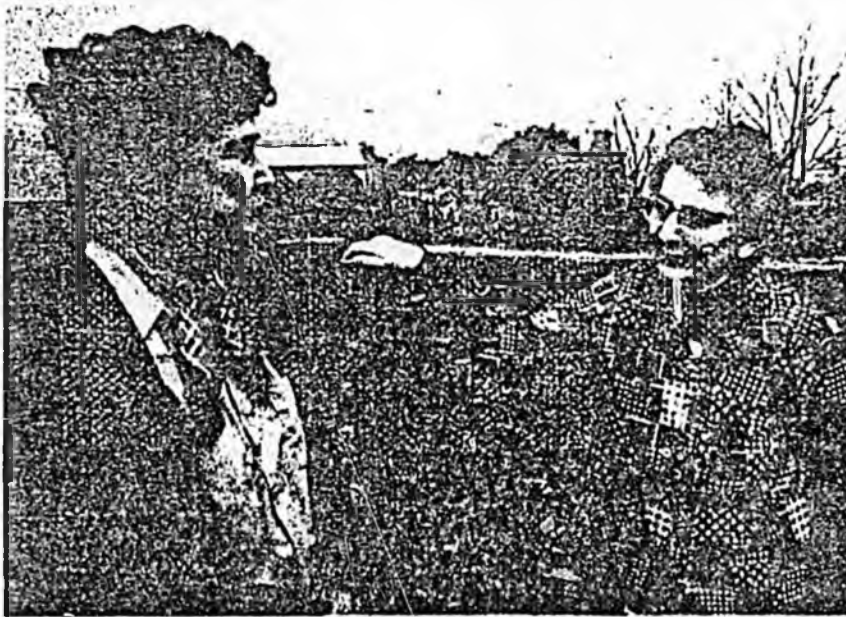
Photos Richter's House of Portraits

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.

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, Kenneth 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 blizzard 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



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.

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 great 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 approx-

imately 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 delinquency.

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."

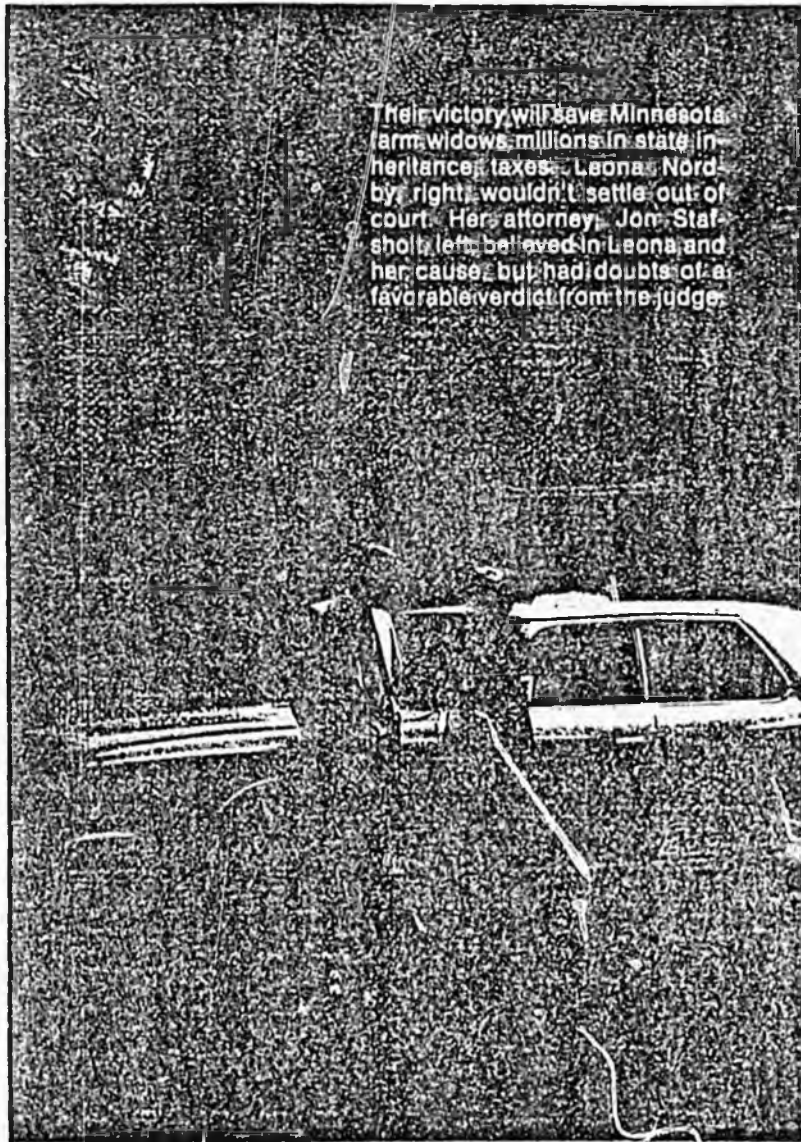
The money involved was not an enormous sum by today's inflated standards, but Lura Otte was satisfied in the knowledge that a woman's contribution was officially recognized, despite strenuous objection by IRS. She keeps up with federal estate tax law and believes it should be changed to give justice 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

Laura Lane's detailed report, "How the Revenue Act of 1978 Affects Your Estate Plan," a companion piece for FARM JOURNAL's *Estate Planning Idea Book*, 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 the *Estate Planning Idea Book*, available from the same address for \$14.95 plus 70¢ delivery charge. Both items are tax-deductible. ◀



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.

Photo: Felix Farrer

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

ate 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

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

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.

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, heater 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 required 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 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.

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 tink-

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

er 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.

Taxing Matters

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 McKeivitt, 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 af-



ford 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 "un-economic 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,

Taxing Matters

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 wears out 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?" ■



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 *Leonard Steinberg*
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.

Justification for Estate Taxes

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.

Representative Mae Tischer
May 10, 1983
Page Two

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;

Representative Mae Tischer
May 10, 1983
Page Six

- 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 hardships 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.

LS