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AUSTIN, TEXAS

WILL WILSON
ATTORNEY GENERAL

January 29, 1957

Hon. Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. WW-9

Re: Classification for
inheritance tax purposes
of a deceased daughter's
former husband who had
remarried and been
divorced prior to decedent's
death.

Dear Mr. Calvert:

You have advised us of the following facts. Jessica S. Pike died on March 16, 1956. Under the terms of her will, she devised and bequeathed all of her estate to her daughter, Phyllis Pike Cahn and to David D. Cahn, or the survivor of them. At the time of the execution of the will, David D. Cahn was married to Phyllis Pike Cahn, who died on September 2, 1951. David D. Cahn remarried on November 5, 1954, and was divorced from his second wife on June 23, 1955. He was unmarried on the date of death of Jessica Pike Cahn.

You state that the attorneys for the estate have taken the position that David D. Cahn should be classified for inheritance tax purposes under Class A - Article 7118, Vernon's Civil Statutes, and request that we advise you as to the proper classification. If Mr. Cahn cannot be classified under Class A, he will necessarily be classified under Class E - Article 7122, V.C.S.

The pertinent provisions of Article 7118, read as follows:

"If passing to or for the use of . . . the husband
of a daughter, or the wife of a son, the tax shall be
. . ."

Mr. Cahn is thus seeking to come within the Class-A group provided for a "husband of a daughter. . ." This provision and the corollary provision for "wife of a son" have been construed by our courts.

In Lewis v. O'Hair, 130 S.W.2d 379 (Tex.Civ.App. 1939) the court held that the surviving wife or widow of a deceased son of the decedent came within the provision above quoted for a "wife of a son". We quote the following excerpt from page 379:

"Appellee, Mrs. Hattie O'Hair, the party asserting the right to be placed in Class A, is the surviving wife (not having remarried) of Will O'Hair, who died in 1919." (Emphasis supplied.)

In Calvert v. Fisher, 259 S.W.2d 944 (Tex.Civ.App., 1953, error rel.) the court was concerned with the following facts. The decedent's daughter, who predeceased her, had been married to one of the beneficiaries named in the will. Subsequent to the daughter's death and prior to the death of the decedent, the beneficiary had remarried and was married at the date of the death of the decedent.

The court held that the beneficiary should be classified for inheritance tax purposes under Class E rather than under Class A. At page 945 the court said:

"The sole question presented by this appeal is: Did the fact that appellee remarried during the lifetime of the testatrix and after the death of his wife Hazel Amanda destroy his status as 'the husband of a daughter' of the testatrix?"

In holding that the status of "husband of a daughter" was destroyed by remarriage during the decedent's lifetime, the court pointed out that both the O'Hair case and Johnson v. Davis, 198 S.W.2d 129 (Tex.Civ.App. 1946, error rel., n.r.e.) recognize that Article 7118 uses the words "wife" and "husband" in the sense of surviving wife or husband, widow or widower. The court reasoned that the term "widower" should be given the sense in which it is ordinarily used and that the accepted meaning of the word is "a man who has lost his wife by death and has not remarried."

We think that the Calvert case is controlling since the Supreme Court refused writ of error.

The various inheritance tax classification provisions and

and the facts which are determinative of one particular relation or status would not be relevant to a determination of the existence of a different status or relation. The status of a "surviving husband" or "widower" of a daughter of the decedent was completely destroyed by Mr. Cahn's remarriage. It was this status upon which a favorable classification depended and it was non-existent at the date of the decedent's death.

SUMMARY

"The decedent's deceased daughter's former husband, who had remarried and been divorced prior to

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decedent's death, should be classified
for inheritance tax purposes under Class E -
Article 7122, V.C.S. Calvert v. Fisher, 259
S.W.2d 944 (Tex.Civ.App., 1953, error ref.).

Yours very truly,

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MMP:cs

APPROVED:

OPINION COMMITTEE
H. Grady Chandler, Chairman