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BENCH AND BAR

DIGEST OF ATTORNEY GENERAL OPINIONS

TAXATION—ESTATE TAX—ITEMS TO BE INCLUDED IN GROSS ESTATE
December 10, 1959

Section 57-3704 (2) of the North Dakota Revised Code of 1943 provides that "all property transferred by the decedent prior to death by grant or gift without an equivalent monetary consideration, intended to take effect either at or after the death of the decedent" is to be included in the gross estate of all decedents for North Dakota estate tax purposes.

"The statute appears to be ambiguous in that it speaks of property 'transferred . . . prior to death,' but 'intended to take effect at or after the death of the decedent.' If the property is transferred prior to death, such transfer must take effect at that time, not at or after the death of the decedent. If the transfer is not effective until at or after the death of the decedent, there is no transfer by him prior to death. It appears therefore that the legislature intended the word 'transfer' to refer to a transfer of legal title and the word 'effect' to mean 'take effect in possession and enjoyment.' If the statute is not given this meaning, its enactment would appear to have been useless. It is presumed however that the legislature acted with deliberation and with a purpose in view."

"In view of the purpose of section 57-3704 (2) the value of property transferred by a decedent during his lifetime, in which he reserved to himself a life estate and for which transfer he received no monetary consideration, is includable in the decedent's gross estate for North Dakota estate tax purposes."

NOTICE

There is a vacancy on the State Bar Board. Article VIII of the By-Laws of the State Bar Association of North Dakota provides that the Executive Committee shall select the names of three members of the Association in good standing for submission to the Supreme Court. At its March meeting, the Executive Committee selected Mr. Arley R. Bjella, Mr. Robert W. Palda and Mr. John A. Zuger as nominees for membership on the Board.

Article VIII also provides that members of the Association may make additional nominations by a petition signed by ten members which shall be timely filed with the Secretary of the Association.

Thereafter, in the event nominations by petition are made, the membership of the Association shall be polled; and the names of those receiving the highest number of votes, "up to the number of nominees to be chosen shall be presented to the Supreme Court as nominees of this Association for members of the State Bar Board."

Pursuant to Article VIII of the By-Laws you are hereby notified that nominations may be made by petition for the vacancy on the State Bar Board, and that such nominations must be filed with the Secretary of this Association not later than May 20, 1960.

