



**THE ATTORNEY GENERAL
OF TEXAS**

**WAGGONER CARR
ATTORNEY GENERAL**

AUSTIN 11, TEXAS

April 24, 1963

This Opinion
Overrules Opinion

*1111-10631

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

Opinion No. C-64

Re: Computation of Inheritance Taxes on Royalty Interest of Life Tenant Under Submitted Facts

Dear Mr. Calvert:

We quote the following from your letter requesting the opinion of this office on the above captioned matter:

"We desire the opinion of your office regarding the computation of inheritance taxes on royalty interests of life tenants under submitted facts.

"John Alexander Graves, Jr., died testate a resident of Tarrant County on October 9, 1962, owning a royalty interest under 612 acres of land in Jackson County, Texas. This royalty interest has a value of \$40,000 based upon a twenty-four months payout.

"Paragraph 4 of the will of the deceased reads in part as follows:

"I bequeath and devise to my beloved wife, Nancy Kay Graves, for her life, all my interest and estate in my lands in Jackson County, Texas, . . . containing 732 acres more or less of which I own the surface, and an undivided interest in the minerals in and under 612 acres of said lands, my mineral interest not including Lot 11 thereof.

"In addition to a life estate, I devise and grant to my said wife a general power of appointment over said lands and estates in Jackson County, Texas. This power may be exercised by deed or by will by appointment to whom-ever she desires, or to herself, her

estate, her creditors or the creditors of her estate for whatever objects she desires. Upon the death of my wife, should she fail to effectively exercise the power of appointment, I direct that the property shall pass in equal shares to my daughter, Nancy Ann Wynne, and to my son, John A. Graves, III.

"My said wife is to hold her life estate in said lands without bond and without liability for impeachment for waste, and is to have all the rights of the owner of a legal life estate including the right to possess and enjoy said property, to receive and use the entire income therefrom with power to dispose the principal and accrued or accumulated but undistributed income as she shall appoint.

"My said wife is to have full power and authority to use or to lease the surface of said lands for agricultural or commercial purposes and to make any use of the surface of said lands which she determines to be useful and profitable, and to drill water wells thereon and use or sell the water found or produced on said lands.

"My said wife is to have full power and authority to develop and produce any oil, gas, sulphur, gravel, clay, or other minerals on and under said lands, and to open new wells and mines and to market and sell all the products from said lands. She is to have full power and authority to make and execute oil and gas leases, all easements, rights-of-way, surface leases, and to receive and use as her own property all bonus moneys, and consideration for same, all rentals, royalties, payments out of oil or gas or other minerals, payments for non-development, drainage or damages, and any and all sums due and payable in connection with the drilling and development and production of oil, gas, sulphur, or any other minerals from said lands.

"In the exercise of the power of appointment hereby granted, my wife may appoint life estates to one or more objects of the power with remainder to others, appoint to grandchildren even though the parents of such appointees are still living, appoint by deed or by will executed during my lifetime or after my death.

"The above does not limit or restrict her powers as holder of a life estate or as donee under the power of appointment above granted, and she is to own and hold said property as her own without restriction on her right to use, consume and dispose of said property."

"The surviving spouse and principal beneficiary has a life expectancy of nine years and therefore will consume all the mineral value, so we are attempting to distribute this interest for inheritance tax purposes according to your ruling in Opinion No. 1063,

"Please advise whether or not the holding in this opinion is applicable to the submitted facts."

Opinion No. WW-1063 was concerned with the following facts. The decedent's will devised all her real property to her legally adopted son for life to have the use and benefit of same as his separate property, and upon his death, said real property was to vest in such of his issue as he might by will appoint. The will further provided for the disposition of the property covered by this devise in the event of failure to exercise the power of appointment. There passed under this provision of the will a royalty interest in the Old Ocean Field in Brazoria County, Texas. The average monthly income from the royalty interest was \$6,300.00. The mineral interest was valued at \$630,000.00 on a 100-month payout basis.

The opinion stated that the life estate in the land extended to the unsevered oil and gas beneath the surface. The beneficiary, at the time of the decedent's death, had a life expectancy of 36.7 years. Since he would receive the entire royalty interest in 100 months, the opinion held that inheritance

taxes should be computed on the entire value of the life tenant's royalty interest, rather than under the provisions of Article 14.08, Ch. 14, Title 122A, 20A, Tax.-Gen., Vernon's Annotated Texas Statutes, which provides the statutory method for computing the value of two or more estates, as an estate for years or for life, and a remainder.

We have concluded that we were in error in so holding, and that Opinion No. WW-1063 must be overruled in view of Calvert v. Thompson, 339 S.W.2d 685 (Tex.Civ.App. 1960, error ref.).

In the Thompson case, the decedent's will contained the following provision:

"All of the rest and residue of my property, real, personal and mixed, I hereby give, devise and bequeath to my beloved wife, Cora Thompson, during her lifetime, with full power to sell or otherwise dispose of same, and at her death, to my children John W. Thompson and Ida May Thompson, share and share alike, in fee simple."

The tax was assessed against the interest of Cora Thompson and its amount was determined on the basis of the value of the entire residuary estate. The court held that the fact that the life tenant was given the power of disposal did not change the estate into something other than an estate for life, citing, among other cases, Wier v. Smith, 62 Tex. 1, (1884); Edds v. Mitchell, 143 Tex. 307, 184 S.W.2d 823 (1945), and authorities cited therein. This, of course, had long been the established rule in the jurisprudence of this state.

At page 688, the court said:

"[2] The statute, Art. 7123,¹ supra,

¹ Article 7123, presently carried as Article 14.08, Ch. 14, Title 122A, 20A, Tax.-Gen., V.A.T.S., reads as follows:

"If the property passing as aforesaid shall be divided into two or more estates, as an estate for years or for life and a remainder, the tax shall be levied on each estate or interest separately, according to the value of the same at the death of the decedent. The value of estates for

is plain in providing the method for determining the value of estates for life and remainders and any other method of determining such values would violate the statute. For this reason the most probable future disposition of the estate by the life tenant would not be a proper item to be considered in determining the amount of inheritance taxes due. . . ."

Since the Texas courts have held that valuation for inheritance tax purposes is unaffected by the life tenant's unfettered power of sale, we think that we are bound to disregard the fact that in the instant case, as well as in Opinion No. WW-1063, the life tenant could receive the entire value of the royalty interest. Opinion No. WW-1063 is hereby overruled, and you are advised that inheritance taxes should be computed under the provisions of Article 14.08.

S U M M A R Y

Under submitted facts, inheritance tax should be computed on life tenant's royalty interest according to the provisions of Article 14.08, Ch. 14, Title 122A, Tax.-Gen., V.A.T.S. Opinion No. WW-1063 is hereby overruled.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By: *Marietta McGregor Payne*
Marietta McGregor Payne
Assistant Attorney General

MMP/jp

APPROVED:

¹ (Cont'd)

years, estates for life, remainders and annuities, shall be determined by the 'Actuaries Combined Experience Tables,' at four per cent compound interest."

OPINION COMMITTEE:

W. V. Geppert, Chairman

W. E. Allen

J. Arthur Sandlin

Ernest Fortenberry

APPROVED FOR THE ATTORNEY GENERAL

By: Stanton Stone