

September 20, 1949.

MEMORANDUM

March 4, 1931 Congress enacted a bill which provided that any person setting up property in trust and who reserved a life estate in it would, upon such person's death, have the corpus or remainder interest in the trust included in their gross estate. Congressman Garner at that time, according to committee records, specifically declared that such bill would not be retroactive. A. U. S. Supreme Court decision subsequently held, shortly after this bill was passed, that the bill was not retroactive and this case was relied upon until January, 1949, when unexpectedly the U. S. Supreme Court (Church Case) reversed the earlier case and held that the 1931 bill was retroactive.

December 24, 1929, upon the death of Mr. C. A. O'Keefe, Mrs. C. A. O'Keefe, in accordance with a contract arrangement with her husband, placed her one-half of their community property in trust and reserved a life estate. This, of course, occurred prior to the March 4, 1931 bill above mentioned. Her trust provided that upon her death the corpus or principal of her estate would go to designated beneficiaries. Of course, when Mr. O'Keefe died his one-half of the community property was properly subject to estate taxes, which were paid. During the period of time from Mr. O'Keefe's death in 1929 until the January, 1949 U. S. Supreme Court decision (Church Case), the O'Keefe Estate had no reason whatsoever to believe that Mrs. O'Keefe's one-half of the property in the estate which she had placed in trust would be subject to an estate tax by the Federal Government. If it had been thought otherwise, tax arrangements could have been made, the least of which would have subjected her portion of the trust to gift taxes.

As soon as we learned of the Church decision, the latter part of January of this year, arrangements were begun to avoid the severity of the decision; one plan in mind being for the heirs of Mrs. O'Keefe to purchase her life estate interest for an amount that would give her a lifetime annuity and it was considered by expert tax authorities that such an arrangement could appreciably and legally avoid the effects of the Church Case. Before any definite steps could be taken however, Mrs. O'Keefe died April 10, 1949, her death being somewhat unexpected. Following Mrs. O'Keefe's death it was hoped that the Commissioner of Internal Revenue would, through his regulations, make the effective date of the Church Case at least six months from the date it was rendered in order to give those people who had created trusts and reserved life estates prior to March 4, 1931, and who were still living at the time of the Church Case, a chance to overcome the harsh effects of this decision. This was not done, however, and the only remaining hope of obtaining relief rested through Congress.

It is my understanding that the feeling in Congress over the Church decision (and a companion decision - the Spiegel Case) was quite adverse to the Supreme Court on the grounds that the latter body was legislating instead of interpreting. I think this is borne out by the action of the Senate in passing HR 5268 this week. Several weeks ago, the House passed a revenue bill and this bill when sent to the Senate was amended to the extent of overcoming the effects of both the Church and Spiegel cases.

HR 5268 will now be referred to a joint conference committee and the members of such committee who represent the House and who will be appointed by Congressman Rayburn will decide whether or not the Church and Spiegel case amendments to this bill as passed by the Senate will remain a part of the bill. It is to be hoped that Congressman Rayburn's appointees will be favorable to the amendments inasmuch as the report by this committee will determine the outcome of the bill.

If this bill, as it now stands, passes and is not met with a Presidential veto, the O'Keefe Estate would be in the position, equitably and justifiably so, of not being charged with extensive estate taxes.

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