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Tax Warning – Wills, Insurance and Estate Tax

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COMMENTS

TAX WARNING

WILLS, INSURANCE AND ESTATE TAX

In drawing a will for a client always inquire if he desires the beneficiary of his insurance policies to contribute to the estate taxes, and, if he answers in the negative, be sure to incorporate in the will a provision that the beneficiaries of insurance policies shall not be required to pay to the executor any portion of the estate taxes.

The Internal Revenue Code¹ provides that, unless the decedent directs otherwise in his will, if any part of the gross estate upon which an estate

tax has been paid consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds of such policies bear to the sum of the net estate and the exemption of \$60,000. There is a similar provision with reference to property over which the decedent had a power of appointment.²

Therefore if Mr. Jones takes out an insurance policy on his life for \$50,000 and names his crippled sister, Mary, as beneficiary with the intention that said sum of \$50,000 should just about take care of Mary for the rest of her life, and if Mr. Jones leaves a very substantial estate but his will is silent on the question of Mary's liability to pay to the executor any portion of the estate taxes, then poor Mary will be required to contribute to the executor a large portion of the \$50,000 as her share of the estate taxes and will not have sufficient funds remaining for her support. This result is completely contrary to the worthy intentions and purposes of Mr. Jones.

Such a deplorable condition could have been avoided had Mr. Jones' attorney incorporated an appropriate provision in the will. To accomplish this end a clause like the following is suggested:

"No beneficiary of the proceeds of any policy of insurance upon my life receivable by such beneficiary shall be required to pay or contribute any portion of the estate taxes of my estate by reason of being such a beneficiary of such a policy of insurance, but any such beneficiary of any such policy of insurance shall be entitled to receive and retain the amount of such insurance without being required to pay to my executor or to my estate any portion of the estate taxes of my estate based upon the amount of the proceeds of any such policy of insurance."

1. Section 826(c) I. R. C.

2. Section 826(d) I. R. C.