

Yost, Calvin L	Case #	Date	
	E-79-72	7/12/1982	Petition for Rehearing
Smith, Robert G			Personal Representative
Yost, Ida M			Heir
Bixler, Alice M			Heir
Yost, Robert L			Heir

FILED ADAMS COUNTY
CIRCUIT COURT
NANCEE KAY LINN, CLERK

82 JUL 12 P 2: 55

STATE OF INDIANA)
COUNTY OF ADAMS) SS: IN THE ADAMS CIRCUIT COURT
CAUSE NO. E-79-72

IN THE MATTER OF)
THE ESTATE OF)
CALVIN L. YOST, DECEASED)

RESPONDENT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN RE: PETITION FOR REHEARING, REAPPRAISEMENT AND REDETERMINATION
OF INHERITANCE AND TRANSFER TAX

Comes now, ROBERT G. SMITH, as personal representative of the estate of CALVIN L. YOST, deceased, by counsel, and submits proposed findings of fact and conclusions of law in the above entitled matter, pursuant to the order entered herein on the 9th day of June, 1982, as follows:

1. CALVIN L. YOST, decedent herein, died on the 7th day of July, 1979, a resident of Adams County, Indiana.
2. The decedent was survived by his spouse, IDA MAE YOST, and his children, ALICE M. BIXLER and ROBERT L. YOST.
3. At the time of decedent's death, IDA MAE YOST was eighty-two (82) years of age.
4. The total value of decedent's net estate and property transferred other than by will or in testate law is, as alleged by the petition, One Million Five Hundred Eleven Thousand Three Hundred Eighty-Five Dollars and Twenty-Two Cents (\$1,511,385.22).
5. "Trust A" established by the terms of decedent's will and trust, consists of assets having a value, for purposes of Inheritance Taxation, of Six Hundred Thirty-Four Thousand Five Hundred Seventy-Two Dollars and Fifty-Five Cents (\$634,572.55).
6. The terms of Trust A grant the decedent's surviving spouse, IDA MAE YOST, a life income interest therein, and a general power of appointment, exercisable by the terms of her will, over the remainder interest therein.
7. "Trust B", established by the terms of decedent's will and trust, consists of assets having a value, for purposes of inheritance taxation, of Seven Hundred Forty Nine Thousand Four Hundred Ninety Dollars and Ninety-Two Cents (\$749,490.92).

8. The decedent's surviving spouse, IDA MAE YOST, is granted a life income interest in Trust B and the decedent's children, ALICE M. BIXLER and ROBERT L. YOST, are each granted an undivided one-half interest in remainder therein.

9. At the time of decedent's death, IC 6-4.1-3-7. provided as follows: "Property interests transferred to surviving spouse. --Each property interest which a decedent transfers to his surviving spouse is exempt from the inheritance tax imposed as a result of his death."

10. The provisions of the Inheritance Tax Act, appearing as Section 6-4.1-3-7, do not distinguish between deductible and non-deductible property interests transferred to a surviving spouse.

11. No person other than IDA MAE YOST, acquired a property interest in Trust A.

12. The general power of appointment granted IDA MAE YOST is a property interest within the meaning of IC 6-4.1-3-7.

13. The fair market value of the aggregate beneficial interests received by IDA MAE YOST, decedent's surviving spouse, is Nine Hundred Sixty Three Thousand Seven Hundred Sixty Nine Dollars and Sixty Nine Cents (\$963,769.69), which consists of the following:

--Jointly owned property	\$127,321.76
--Trust A, consisting of a live estate valued at	\$170,992.12
and corpus subject to the general power of appointment granted decedent's spouse having a value of	<u>463,580.43</u>
for an aggregate value of	634,572.55
--Life income interest in Trust "B"	<u>201,875.38</u>
Total value of beneficial interests	<u>963.769.69</u>

14. The beneficial interests received by persons other than decedent's spouse, and the respective fair market value of such interest, are as follows:

--Alice M. Bixler
Undivided 1/2 interest in
remainder of Trust B \$273,807.77

--Robert L. Yost
Undivided 1/2 interest in
remainder of Trust B 273,807.76

15. The net taxable value of decedent's estate, as determined for purposes of inheritance tax liability, is Five Hundred Forty Three Thousand Six Hundred Fifteen Dollars and Fifty Three Cents (\$543,615.53), which is determined as follows:

<u>Beneficiary</u>	<u>Fair Market Value of Beneficial Interest</u>	<u>Exemption Allowed</u>	<u>Net Taxable Value</u>
Ida Mae Yost	\$963,769.69	\$963,769.69	\$-0-
Alice M. Bixler	273,807.77	2,000.00	271,807.77
Robert L. Yost	<u>273,807.76</u>	<u>2,000.00</u>	<u>271,807.76</u>
TOTALS	\$1,511,385.22	\$967,769.69	\$543,615.53

16. The inheritance tax liability of decedent's estate, determined in accordance with the foregoing allocation of interests of the respective distributees, is Sixteen Thousand Two Hundred Forty Four Dollars and Sixty Two Cents (\$16,244.62).

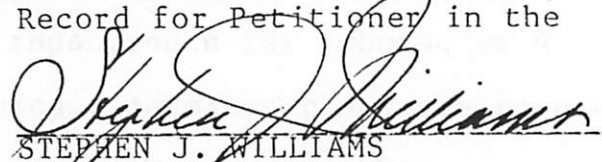
Respectfully submitted



STEPHEN J. WILLIAMS
Attorney for Respondent
1900 Lincoln Bank Tower
Fort Wayne, Indiana 46802
(219) 423-1430

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing Respondent's Proposed Findings of Fact and Conclusion of Law as attorney for Respondent, Robert G. Smith to Daniel LaRue, Deputy Attorney General, Counsel of Record for Petitioner in the foregoing cause.



STEPHEN J. WILLIAMS
1900 Lincoln Bank Tower
Fort Wayne, Indiana 46802

S/ Robert S. Anderson
Robert S. Anderson, Judge Adams Circuit Court



ROBERT S. ANDERSON, JUDGE ADAMS CIRCUIT COURT

Read and signed.

ESTATE OF)

CALVIN L. YOST, DECEASED)

ESTATE NO. E-79-72

Comes now Robert S. Anderson, Judge of the Adams Circuit Court, and now files Judgment in regard to the Redetermination of Indiana Inheritance Tax, which Judgment is in the following words and figures, to wit:

FILED ADAMS COUNTY
CIRCUIT COURT
NANCEE KAY LINN, CLERK

STATE OF INDIANA
COUNTY OF ADAMS

SS 2 JUL 21 A 9:17

IN THE ADAMS CIRCUIT COURT
JULY SESSION, 1982 TERM

In the Matter of the
Estate of CALVIN L. YOST,
Deceased

CAUSE NO. E-79-72

JUDGMENT

This matter arose when the Inheritance Tax Division of the Indiana Department of Revenue, State of Indiana, filed a Petition for Rehearing, Reappraisal and Redetermination of Inheritance Tax and Transfer Tax.

After various petitions for continuances filed by the parties, this matter was heard by this Court on the 9th day of June, 1982, and on said date this Court took the matter under advisement and directed that the attorneys for the parties present proposed Findings of Fact and Conclusion of Law within thirty days of date (June 9, 1982).

The attorneys for the estate of Calvin L. Yost filed their proposed Findings of Fact and Conclusions of Law on the 12th day of July, 1982, and this Court by telephone advised Dan S. LaRue, Deputy Attorney General of the State of Indiana, representing the Inheritance Tax Division, of the Indiana Department of State Revenue that the said proposed Findings of Fact and Conclusions of Law were due on July 9, 1982. In said telephone conversation, of July 12, 1982, Mr. LaRue advised this Court that he had forgotten to file said proposals but would file said proposed Findings of Fact and Conclusions of Law on or before the 15th day of July, 1982.

Mr. LaRue still has not filed his proposed Findings of Fact and Conclusions of Law, and this Court proceeds to render Judgment without the benefit of said proposed Findings of Fact and Conclusions of Law from Deputy Attorney General LaRue, and said Judgment is hereinafter set out:

This matter concerns the proper amount of Indiana inheritance tax payable by the estate of Calvin L. Yost, deceased, and specifically the amount of tax on the property which goes to the surviving widow of the decedent through a trust, and the proper allocation of the remainder of the decedent's property, which would go

to his children through a trust.

The Statute in question is I.C. 6-4.1-3-7 which reads as follows: "(a) each property interest which a decedent transfers to his surviving spouse is exempt from the inheritance tax imposed as a result of his death".

This Statute, which was P. L. 75 of the Acts of 1979 became effective and applied to inheritance and estate taxes "imposed as a result of the deaths of decedents who die after June 30, 1979".

The decedent in this matter, Calvin L. Yost, died on the 7th day of July, 1979, which would be seven days after the effective date of the Statute.

The matters raised in this case involve the proper interpretation of this Statute, and the resultant tax.

The State of Indiana through the Department of Revenue, the Inheritance Tax Division, filed a Petition for Rehearing, Reappraisal and Redetermination of Inheritance Tax and Transfer Tax contending that the "Trust A" established by decedent's will for the benefit of his surviving widow, Ida Mae Yost, should be taxed only on the value of a life estate in said "Trust A", and that the balance would be taxable in the "Trust B", which was established by decedent's will for his surviving children.

The estate takes the position that inasmuch as "Trust A" contains a power of appointment to the surviving widow, that the entire value of the "Trust A" property should be exempt, plus a life estate in "Trust B", which, of course, reduces the resultant tax.

In other words, the parties have stipulated and agreed on the amount of the property in the estate, but the disagreement is as to the proper allocation, with the estate claiming a greater amount in "Trust A", for the widow and a lesser amount in "Trust B" for the children of decedent than the Inheritance Tax Division.

Therefore, in order to resolve this matter it is necessary to ascertain whether or not the power of appointment given to decedent's widow would constitute a "property interest" in "Trust A" within the meaning of that term as used in I.C.

6-4.1-3-7 and therefore be exempt.

The State of Indiana through the Inheritance Tax Division claims that except for the value of a life estate in the widow in Trust A, that the property should be taxed in "Trust B" of the husband's estate, instead of "Trust A".

As indicated, this Statute became effective only seven days prior to the death of the decedent, and therefore there have been no cases on an Appeals Court level interpreting this particular Statute.

In order to resolve this issue, this Court has read other cases which have some bearing, and guidance in the resolution of this matter.

In the case of the Estate of Newell (1980), 408 NE 2nd 552, the Indiana Court of Appeals held that the value of the property in the surviving widow's trust should have been charged to and included in the trust valuation. The Court reasoned that inasmuch as the widow had the right to consume the corpus that the surviving spouse was the owner of the entire value of the trust assets.

Another case which has some bearing is Indiana, Etc. vs Estate of Hungate (1981) 426 NE 2nd 433, and at page 435, the Court stated as follows:

"A trust is a legal relationship between one person possessing equitable ownership in the property and another person owning the legal title to the property. 76 Am. Jur. 2nd, Sec. 2, Trusts (1975). Hungate possessed an equitable ownership in the corpus by her right to consume it. Inheritance tax is imposed upon the property interests of the decedent. I.C. 6-4.1-2-2. We believe that Hungate's power to enjoy the corpus during her lifetime coupled with her general power of appointment constituted a property interest subject to inheritance tax because otherwise the legal form of the trust would control the substance of her rights to consume the corpus."

Also, in a more recent case, being Indiana Department of Revenue, etc., vs Estate of Puett (1982) 435 NE 2nd 298, the Indiana Court of Appeals said at pages 301 and 302 "The

taxation of property interests transferred at the time of death is governed entirely by Statute. Matter of the Estate of Compton, (1980) Ind. App. 406 NE 2nd 365. The inheritance tax statutes are designed to tax the privilege of succeeding to property rights of deceased persons and the tax is imposed on the interest taken by the transferee and not on the property itself. In Re Estate of Grotrian (1980) Ind. App. 405 NE 2nd 69. In case of doubt, the Inheritance tax statutes are to be interpreted and construed in favor of the taxpayer. State of Indiana et al., vs Lees (1980) 418 NE 2nd 226; State Department of State Revenue vs The National Bank of Logansport (1980) Ind. App. 402 NE 2nd 1008". (This Court's emphasis).

In the opinion of this Court, as stated in the Puett case, inasmuch as there is a question as to the meaning of the Indiana General Assembly in the enactment of I.C. 6-4.1-3-7, that any question should be resolved in favor of the taxpayer, in this Court's opinion, the position of the Estate of Calvin L. Yost is the most tenable, and this Court now sets out its findings of facts and conclusions of law, as follows:

FINDINGS OF FACTS

1. CALVIN L. YOST, decedent herein, died on the 7th day of July, 1979, a resident of Adams County, Indiana.
2. The decedent was survived by his spouse, IDA MAE YOST, and his children, ALICE M. BIXLER AND ROBERT L. YOST.
3. At the time of decedent's death, the widow, IDA MAE YOST was eighty-two (82) years of age.
4. The total value of decedent's net estate and property transferred other than by will or intestate law is the sum of One Million, Five Hundred Eleven Thousand, Three Hundred Eighty-Five Dollars and Twenty-Two Cents (\$1,511,385.22).
5. "Trust A" established by the terms of decedent's will and trust, consists of assets having a value, for purposes of Inheritance Taxation, of Six Hundred Thirty Four Thousand, Five Hundred Seventy-Two Dollars and Fifty-Five Cents (\$634,572.55).
6. The terms of "Trust A" grant the decedent's surviving spouse, IDA MAE YOST, a life income interest therein, and

a general power of appointment, exercisable by the terms of her will, over the remainder interest therein.

7. "Trust B", established by the terms of decedent's will and trust, consists of assets having a value, for purposes of inheritance taxation, of Seven Hundred Forty Nine Thousand, Four Hundred Ninety Dollars and Ninety-Two Cents (\$749,490.92).

8. The decedent's surviving spouse, IDA MAE YOST, is granted a life income interest in "Trust B" and the decedent's children, ALICE M. BIXLER and ROBERT L. YOST, are each granted an undivided one-half interest in the remainder therein by the terms of decedent's will.

9. At the time of decedent's death, I.C. 6-4.1-3-7, provided as follows: "Property interests transferred to surviving spouse. --Each property interest which a decedent transfers to his surviving spouse is exempt from the inheritance tax imposed as a result of his death."

CONCLUSIONS OF LAW

1. The provisions of the Inheritance Tax Act, appearing as Section 6-4.1-3-7, do not distinguish between deductible and non-deductible property interests transferred to a surviving spouse.

2. No person other than IDA MAE YOST, acquired a property interest in "Trust A".

3. The general power of appointment granted IDA MAE YOST is a property interest within the meaning of I.C. 6-4.1-3-7.

4. The fair market value of the aggregate beneficial interests received by IDA MAE YOST, decedent's surviving spouse, is Nine Hundred Sixty Three Thousand, Seven Hundred Sixty Nine Dollars and Sixty Nine Cents (\$963,769.69), which consists of the following:

--Jointly owned property \$127,321.76

--Trust A, consisting of
a life estate valued at 170,992.12

and corpus subject to
the general power of
appointment granted
decedent's spouse having
a value of 463,580.43

for an aggregate value of	\$634,572.55
--Life income interest in "Trust B"	<u>201,875.38</u>
Total value of beneficial interests of widow	<u>\$963,769.69</u>

5. The beneficial interests received by persons other than decedent's spouse, and respective fair market value of such interest, are as follows:

--Alice M. Bixler Undivided 1/2 interest in remainder of "Trust B"	\$273,807.77
--Robert L. Yost Undivided 1/2 interest in remainder of "Trust B"	273,807.76

6. The net taxable value of decedent's estate as determined for purposes of inheritance tax liability, is Five Hundred Forty Three Thousand, Six Hundred Fifteen Dollars and Fifty Three Cents (\$543,615.53) which is determined as follows:

<u>Beneficiary</u>	<u>Fair Market Value of Beneficial Interest</u>	<u>Exemption Allowed</u>	<u>Net Taxable Value</u>
Ida Mae Yost	\$963,769.69	\$963,769.69	\$-0-
Alice M. Bixler	273,807.77	2,000.00	271,807.77
Robert L. Yost	<u>273,807.76</u>	<u>2,000.00</u>	<u>271,807.76</u>
TOTALS	\$1,511,385.22	967,769.69	543,615.53

7. The inheritance tax liability of decedent's estate, determined in accordance with the foregoing allocation of interests of the respective distributees, is Sixteen Thousand, Two Hundred Forty Four Dollars and Sixty Two Cents (\$16,244.62).

JUDGMENT ACCORDINGLY.

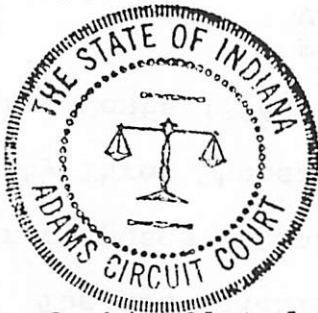
It is therefore now ORDERED, ADJUDGED AND DECREED that the inheritance tax liability of decedent's estate determined in accordance with I.C. 6-4-.1-3-7 is the amount of \$16,244.62.

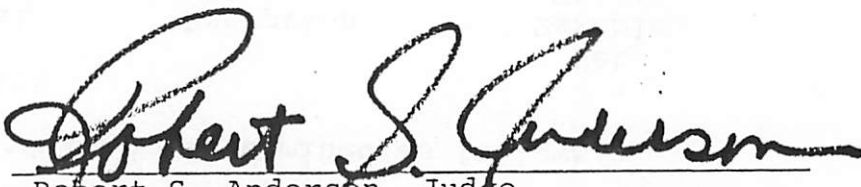
It is further ORDERED, ADJUDGED AND DECREED that this Judgment shall constitute an appealable judgment.

It is further ORDERED, ADJUDGED AND DECREED that the costs of this action are hereby assessed against the Indiana Department of Revenue Inheritance Tax Division of the State of Indiana.

JUDGMENT ACCORDINGLY.

The Clerk of the Adams Circuit Court is hereby ordered and directed to mail a certified copy of this Judgment to Robert G. Smith of Smith, Burry & Herman, 113 N 2nd St., Decatur, Indiana, 46733; to Stephen J. Williams, 1900 Lincoln Bank Tower, Fort Wayne, Indiana, 46802; to Mr. Don LaRue, Deputy Attorney General, Inheritance Tax Division of the Department of Revenue, State of Indiana, 219 State House, Indianapolis, Indiana, 46204, and to Mr. Earl M. Caston, Trust Officer of the First State Bank of Decatur, Decatur, Indiana 46733, for their information and appropriate action.





Robert S. Anderson, Judge
Adams Circuit Court

Dated this 21st day of July, 1982.

S/ Robert S. Anderson
Robert S. Anderson, Judge Adams Circuit Court

Read and signed.


ROBERT S. ANDERSON, JUDGE ADAMS CIRCUIT COURT
