NEW MEXICO LAW REVIEW

Volume 3
Issue 1 *Symposium: The New Mexico Equal Rights Amendment—Asessing Its Impacts*

Winter 1973

Tax Implications of the Equal Rights Amendment

Kendall O. Schlenker

TAX IMPLICATIONS OF THE EQUAL RIGHTS AMENDMENT

KENDALL O. SCHLENKER†

Although veteran tax fighter Vivien Kellems continues to wage her war against the federal revenues on constitutional grounds, the alleged discrimination has not been based solely on the sex of the taxpayer. In her latest reported attack Ms. Kellems contended that the provisions of the Internal Revenue Code which require a higher tax rate for a single person than for a married person are unconstitutional and in violation of the fifth, ninth, fourteenth and sixteenth amendments and article I (§ 2, clause 3 and § 9, clause 4) of the United States Constitution. The Tax Court left her string of losses intact and followed Supreme Court precedent for not disturbing legislative classification so long as any set of facts can be conceived for justifying such classification. The justification seen in the rate differential is that it is a means of achieving geographic equality between community property and non-community property states. Further, the Tax Court thought that Congress might have believed that married persons generally have bigger financial burdens than single persons.[1]

The case points up the fact that although taxation laws are sometimes discriminatory in their application, they are generally not discriminatory by design as are certain laws specifically providing different treatment for one sex than another. Interestingly enough, it appears that the only case approving discrimination on the basis of sex alone involved discrimination against a male taxpayer and not a female.[2]

The Internal Revenue Code defines "taxpayer" as a "person" subject to tax, and it defines "person" as including an "individual."[3] The provisions which make reference to "husband" and "wife" are far more neuter than they would at first appear, since these two terms are interchangeable by definition if the wife should actually end up paying the alimony, or if a reversal of the

†Member of the New Mexico Bar; Shareholder in Schlenker, Parker, Payne & Wellborn, A Professional Association, Albuquerque, New Mexico.

1. Vivien Kellems, 58 T.C. 556 (1972), *appeal docketed*, No. _____ 2d Cir., 7 CCH 1972 Stand. Fed. Tax Rep. § 7639.

2. Moritz v. Comm'r, No. 71-1127 (10th Cir. 1972), 71-2 U.S. Tax Cas. ¶9971 (1972). In reversing the Tax Court, the Circuit Court was of the opinion that the classification premised primarily on sex violated equal protection and due process principles.

3. Int. Rev. Code of 1954, §§ 7701(a)(14), (1).

terms is otherwise appropriate.[4] The New Mexico taxing statutes contain definitions similar to those in the Internal Revenue Code.[5] So far as definitions alone are concerned, they could hardly be less discriminatory.

This is not to suggest that there is not discrimination in fact in both the federal and state revenue laws on the basis of the sex of the taxpayer. The point is that this discrimination is not *imposed* by the taxing statutes. Instead, it arises from other laws relating to property ownership and family relationships, and perhaps from other laws whose relationship to tax consequences in a particular situation are not so readily apparent.

The Equal Rights Amendment would require changes in these other laws and these changes would in turn bring about tax consequences different from those which now depend upon the sex of the taxpayer. Since tax implications can be both far reaching and substantial, it is important that they be carefully considered with respect to all other required changes.

Changes would be required in certain New Mexico community property laws, and these changes would bring about immediate and important tax consequences with respect to both death and income taxes. The death taxes affected include both the United States estate tax and the New Mexico inheritance or succession tax. Both federal and state income taxes would be affected, since New Mexico "base income" is defined by reference to federal taxable income.[6] Income tax changes will relate not only to imposition of taxes, but they will also concern liability for payment of taxes assessed against both husband and wife.

ESTATE AND INHERITANCE TAX

The problem of the interrelationship of state law and federal taxation has come before the United States Supreme Court a number of times.[7] In *Morgan v. Commissioner,* the Court enunciated its standard as follows:

> State law creates legal interests and rights. The federal revenue acts designate what interests or rights, so created, shall be taxed. Our duty is to ascertain the meaning of the words used to specify the

4. Int. Rev. Code of 1954, § 7701(a) (17). By general definition masculine includes feminine. Int. Rev. Code of 1954, § 7701(d) (1) (3); 1 U.S.C. § 1 (1947).

5. N.M. Stat. Ann. § 72-15A-2(E.), (L.) (Supp. 1972). The New Mexico inheritance or succession tax refers only to "deceased person." N.M. Stat. Ann. § 31-16-1 to -2 (Supp. 1972).

6. N.M. Stat. Ann. § 72-15A-2(S.) (Supp. 1972).

7. Morgan v. Comm'r, 309 U.S. 78 (1940); Burnet v. Harmel, 287 U.S. 103 (1932); Poe v. Seaborn, 282 U.S. 101 (1930).

> thing taxed. If it is found in a given case that any interest or right created by local law was the object intended to be taxed, the federal law must prevail, no matter what name is given to the interest or right by state law.[8]

Nowhere is the ascertainment of "the meaning of the words used to specify the thing taxed" put to a more severe test than it is in certain cases involving death taxes on New Mexico community property under present law.

N. M. Stat. Ann. § 29-1-8 (1953) provides:

> Upon the death of the wife, the entire community property, without administration, belongs to the surviving husband, except such portion thereof as may have been set apart to her by a judicial decree, for her support and maintenance, which portion is subject to her testamentary disposition, and in the absence of such disposition, goes to her descendants, or heirs, exclusive of her husband.

However, in New Mexico "ladies first" applies only in the numbering of the statutory sections. N. M. Stat. Ann. § 29-1-9 (1953) presently provides:

> On the death of the husband, the entire community property goes to the surviving wife, subject to the husband's power of testamentary disposition over one-half [½] of the community property. In the case of the dissolution of the community by the death of the husband, the entire community property is subject to the community debts, the husband's debts, funeral expenses of the husband, the family allowance and the charge and expenses of administration.

In case of the wife's death prior to that of her husband, it has been held that her interest in the community property, which then *belongs* to him, is not subject to either the New Mexico succession tax[9] or the federal estate tax.[10] In case of the husband's prior death, it has been held that his interest is subject to the federal estate tax.[11] No question has been raised that it is also subject to the New Mexico succession tax.

This difference in extent of ownership and the consequent disparity in death tax treatment, which is unique in New Mexico among the community property states, has been the subject of several extensive and well reasoned analyses.[12] It has also been

8. 309 U.S. 78, 80-81 (1940).

9. *In re* Chavez's Estate, 34 N.M. 258, 280 P.241 (1929).

10. Hernandez v. Becker, 54 F.2d 542 (10th Cir. 1931).

11. Hurley v. Hartley, 379 F.2d 205 (10th Cir. 1967).

12. J. Wood, The Community Property Law of New Mexico (1954); R. Clark, Community of Property and the Family in New Mexico (1956); Swihart, *Federal Taxation of New Mexico*

the object of several unsuccessful legislative attempts at equalizing community property ownership between husband and wife.[13] Resistance to these attempts at legislation has been based on several grounds, one of which is the assumed death tax "advantage" realized by the husband in case of his wife's prior death.[14] This advantage is almost as illusory as the death tax "advantage" supposedly enjoyed by both husband and wife in holding title to property from a community source as joint tenants with right of survivorship. In the joint tenancy situation the reduction of death taxes through estate planning becomes an impossibility no matter which spouse dies first, since the husband also relinquishes his power of testamentary disposition.

The federal estate tax is imposed on taxable estates at rates ranging from 3 percent to 77 percent in rather broad graduated brackets.[15] Certain property not included in estates for purposes of administration is included in the gross estate for estate tax purposes. Deductions for expenses, debts, taxes, losses and charitable gifts are allowed in arriving at the taxable estate.[16] A "marital deduction" is also allowed for certain property which passes or has passed from the decedent to the surviving spouse, to the extent such property is included in determining the value of the decedent's gross estate.[17] This marital deduction does not apply to either community property or property which has been transmuted from community property into some other form of ownership.[18] However, community property may be used to satisfy the marital deduction amount where the marital deduction is available because of other non-community property included in the decedent's gross estate.[19] A $60,000 exemption is also allowed in arriving at the taxable estate.[20]

The New Mexico succession tax is imposed on taxable estates at level rates of either 1 percent or 5 percent, depending on the

Community Property, 3 Natural Resources J. 104 (1963); Comment, *Community Property—Power of Testamentary Disposition—Inequality Between Spouses*, 7 Natural Resources J. 645 (1967) [hereinafter cited as Comment, *Community Property*].

13. H.B. 183, 1971 Sess. N.M. Legislature, is an example. No legislative historical records are maintained in New Mexico.

14. Comment, *Community Property*, *supra* note 12, at 648-651.

15. Int. Rev. Code of 1954, § 2001.

16. Int. Rev. Code of 1954, §§ 2053, 2054, 2055.

17. Int. Rev. Code of 1954, § 2056.

18. Int. Rev. Code of 1954, § 2056(c)(2)(B), (C).

19. The actual limitations come about through computation of the "adjusted gross estate." The special rules exclude community property and property which was formerly community property from this computation. *Id.*

20. Int. Rev. Code of 1954, § 2052.

degree of relationship of the beneficiaries to the decedent.[21] Except for the marital deduction, deductions similar to those for estate tax purposes are allowed.[22] Also allowed is a deduction for federal estate tax paid.[23] There is allowed a statutory exemption of either $10,000 or $500, and this also depends on the degree of relationship of the beneficiaries to the decedent.[24]

For federal estate tax purposes where the taxable estate exceeds $40,000, a credit is allowed for state inheritance tax paid.[25] To make sure the state receives the benefit of the full inheritance tax credit available, there is imposed an additional New Mexico "take-up" or "slack" tax to absorb the full federal credit.[26] Thus, in many larger estates the effect is that the New Mexico succession tax is included within the computation of the federal estate tax. Since the New Mexico succession tax is generally either minimal in amount or included in the federal estate tax by means of the credit, opportunities for death tax savings generally lie in planning to avoid the federal estate tax.

Depriving the wife of power of testamentary disposition over her New Mexico community property does not of itself result in any death tax saving. The potential for minimizing federal estate tax in community property states lies in making full use of the $60,000 exemptions of both husband and wife, and in avoiding inclusion in the survivor's estate of property which was taxed in the estate of the first decedent. If the wife had power of testamentary disposition over her interest in New Mexico community property, and the total of such community property is in excess of $60,000, and she either (1) did not exercise her power of testamentary disposition, or (2) exercised her power of testamentary disposition by making a direct bequest or devise of her entire community interest to her husband, there would be a greater amount of death taxes imposed as a result of both deaths than there is in the present situation where she has no power of testamentary disposition. Otherwise, no death tax savings result.

If husband and wife own community property valued at $120,000, there would be no federal estate tax imposed as a result of the first death, no matter which of them died first. This would

21. N.M. Stat. Ann. §31-16-2 (Supp. 1972).
22. N.M. Stat. Ann. § 31-16-3 (1953).
23. N.B.S. Corp. v. Valdez, 75 N.M. 379, 405 P.2d 224 (1965).
24. N.M. Stat. Ann. § 31-16-1(A) (1), (3) (Supp. 1972).
25. Int. Rev. Code of 1954, § 2011.
26. N.M. Stat. Ann. § 31-16-25 (1953).

be true in the other community property states as well as New Mexico, since the first decedent's one-half or $60,000 is equal to the amount of the exemption. In New Mexico there would be no federal estate tax in case of the wife's prior death by reason of N.M. Stat. Ann. § 29-1-8 (1953 Supp. 1972) without regard to the exemption. If the decedent's $60,000 interest is subsequently included in the surviving spouse's gross estate, it will result in federal estate tax of $9,500. In such a situation, the entire amount of tax can be avoided where the first decedent has the power of testamentary disposition and actually exercises that power in a manner which would avoid inclusion of his or her interest in the gross estate of the surviving spouse. This can be accomplished by both husband and wife in all community property states except New Mexico, and by the husband in New Mexico. Consequently, the wife's $60,000 exemption is completely wasted in New Mexico where she dies first, and there will be inclusion (although not double inclusion) of her interest in the gross estate of the surviving husband on his death, unless he manages to dispose of her entire interest in such a manner that it will not be included in his gross estate at death.

The disadvantage of the wife's not having power of testamentary disposition can best be illustrated by death tax computations. The impact of death taxes should not be assumed away on the basis that the estate is not large enough to bring about any particular death tax problems. If the total value of community property is less than $60,000, there is not likely to be any problem. In all other cases, the problem exists and becomes one of degree. Since the estate tax is a graduated tax, any example will be made far more dramatic by adding two or three zeros to the figure in use.

For purposes of example, we will assume that husband and wife own New Mexico community property having a fair market value of $150,000 in which they have an adjusted basis of $75,000. It is the only property owned by them. They have no debts. Funeral expenses will be $1,000 on each death, and in cases where administration is required, the total expense will be $4,000. Both husband and wife desire that the survivor of the two of them have the lifetime benefit of all their accumulated property, and they desire that after the death of the survivor the remaining property be passed on to their children and descendants.

If the husband dies first, either without a will or with a will which leaves his entire estate to his wife, there will be federal estate tax and New Mexico succession tax upon his death of $1,392. Upon the wife's subsequent death there will be additional death taxes totaling $15,543, for total death taxes on both deaths of $16,935.[27]

Taking the opposite order of deaths, where the "savings" are thought to occur, the wife has no power of testamentary disposition and there are no death taxes imposed at the time of her death. However, upon the husband's subsequent death there will be death taxes totaling $17,049, an amount just slightly higher than in the preceding example.[28]

In the case of simultaneous deaths, N. M. Stat. Ann. § 29-1-27 (1953 Supp. 1972) applies, and total federal estate taxes and New Mexico succession taxes are only $2,190 for both deaths.[29] This favorable tax result occurs not because the parties were lucky enough, or unlucky enough, to be killed at the same time, but because the combined estates receive the benfit of both $60,000 exemptions, without double inclusion of any of the property for death tax purposes.

The best tax plan for the parties approximates the result occasioned by the simultaneous death of the parties. Both $60,000 exemptions are desired, but without double inclusion of any of the property in both of their estates for death tax purposes. In New Mexico it will be possible to accomplish this only if the husband dies before the wife. Instead of giving his entire estate outright to his wife by will, he can give her a life estate in his one-half of the community property, or he can provide through use of an *inter vivos* or testamentary trust for her lifetime benefit, with the remainder to children and descendants. If this is done, the wife will still receive the full benefit of all the community property during her lifetime, reduced only by the expenses and tax payable upon the husband's death, without inclusion again of the husband's remaining property in the wife's gross estate upon her death. In our $150,000 community property estate, there would be death taxes of $1,392 upon the husband's prior death and death taxes of $1,095 upon the wife's subsequent death, for a total of $2,487. This is a saving of $14,448, which can only be

27. *See* Appendix A.
28. *See* Appendix B.
29. *See* Appendix C.

accomplished in New Mexico if the husband dies first. If the wife also had power of testamentary disposition, the same estate planning could reduce the total death taxes on both estates from $17,049 to $2,487—a saving of $14,562.[30]

The foregoing computations do not take into account any federal estate tax credit for tax on prior transfers. There is a credit available if property which has been the subject of federal gift or estate tax is subsequently included in another taxable estate within ten years. This credit for a proportionate share of tax previously paid on prior transfers diminishes at the rate of 10 percent per year, and it is totally consumed in a ten year period after the gift or date of prior death.[31] The New Mexico succession tax statutes contain no similar provision.

There is also one very important income tax consideration involved in the wife's not having power of testamentary disposition over her interest in New Mexico community property. To the extent that a decedent's property is included in his or her gross estate, it acquires a new income tax basis equal to its fair market value at the date of death.[32] Where the property included in decedent's gross estate is an interest in community property, the interest of the surviving spouse also takes a new fair market value at date of death basis.[33] In the example used above for purposes of death tax computations, the fair market value was assumed to be $150,000 and the adjusted basis was assumed to be $75,000. If the husband should die first, the basis in all the property becomes $150,000. In New Mexico if the wife should die first, present law results in the basis of all the community property remaining at $75,000. Consequently, a sale of the property after the death of the first spouse would result in the realization of gain of either $0 or $75,000, depending on which spouse died.[34]

In New Mexico, husband and wife are allowed to hold property as joint tenants, tenants in common, or as community property.[35] They can also transmute either separate or community property.[36] Transmutation may be accomplished at any time

30. *See* Appendix D.

31. Int. Rev. Code of 1954, § 2013.

32. Int. Rev. Code of 1954, § 1014(a).

33. Int. Rev. Code of 1954, § 1014(b)(6).

34. Tax practitioners generally regard § 1014(b)(6) as creating a "free stepped up basis" in the interest of the surviving spouse. However, where the date of death fair market value is lower than the adjusted basis, both the decedent's and the survivor's interest take a reduced basis. Floersch v. United States, No. 4780 (D.C.N.M. 1962), 62-2 U.S. Tax Cas. ¶ 9771.

35. N.M. Stat. Ann. § 57-3-2 (Repl. 1962).

36. Chavez v. Chavez, 56 N.M.393, 244 P.2d 781 (1952).

by agreements made either before or during their marriage.[37] Transmutation from community property ownership to separate property or tenancy in common is frequently desired for the sole reason that it affords the wife power of testamentary disposition, thus affording desired estate planning possibilities. However, the Internal Revenue Service has ruled that transmutation of one-half of New Mexico community property into the separate property of the wife results in a gift by the husband of his survivorship interest in the property.[38] The validity of this ruling is doubtful in view of the New Mexico divorce cases involving divisions of community property. Does *Hernandez v. Becker*[39] really apply to anything other than a death situation? Even if the ruling is correct in determining that there is a gift of husband's survivorship interest, no formula has yet been announced to disclose how the value of the gift would be determined. The wife might have to be considerably older than her husband before the gift would have any value.[40]

The transmutation of community property to accomplish death tax savings still does not put New Mexico on a parity with other community property states. If community property is transmuted into tenancy in common ownership or into separate property, only the decedent's interest in the property takes a fair market value at date of death basis. The basis of the property of the surviving spouse is unchanged.[41]

Nor is transmutation of New Mexico community property into joint tenancy ownership a satisfactory means of saving death taxes. Although this ownership form may have the desired result of avoiding probate, neither party will have power of testamentary disposition. In cases where death taxes are a consideration at all, double includability—although not desired—is assured.

In the case of transmutation into joint tenancy, as in the case of transmutation into tenancy in common, only the decedent's interest receives a fair market value at date of death basis. In

37. *Id.;* Massaglia v. Comm'r, 286 F.2d 258 (1961).

38. Rev. Rul. 70-401, 1970-2 Cum. Bull. 197.

39. 54 F.2d 542 (10th Cir. 1931).

40. The average life expectancy of female over male is 5.7 years at age interval 40-45, 5.3 years at age interval 50-55, and 4.1 years at age interval 60-65. U. S. Bureau of the Census, Statistical Abstract of the United States 53 (87th ed. 1966). The conservative actuarial tables to be used in valuation of property for estate and gift tax purposes after December 31, 1970 also reflect a greater life expectancy of females over males at the same age, but these tables appear to recognize less difference than those cited above. Treas. Reg. § 20.2031-10 (1970).

41. Massaglia v. Comm'r, 286 F.2d 258 (1961).

Murphy v. Commissioner,[42] the concept of "constructive community property" was rejected, and it was held that where community property had been transmuted into joint tenancy between husband and wife, only the decedent's one-half interest received a new basis.

Although no written ruling or other authority was ever made known to the public, the Internal Revenue Service for many years recognized a "constructive community property concept" upon the death of the wife prior to the death of the husband when New Mexico community property had been transmuted into joint tenancy. In case of the wife's prior death no federal estate tax return was required even though her joint tenancy interest, valued pursuant to Sec. 2040, Int. Rev. Code of 1954, exceeded $60,000. The joint tenancy property was still regarded as New Mexico community property, apparently in reliance upon *Hernandez v. Becker.* Reliance may have also been placed upon an Oklahoma United States District Court decision, which held that under the elective Oklahoma community property law there was a stepped up basis at date of death even though title to property was taken by husband and wife as joint tenants.[43]

The Internal Revenue Service changed its position in 1966, again without any written ruling or announcement.

INCOME TAX

N. M. Stat. Ann. § 57-3-7 (1953) provides:

> The earnings and accumulations of the wife and of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife.

The earnings of the husband continue to be community property.[44] It has been held that this disparity in treatment does not involve a violation of due process.[45] If the Equal Rights Amendment is adopted, it would seem that amendment would be required of one statute or the other.

Not only do the statutes presently provide unequal treatment, but as a practical matter they also result in a difficult tax

42. 342 F.2d 356 (9th Cir. 1965). Presumably there would be no taxable gift on transmutation into joint tenancy. It is clear that there would not be a taxable gift if the property transmuted was real estate. Int. Rev. Code of 1954, § 2515.

43. McCollum v. United States, No. 4517 (No. Dist. Okla. 1958), 58-2 U.S. Tax Cas. ¶ 9957. This case relied on *In re Trimble's Estate,* 57 N.M. 353, 253 P.2d 805 (1953) for the proposition that conveyance into joint tenancy did not prevent it from being community property.

44. N.M. Stat. Ann. § 57-4-1 (Repl. 1962).

45. Loveridge v. Loveridge, 52 N.M. 353, 198 P.2d 444 (1948).

reporting problem. When periods of separation exist, they frequently exist under circumstances in which the parties are not particularly inclined to cooperate with each other. Frequently the period of separation is preparatory to obtaining a divorce. Joint income tax returns may be filed by the parties for any year in which they are married on December 31.[46] But the parties are jointly and severally liable for the full amount of the tax shown on the return.[47] When parties are separated, they do not seem to want to file joint returns in many cases. In a community property state a husband and wife are permitted to divide their community income and file separate returns.[48] Under the statute quoted above, the wife reports her income during separation as separate income. This presents no particular problems since she has access to information on her own earnings. However, in many cases only the husband has information concerning the nature and extent of the community income, and he does not always make this readily available to the wife. Consequently, the wife, facing a tax filing deadline, is forced to file income tax returns by making approximations of the community gross income and deductions, and by also estimating her share of the credit for withholding tax taken from the husband's salary, if any.

The same problem of obtaining information for tax reporting purposes exists where parties are divorced during a year, since they are each liable for the tax on his or her share of the community income to the date of divorce. By virtue of the quoted statute the husband will not have to be concerned about the income of the wife during periods of separation.

If the decision is made to amend the statute to make all earnings community income during periods of separation, both parties will then have the same tax accounting problem and both will be placed in a position of having to disclose the necessary information in order to obtain the equally necessary information from the other party.

A second significant problem in the income tax area relates to liability for payment of taxes. Although husband and wife in a community property state are permitted to divide the community

---

46. Int. Rev. Code of 1954, § 6013(a)(2).

47. An innocent spouse is now relieved of joint and several liability in certain cases by Int. Rev. Code of 1954, § 6013(e).

48. Poe v. Seaborn, 282 U.S. 101 (1930).

income and file separate returns, it is seldom advantageous to do so, as a result of the Tax Reform Act of 1969.[49]

It has been held that when such separate returns are filed by husband and wife, they become ". . . separate and distinct taxpayers . . . , and the situation is no different than it would be if the taxpayers were other than husband and wife . . . ."[50] However in New Mexico, the entire community assets can be reached for the payment of the separate debts of the husband as well as community debts incurred by him. Consequently, it has been held that an income tax refund to which the wife is currently entitled may be applied against a deficiency of the husband for a prior taxable year.[51]

Adoption of the Equal Rights Amendment would seem to require legislation protecting the wife's community property interest from her husband's separate creditors, including the taxing authorities.

49. Int. Rev. Code of 1954, § 1211(B) (2) limits the capital loss deduction of a husband or wife who files a separate return to $500 in lieu of $1,000. This section was added by the Tax Reform Act of 1969, 26 U.S.C. § 513(a) (1970). Before the effective date of this amendment it was possible for each to obtain a $1,000 deduction for capital losses involving community property by filing separate returns.

50. Gilmore v. United States, 290 F.2d 942, 950 (Ct. Cl. 1961), *aff'd (rev'd) on other grounds*, 372 U.S. 39 (1963).

51. Eaves v. United States, 433 F.2d 1296 (10th Cir. 1970).

APPENDIX A

H dies first (Without will or with will leaving entire estate to W).

U.S. estate tax				
Gross estate ($150,000 x ½)		$75,000		
Funeral expenses	$1,000			
Administration expenses	4,000			
Total	$5,000			
Less deductible one-half		2,500		
Less specific exemption		60,000		
Taxable estate		$12,500		
U.S. estate tax			$775	
N.M. succession tax				
Gross estate		$75,000		
Less deductions above		2,500		
Less U.S. estate tax		775		
Less statutory exemption		10,000		
Taxable estate		$61,725		
N.M. succession tax			617	
Total death taxes on H's death				$ 1,392
W's subsequent death				
U.S. estate tax				
Gross estate ($150,000–$5,000 expenses paid–$1,392 death taxes)		$143,608		
Less funeral expenses		1,000		
Less administration expenses		4,000		
Less specific exemption		60,000		
Taxable estate		$78,608		
U.S. estate tax ($14,710 less $309 credit for state inheritance tax)			$14,401	
N.M. succession tax				
Gross estate		$143,608		
Less deductions above		5,000		
Less U.S. estate tax		14,401		
Less statutory exemption		10,000		
Taxable estate		$114,207		
N.M. succession tax			1,142	
Total death taxes on W's death				$15,543
Total death taxes on both deaths				$16,935

APPENDIX B

W dies first			
U.S. estate tax			
None			$0
N.M. succession tax			
None			0
Total death taxes on W's death			$0
H's subsequent death			
U.S. estate tax			
Gross estate ($150,000–$1,000 funeral expense paid)	$149,000		
Less funeral expenses	1,000		
Less administration expenses	4,000		
Less specific exemption	60,000		
Taxable estate	$84,000		
U.S. estate tax ($16,220 less $352 credit for state inheritance tax)		$15,868	
N.M. succession tax			
Gross estate	$149,000		
Less deductions above	5,000		
Less U.S. estate tax	15,868		
Less statutory exemption	10,000		
Taxable estate	$118,132		
N.M. succession tax		1,181	
Total death taxes on H's death			$17,049
Total death taxes on both deaths			$17,049

APPENDIX C

Simultaneous deaths (With or without wills).

U.S. estate tax (Each)			
Gross estate ($150,000 x ½)	$75,000		
Less funeral expenses	1,000		
Less administration expenses	4,000		
Less specific exemption	60,000		
Taxable estate	$10,000		
U.S. estate tax		$500	
N.M. succession tax (Each)			
Gross estate	$75,000		
Less deductions above	5,000		
Less U.S. estate tax	500		
Less statutory exemption	10,000		
Taxable estate	$59,500		
N.M. succession tax		595	
Total death taxes on each death			$1,095
Total death taxes on both deaths ($1,095 x 2)			$2,190

APPENDIX D

H dies first (Estate planned to above tax on H's interest; subsequent death of W).

U.S. estate tax			
Same as Footnote 27		$775	
N.M. succession tax			
Same as Footnote 27		617	
Total death taxes on H's death			$1,392
W's subsequent death			
U.S. estate tax			
Same as Footnote 29		$500	
N.M. succession tax			
Same as Footnote 29		595	
Total death taxes on W's death			$1,095
Total death taxes on both deaths			$2,487