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Opinion No. 63-46-L  
R-191  
March 22, 1963

REQUESTED BY: MRS. GERALDINE C. SWIFT  
Estate Tax Commissioner

OPINION BY: ROBERT W. PICKRELL  
The Attorney General

QUESTION: Is the benefit, payable to the beneficiary of a decedent employee, under a usual profit sharing plan, includible in the gross estate of said employee?

ANSWER: Yes.

An estate tax, or the inheritance and transfer tax which is so characterized, is an excise tax upon the privilege of inheritance and succession. The proceeds of a profit sharing plan to the beneficiary after the death of the employee may be a part of the estate of the employee. It depends, of course, upon the contract. (In re Daniels Estate, 1952, Ohio, 112 N.E.2d 56) A criterion upon which contracts are classified, in this connection, is expressed in the cited case. In this case, the provision of the company pension trust agreement prohibited assignment and other hypothecation of the beneficial interest of the employee. These provisions were not permitted to abrogate the general character of that pension trust, as one in which substantial control of the company had been divested. The Ohio Court held:

" . . . This court views the above quoted provisions simply as a spend-thrift provision designed to protect the purpose of the trust and not inconsistent with ownership by the participant . . . ." i.d. at p. 58

Your question does not imply a less definite interest, or control, within the lifetime of the employee, than is usual to such contracts. Upon this basis, the

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death benefits are includible within the gross estate of the decedent. A.R.S. § 42-1511 (A) (5). Some estate tax statutes provide an exemption to the beneficiary of the decedent's share for the proceeds of an employee's retirement plan or trust. Arizona estate tax statutes do not provide such an exemption, i.d. 42-1512.

Benefits under conventional employee's profit sharing plan, paid to the beneficiary of a decedent, are to be included in the gross estate of such decedent. The answer to your question is, therefore, in the affirmative.

  
ROBERT W. PICKRELL  
The Attorney General

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