

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #96-30**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.**

**SUBJECT**

Whether the statutory right as next-of-kin to receive proceeds from a wrongful death suit is an interest in property which can be disclaimed under T.C.A. § 31-1-103.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

**FACTS**

[DECEDENT] died in a plane crash. Her mother, as the personal representative of her estate and as her next-of-kin, is contemplating filing a wrongful death suit against the airline responsible for the crash. Under the applicable wrongful death statute, [DECEDENT]'s mother would receive any proceeds of recovery from such a suit as [DECEDENT]'s next-of-kin ([DECEDENT]'s father predeceased her and she was

unmarried without issue). [THE MOTHER] is contemplating disclaiming the right to receive all or a portion of such proceeds if it constitutes an interest in property under T.C.A. § 31-1-103.

For purposes of this ruling, it is assumed that the applicable wrongful death statute is the Tennessee wrongful death statute, T.C.A. § 20-5-106.

### ISSUE

Is the statutory right as next-of-kin to receive proceeds from a wrongful death suit an interest in property which can be disclaimed under T.C.A. § 31-1-103?

### RULING

For purposes of applying the Tennessee transfer tax laws, the Department of Revenue considers that the next-of-kin of a decedent may disclaim, pursuant to T.C.A. § 31-1-103, the right to receive proceeds from a wrongful death suit under T.C.A. § 20-5-106.

### ANALYSIS

The Commissioner has discretion over whether to issue rulings under T.C.A. § 67-1-109 and may elect not to issue a ruling where an interpretation is sought of laws other than the Tennessee tax laws.

In a technical sense, this ruling request relates primarily to the application of T.C.A. § 31-1-103, a Tennessee *probate law*. (The statute has been codified by the Tennessee Code Commission in Title 31 of the Tennessee Code Annotated, which is entitled “Descent and Distribution,” a subclassification of the general classification of Probate statutes in Volume 6.)

However, this request indirectly relates to the Tennessee transfer tax laws (inheritance tax and gift tax laws) since the Commissioner’s conclusion on the validity of a disclaimer will have a Tennessee tax impact on persons having an interest in the Estate of [DECEDENT].

Therefore, because of this indirect tax impact and because the facts presented appear to fall within the purview of a valid letter ruling request under T.C.A. § 67-1-109(c)(1), a ruling is considered appropriate.

For purposes of this ruling, it has been assumed that the Tennessee wrongful death statute, T.C.A. § 20-5-106, applies. Subsection (a) of that statute provides in part as follows:

The *right of action* which a person, who dies from injuries received from another, or whose death is caused by the wrongful act, omission, or killing by another, would have had against the wrongdoer, in case death had not

ensued, *shall not abate or be extinguished* by the person's death *but shall pass* to the person's surviving spouse and, in case there is no surviving spouse, to the person's children or next of kin. . . (Emphasis provided.)

Thus, in the case of the facts presented, the right of action which the decedent (DECEDENT) would have had, but for her death, *passed* to her next-of-kin ([DECEDENT]'s mother) under applicable Tennessee law.

The courts in Tennessee have clearly recognized that the Tennessee wrongful death statute is in the nature of a descent and distribution statute. *See O'Neal v. Southern Ry.*, 403 F.Supp. 115 (E.D. Tenn. 1975) and *Harmon v. Wolfe*, 253 F.Supp. 577 (E.D. Tenn. 1965). Therefore, the right to proceeds in a wrongful death action in Tennessee is an interest in property which may pass on, descend or succeed to others - even if the passing is by terms of the statute rather than pursuant to a specific designation by the decedent in a will.

T.C.A. § 31-1-103 establishes the general provisions for disclaimer of property, powers and interests in Tennessee. Subsection (a) of that provision lists the persons who may legally disclaim all or part of such property or interests. Subsection (a)(2) in particular refers to “a *recipient of property from a decedent's estate*” as a person eligible to disclaim property. (Emphasis provided.)

[DECEDENT]'s mother had no right or interest at all under Tennessee law until [DECEDENT]'s death occurred. However, upon [DECEDENT]'s death, [DECEDENT]'s mother *received* a right of action under the Tennessee wrongful death statute.

This right of action may properly be characterized as a statutory right and one which is in fact derived from the decedent's own interest. However, the law generally recognizes that once a decedent dies, the decedent's interests are handled by the decedent's estate. The decedent's property is then *distributed by the estate* in accordance with the decedent's will or applicable probate laws *to appropriate distributees or recipients*. (Tennessee's wrongful death statute recognizes the role of the decedent's estate with respect to a wrongful death action when it provides that the right shall pass, alternatively to “. . . the person's personal representative, for the benefit of the person's spouse or next-of-kin . . .” T.C.A. § 20-5-106(a). This would presumably provide for cases where the decedent's personal representative (executor of the will or administrator of the estate) would be in a better position to take action on behalf of the spouse or next-of-kin than the latter parties would themselves).

Therefore, it can be concluded that [DECEDENT]'s mother, as next-of-kin of [DECEDENT], was “(a) recipient of property from a decedent's estate” pursuant to T.C.A. § 31-1-103(a)(2), and thus a person who would be permitted to disclaim all or part of the property or interest (proceeds from a wrongful death suit) pursuant to the disclaimer statute. Effective disclaimer would, of course, still be contingent upon compliance with all provisions of that statute.

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APPROVED: Ruth E. Johnson  
Commissioner of Revenue

DATE: 10/8/96