

INHERITANCE TAX WAIVERS: If, after the filing of the inventory and
CORPORATE STOCK: appraisement of the estate of the decedent, it is the opinion of the court entered of record that these items are not taxable, then and only then do the provisions of Section 145.210. RSMo become inoperative.

March 6, 1964

Opinion No. 76



Mr. Frank Bild
State Representative
9234 Gravois
St. Louis, Missouri 63123

Dear Mr. Bild:

This is in answer to your request for an opinion from this office which reads as follows:

(Is) "As a notice of time and place of intended transfer of stock to be served upon the Director of Revenue and Attorney General at least ten days prior to said transfer in a situation where the estate of the decedent has been entirely administered upon by the Probate Court and the Probate Court has issued its Order of Discharge to the executor and made its Order of Distribution to the heir. The heir, with a certified copy of this Order of Distribution and Order of Discharge presents the stock of the decedent to the transfer agent of the corporation for transfer to the said heir."

The statement of facts of the opinion request does not indicate whether the court record of the estate of the decedent contains an opinion of the court that the estate is not taxable. Thus, we are obliged to answer in the alternative.

The section in question, §145.210, RSMo reads as follows:

"1. If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligation in this state standing in the name of the decedent or in trust for a decedent liable for any such tax, the tax shall be paid to the director of revenue on the transfer thereof.

"2. No safe deposit company, trust company, corporation, bank or other institution,

Mr. Frank Bild

persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who is a resident or nonresident, or belonging to or standing in the joint names of such a decedent and one or more persons, including the shares of capital stock or other interest in a safe deposit company, trust company, corporation, bank or other institution making a delivery or transfer herein provided, shall deliver or transfer the same to the executor, administrator, or legal representative of said decedent or the survivor or survivors when in the joint name of a decedent and one or more persons or upon their order or request unless notice of the time and place of such intended delivery or transfer be served upon the director of revenue and attorney general at least ten days prior to said delivery or transfer; nor shall any safe deposit company, trust company, corporation, bank or other institution, person or persons, deliver or transfer any securities, deposits, or other assets belonging to or standing in the name of decedent or belonging to or standing in the joint names of decedent and one or more persons, including the shares of capital stock of or any other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits, or other assets, including the shares of capital stock or other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer under the provisions of this chapter unless the director of revenue and the attorney general consent thereto in writing.

"3. And it shall be lawful for the director of revenue together with the attorney general, personally or by representative, to examine

Mr. Frank Bild

said securities, deposits or assets at the time of such delivery or transfer.

"4. Failure to serve such notice or failure to allow such examination or failure to retain a sufficient portion or amount to pay such tax or interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits, or other assets, including the charges of capital stock of, or other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto a penalty of one thousand dollars; and the payment of such tax and interest thereon or the penalty above prescribed or both may be enforced in an action brought by the attorney general at the relation of the director of revenue, in any court of competent jurisdiction."

There is only one situation where the provisions of Section 145.210, RSMo 1959 become inoperative. Subsection 2, Section 145.150, RSMo 1959 states that:

"The court shall immediately upon the filing of the inventory and appraisement of the estate of a decedent, examine the same, and if it is apparent, in the opinion of the court, that the estate is not subject to the tax provided for in this law, its finding and opinion shall be entered of record in the court and thereupon the provisions of section 145.210 become inoperative as to the holders of funds or other property thereof, and there shall be no further proceedings relating to such tax unless upon the application of interested parties the existence of other property or an erroneous appraisement is shown."

Assuming that there are no applications of interested parties claiming the existence of other property or an erroneous appraisement:

(1) If the finding and opinion of the court that the estate is not subject to the tax are entered of record, then the requirement of notice need not be met.

(2) If no such finding and opinion of the court are entered of record, then the requirement of notice must be met.

CONCLUSION

If, after the filing of the inventory and appraisement of the estate of the decedent, it is the opinion of the court entered of record that these items are not taxable, then and only then do the provisions of Section 145.210, RSMo become inoperative.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Thomas E. Eichhorst.

Yours very truly,

Thomas F. Eagleton
THOMAS F. EAGLETON
Attorney General