

*Inheritance Tax - Suggestions relating to
Procedure Thereeto.*

June 7, 1933.



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Hon. Roy McKittrick
Attorney General
Jefferson City, Missouri

Dear General:

The question has arisen concerning the procedure relating to Inheritance Tax Law in the State of Missouri. The question concerns the construction of Section 583, R. S. No. 1933.

This statute may be divided into three parts:

- (1) That notice be served upon the State Treasurer and the Attorney General at least ten days before the delivery or transfer of any assets standing in the name of the decedent.
- (2) That delivery or transfer without retaining a sufficient amount to pay the tax and/or interest which may be assessed on account of the transfer of such assets shall not be made.
- (3) That no assets standing in the name of a decedent shall be transferred or delivered unless a sufficient amount is retained for any tax and/or interest that may be found due, or unless the consent of the State Treasurer and the Attorney General is secured.

The statute also provides that failure to serve such notice, or failure to retain a sufficient amount for the

payment of such tax and/or interest shall render the safe deposit company, trust company, corporation, bank or other institution, making such delivery or transfer liable for the payment of the tax, and in addition thereto a penalty for such failure of one thousand dollars.

Since the decision in the case of First National Bank of Boston, Executor of the Estate of Edward R. Haskell, Deceased, vs. the State of Maine, there can be no tax due the State of Missouri on the transfer of stock of Missouri corporations belonging to a non-resident decedent. Consequently, the Office of the State Treasurer has not been requiring waivers in order that stocks of Missouri corporations may be transferred when held by a non-resident decedent.

There have been many requests for an opinion from this office as to whether or not, since the decision in this case, we would continue to demand waivers. It is respectfully submitted that the policy of requiring waivers for the transfer of stocks and other evidences of indebtedness be continued and answered to strictly for the following reasons:

- I. There is a possibility that there could be some question as to the domicile of a decedent. For instance, Mr. "A", who had resided in Kansas City for a number of years, leaves Kansas City and moves to California for say six months. While in California, Mr. "A" dies intestate. His heirs might contend that he died a resident of California; and, if the Probate Court of California granted Letters of Administration, the Probate Court of Kansas City would authorize the foreign administrator, upon filing an affidavit of no debts and an authenticated copy of his appointment, to have any assets standing in the decedent's name transferred to him, after the expiration of the six months'

period. It can easily be seen that, if the State of Missouri requires no check upon these non-resident estates, there would be no way for the State to ascertain the actual residence of the decedents. In the hypothetical case, cited above, Mr. "A" might only have been visiting in California, in which event he would still be a legal resident of the State of Missouri and his estate would be subject to the inheritance tax laws of the State of Missouri.

For that reason, a form has been prepared which is attached hereto whereby the executor or administrator of a non-resident decedent, in order to secure the consent of the State of Missouri to the transferring or delivering of assets standing in the name of the non-resident decedent, will be compelled to make affidavit that the decedent was, at the time of his death, a legal resident of the foreign State.

II.

A more serious question arises with respect to stocks, bonds, notes, mortgages and other evidences of indebtedness that may have acquired a business situs in the State of Missouri though standing in the name of a non-resident decedent. The law pertaining to the business situs of securities has never been enforced in the State of Missouri according to Mr. Covert, the present State Supervisor, and it is respectfully submitted that this law should be strictly enforced in the future.

To return to our hypothetical case once more, suppose that Mr. "A" is a legal resident of the State of Kansas living, as many people do, just over the state line in Kansas City. He has for many years carried a large brokerage account with the brokerage firm of Harris Upham and Company. This firm has been acting as his agent in the buying and selling of stocks and other securities for many years. Mr. "A" dies. On the face of it, it would seem that these securities being intangible

personal property should be subject to tax at the domicile of the owners and unless some check were made, that would be the procedure.

In the very recent case of State vs. Baldwin, (Supreme Court of Missouri) 19 S.W. (2d) 732, the court held that the transfer of property belonging to a non-resident decedent consisting of notes, some of which were secured by mortgages on land in the State, bank deposits in the State and Liberty Bonds, all of which were in the possession of the administrator appointed within the State, was subject to an inheritance tax as being "within the jurisdiction of the State", even if the property was not "within the State" under the doctrine of "mobilia personam sequuntur", and notwithstanding the same property was taxed in the State of the owner's domicile.

The court said in relation to the law of "business situs":

"It possibly required a business situs in this state. Whether it did or not, it was within the jurisdiction of the state, and property subject to the transfer tax. It would have been a proper subject of inquiry by the trial court to determine how and why and under what conditions these evidences of debt were in this state, but, whatever the determination of that question, the property was legally within the jurisdiction of the probate court of Lewis County in this state, and subject to the tax."

This case was reversed by the Supreme Court of the United States in the case of Baldwin vs. Missouri, 74 Law Ed. 1006, in which it was held that the imposition of an inheritance tax by a State in respect of the deposits in banks within the State to the credit of a non-resident decedent, and bonds of the United States and notes executed by individual citizens of the

State physically present therein, belonging to such decedent which have not been given a business situs in such State violates the due process clause of the Fourteenth Amendment.

It will be noticed that the Supreme Court of Missouri was reversed for the reason that no business situs had been established for these securities. It is respectfully submitted that the purpose of the affidavit attached hereto is to prevent non-resident estates from escaping inheritance tax law of the State of Missouri where there has been an actual business situs established in this State. The wording of the Supreme Court of Missouri in the case cited supra states our position clearly; that is, that there should be an inquiry to determine how and under what conditions these evidences of debt are in this State. There is no doubt in our mind but that many estates are evading the inheritance tax laws of Missouri through the fiction of "*mobilia personam sequuntur.*"

III.

In the very recent case of *First National Bank of Boston vs. the State of Maine*, 53 Sup. Ct. 174, shares of stock in a Maine corporation sought to be subjected to inheritance taxes were part of the estate of the decedent, who at the time of his death was domiciled in Massachusetts. Most of the property of the corporation was located in Maine. The stock, as a part of the decedent's estate had been subjected to inheritance tax by the State of Massachusetts and the State of Maine sought to collect an inheritance tax on the same stock. The court held that shares of corporate stocks were subject to inheritance tax in the State of the owner's domicile under the maxim of "*mobilia personam sequuntur.*" On the face of this taxation, it would seem that there was no need for a State to give its consent for the transfer of corporate stock belonging to a non-resident decedent for the reason that the State would not be able to subject the stock to taxation; however, the basis upon which these recommendations are being made is that where there has been a business situs established, then and in that event these stocks, bonds and other credits are

subject to the inheritance tax in the State in which they are physically present and on this point, the Supreme Court of the United States in the case of *Boston vs. Maine*, cited *supra*, said:

"We do not overlook the possibility that shares of stock as well as other intangibles may be so used in a State, other than that of the owner's domicile, as to give them a situs analogous to the actual situs of tangible personal property. See *Farmers' Loan Company* case *supra*, 330 U. S. p. 213; 50 Sup. Ct. 99; 74 Law Ed. 371; 65 A.L.R. 1000. That question has been reserved and it still is reserved to be disposed of when, if ever, it properly should be presented for our consideration."

In the case of *Farmers' Loan and Trust Co. vs. Minnesota*, 330 U. S. 354; 74 Law Ed. 371, the court said:

"*New Orleans v. Stempel*, 175 U. S. 309, 44 L. ed. 174, 30 Sup. Ct. Rep. 110; *Bristol v. Washington County*, 177 U. S. 133, 44 L. ed. 701, 30 Sup. Ct. Rep. 585, and *Liverpool & L. A. G. Ins. Co. v. Board of Assessors*, 231 U. S. 346, 55 L. ed. 762, L.R.A. 1915 C, 903, 31 Sup. Ct. Rep. 530, recognize the principle that choses in action may acquire a situs for taxation other than at the domicile of their owner if they have become integral parts of some local business. The present record gives no occasion for us to inquire whether such securities can be taxed a second time at the owner's domicile."

The court, in the case of *Board of Commissioners vs. Hewitt*, 93 Pac. 181, 78 Ke. 816, said:

"Notes, mortgages, tax sale certificates, and the like, might be brought into the State for something more than a temporary purpose and be devoted to some business use here, and thus become incorporated with the property of this state for revenue purposes. Such situs had been aptly termed

"business situs." Board of Com'rs v. Hewitt, 93 Pac. 181, 184, 76 Kan. 816, 14 L.R.A. (N. S.) 493."

A line of cases hold that wherever a money lender has a local agent in another state, and permits that agent to control the evidences of debt and the mortgages securing them and to continue, for a long course of dealing, the business of lending money, collecting and re-lending money in the state of the agent's residence, the evidences of debt and the mortgages securing them have what has come to be known as a "business situs" for purposes of taxation and for other purposes. Adams v. Colonial & U. S. Mortgage Co., 34 South. 483, 536, 82 Miss. 263, 17 L.R.A. (N.S.) 138, 100 Am. St. Rep. 633 (citing Jubier v. Mascoe, 68 Miss. 699).

In view of the law as cited above it is expressly recommended that the attached affidavit be used before the consent of the State of Missouri is given in the transferring of any assets belonging to a non-resident decedent. It is further recommended that the field men, working under the treasurer, endeavor to ascertain the names of non-residents, who are now or who may be in the future dealing in securities in Missouri, so as to give those securities a business situs in Missouri.

IV.

In 1927 the General Assembly of the State of Missouri passed an act that is known as the "estate tax for the State of Missouri". This act is contained in Section 573, R. S. No. 1929, which provides as follows:

"In the event that the total of the inheritance taxes imposed upon the several interests and property comprising the estate of the deceased, by law, less exemptions allowed by law, and all other state inheritance taxes, shall not equal eighty per centum of the amount of the tax imposed upon the value of the net estate of said decedent, under the federal estate tax law, whenever the federal estate tax is determined an additional tax shall then be imposed upon the value of

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the net estate of said decedent as of the date of such determination equal to the difference between the total of the tax imposed under said Section 573 as amended and eighty per centum of the tax imposed by said act of Congress. (Laws. 1927, p. 100. Amended 1929, p. 103.)⁸

It is expressly recommended that in view of this Act the Office of the State Treasurer furnish the Office of the Attorney General a complete list of all estates exceeding in value Fifty Thousand (\$50,000.00) Dollars, and that the field men working under the State Treasurer be required to ascertain the amount of the tax paid in these estates to the Federal government, and report the same to the State Treasurer in order that it may be determined whether or not there is an estate tax due and owing to the State of Missouri. The Office of the State Treasurer and the Office of the Attorney General in order to carry out the provisions of this law, should work together and in complete harmony.

Respectfully submitted,

JOHN W. HOFFMAN, JR.
Assistant Attorney General.

JWH/AJ