

INHERITANCE TAX: A step-child is considered as a stranger in blood under Mo. inheritance tax laws and the inheritance tax must be paid upon succession provided by statute for a stranger in blood.

1-28

January 22, 1935.

FILED  
34

Hon. J. D. Greer,  
Judge of Probate Court,  
Mexico, Missouri.

Dear Sir:

This department is in receipt of your letter of January 15 requesting an opinion as to the following state of facts:

"I have an estate like this: A Mr. Wilkins, being along in years, had a little 40-acre farm and his sons paid off a deed of trust for him; his wife died and he married another and willed his farm to her and died. Now the widow has died after willing it to a son by a first marriage and he hardly able to take care of himself.

This farm, as you see, comes from his father to him thru his step-mother and is valued at \$300.00 by the appraisers of the widow's estate. This man is not strong minded and needs badly all he can make, and I am wondering if I will be compelled to assess inheritance tax when it came from his father in this indirect way."

At the outset, we wish to respectfully call your attention that under the facts as outlined in your letter, there can be no doubt but that the step-son takes this property by reason of the death of his step-mother, there being no succession whatsoever from the father to the son. The precise question, therefore, involved in this estate is whether or not a step-child is possessed of the same exemption under the inheritance tax laws of Missouri as is a child of the blood.

It has been generally held that the word "children", as contained in inheritance tax statutes, cannot be construed to include "step-children" unless such "step-children" should have been legally adopted or brought within the conditions imposed by the statute to establish the relationship of a mutually acknowledged child. Kidder "State Inheritance Tax."

Pinkerton in his work on Inheritance Taxation states the following rule:

"Step-children named as beneficiaries under a will have often sought to receive the benefit of the low rates and high exemptions given to children, but this is denied them unless they stand in the mutually acknowledged relationship of parent and child for a period not less than ten years beginning at a time prior to the child's fifteenth birthday and subsequent to the death of both parents of the child, or were proven to have been legally adopted. This is true even if the step-parent received the property in question from the step-child's own parent."

In the case of Marshall's Estate, 184 Pac. 43, a step-daughter inherited property from her step-mother, the same property having been inherited by the step-father from the step-daughter's mother. Inasmuch as said property had been originally owned by the mother, the step-daughter claimed the exemption of a natural child. The Court held, however, that the step-child was none the less a stranger in blood to the step-father, and the tax being upon the right of succession, and the succession of the property coming from the step-father, the same was taxable under the rate awarded by the California Statute to a stranger in blood.

#### CONCLUSION

In view of the foregoing, it is the opinion of this department that under the inheritance tax laws of the State of Missouri a step-child is to be considered as a stranger in blood, and the inheritance tax must be paid upon the succession provided by the statute for a stranger in blood.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,  
Assistant Attorney General.

APPROVED: