

INHERITANCE TAX: Failure to make application for refund within two years from date of accrual of right to such refund bars claimant from making such application.

1-21  
January 14, 1935.



Hon. Richard R. Nacy,  
State Treasurer,  
Jefferson City, Missouri.

Dear Sir:

This department is in receipt of your request for an opinion as to the following state of facts:

"On May 25, 1926, Bertha Wood, General Delivery, Kirksville, Missouri, was appointed Administratrix of the estate of Frank Munn, deceased. The inventory shows that the estate had \$7,095.00 in money. This came from the United States Veterans Bureau. Frank Munn, the deceased, had been a soldier in the World War and this was insurance money his estate received after the death of the beneficiary. Paul D. Higbee was appointed Inheritance Tax appraiser and each of the six brothers and sisters was assessed \$18.00 Inheritance Tax, making a total of \$108.00.

I am informed that any estate that receives money from the Veterans Bureau is not subject to Inheritance Tax on that money. Do you know when this ruling was made?

Will you please let me know whether or not this money could be refunded to the heirs?"

It appears from the records submitted to us in this estate that the payment of this tax was made on or about January 15, 1927. Section 584, R.S. Mo. 1929 makes provision for a refund of any inheritance tax paid erroneously. This section provides as follows:

"When any tax shall have been paid erroneously to the state treasurer it shall be lawful for him, on satisfactory proof of said erroneous payment, to refund and pay to the executor, administrator, or trustee, person or persons who paid the same the amount of such tax so erroneously paid: provided, that all applications for the refund of said tax shall be made within two years from the date of the accrual of the right to such refund."

It will be noted that the statute expressly requires all applications for refund to be made within two years. Judge Graves, in passing upon this identical point in the case of State Treasurer v. Trust Co., 293 Mo. 545, l.c. 560, said:

"Section 12, supra, clearly has reference to an erroneous payment of a tax as a whole, and not to an excess payment provided for by Section 25 for the emergencies of that section. The parties named in Section 12, to whom re-payment is to be made, are all in esse, and can make their application within two years. This two-year provision in said Section 12 is in the nature of a statute of limitations. The parties must proceed within two years or be barred. The two years begins from the time they were entitled to the refund. If it was an erroneous payment they were entitled to an immediate refund. In other words, their claims for refund arose immediately upon the payment of the erroneous tax."

#### CONCLUSION

In view of the foregoing, it is the opinion of this department that more than two years having elapsed since the payment of the inheritance tax in the Estate of Frank Munn, deceased, no refund

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can now be made of the inheritance tax paid in said estate by reason of the statute of limitations provided in Section 584, R.S. Mo. 1929.

The parties having failed to make application for a refund within two years from the date of the accrual of the right to such refund, they are now barred by reason of the Statute from making such application.

Respectfully submitted,

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

APPROVED:

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ROY McKITTRICK,  
Attorney General.

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