

- INHERITANCE TAX: 1) A step child considered a stranger in blood.
2) A Half-brother entitled to some exemptions as a brother of the whole blood.

May 10, 1937



Mr. James D. Clemens
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Dear Sir:

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

"I have been appointed tax appraiser in estates involving the following questions as to exemptions:

1. Does a half-brother have the same status as a full brother?
2. Does a step-son (never legally adopted) have any exemption other than as a stranger?

Your rulings on these points will be greatly appreciated."

I.

Under the Inheritance Tax Laws of Missouri, a step child is considered as a stranger in blood.

On January 22, 1935, this department ruled that under the inheritance tax laws 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. A copy of this opinion is attached hereto for your consideration.

II.

Under the Inheritance Tax Laws of Missouri, a half-brother is to be treated as a brother of the whole blood.

Sub-section 2 of Section 572 R.S. Mo. 1929, provides:

"(2) Three per cent.- Where the person or persons to whom such property or any beneficial interest therein passes shall be the brother or sister, or the descendant of a brother or sister of the decedent, the wife or widow of a son, or the husband of a daughter of the decedent, at the rate of ~~three~~ per centum of the clear market value of such property or interest therein."

Section 575, R. S. Mo. 1929, provides, in part, as follows:

"The following shall be exempt from taxes provided for in this article: ***** all transfers of property or any beneficial interest therein of the clear market value of Five Hundred Dollars to each of the persons described in the second subdivision of Section 572 of this article ****."

There is no language in these statutes that would indicate any legislative intent to exclude half-brothers and half-sisters from the exemption provided for whole sisters and whole brothers. While there are no Missouri decisions construing this section of our laws, we may, in the absence thereof, have recourse, as persuasive, to decisions of the Courts of other states. In the case of *People v. Elliff* (Colorado) 219 Pac 224, the precise question here presented was before the Supreme Court of Colorado. Judge Campbell, in speaking for the Court, said:

"To require brothers and sisters of the half blood to pay a higher rate of inheritance or succession tax than those of the full blood would be to discriminate in favor of the latter. Our General Assembly did not, in the succession or inheritance tax statute, indicate, either explicitly or impliedly, that any discrimination or distinction, as between brothers and half-brothers, or sisters and half-sisters, was intended. In construing the statute we are, therefore, bound to presume that the words "brother" and "sister" were intended to, and they did, include half-brother and half-sister respectively, since no qualifying or limiting words or expressions are found in the statute."

In view of the decision of the Supreme Court of Colorado, and in the absence of any language in our statutes indicating a legislative intent to exclude half-brothers and half-sisters from the exemptions provided in Section 575, it is the opinion of this

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department that a half-brother is entitled to an exemption of \$500.00.

Respectfully submitted,

JOHN W. HOFFMAN
Assistant Attorney General

APPROVED:

(Acting) Attorney General