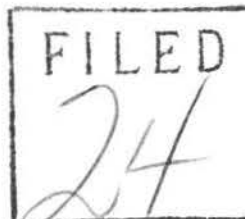


INHERITANCE TAX: (1) Missouri Road Bonds subject to inheritance taxation in Missouri, (2) United States Treasury Bonds subject to inheritance taxation in Missouri, (3) War Risk Insurance not subject to inheritance taxation in Missouri.

March 12, 1937.



Mr. H. E. Doerner,
Public Administrator,
Pemiscot County,
Steele, Missouri.

Dear Sir:

This department is in receipt of your letter of March 10, 1937, requesting opinion as follows:

"We have an estate now in course of administration in the Probate Court of our county, practically the entire estate consists of

First Missouri Road Bonds
Second United States Treasury Bonds
Third A United States Veterans Insurance Policy

As the intestate deceased was a single man he only left brothers and their descendants.

The question has arisen as to whether upon an appraisal of this estate whether or not any or all of the above mentioned assets or the value thereof is liable to a tax.

The insurance policy reads that it is to be free from all taxes. But we do not know whether or not this applies to collateral inheritance tax or not.

Would appreciate your advice in the matter."

I.

The exemption of state bonds from all state, county or municipal taxation does not prevent the imposition of a succession tax upon them.

Section 570, Laws of Missouri 1931, page 130, provides, in part, as follows:

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"A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or any interest therein, or income therefrom, in trust, or otherwise, to persons, institutions, associations, or corporations, not hereinafter exempted in the following cases *****"

The Missouri Inheritance Tax is not a property tax, nor is it a tax levied against persons, but rather it is an exaction in the nature of a "death duty" to be paid to the State upon the occasion of a death and consequent transfer of ownership in the property of the decedent. In re Rosing's Estate, 85 S. W. (2nd) 495.

In the rather recent case of Waddell vs. Doughton, 140 S. E. 160, the Supreme Court of North Carolina had the precise problem presented to them that is here before us. Conner, J., in delivering the opinion of the Court said:

"The inheritance tax, however, which plaintiff has been required to pay, and which he has paid, is not a tax upon the bonds, as property owned by him, but upon his right to take and hold said bonds under the will. The bonds are exempt from taxation in the hands of a holder, but this exemption does not extend to the right of succession, or to the right to have said bonds transferred to him.

This necessarily follows, we think, from the nature of an inheritance tax, as defined by this court and as levied and collected under the statute. It is not a tax on property, but on the succession to or transfer of property, occasioned by death. It has been so held consistently in many decisions of this court."

II.

United States Bonds are subject to the Missouri Inheritance Tax.

The power of the State to exact a succession or inheritance tax with respect to United States bonds which are exempt from property taxation is well settled. In the case of

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Plummer v. Coler, 178 U. S. 115, the court, in reaching this conclusion said:

"We think the conclusion fairly to be drawn from the state and Federal cases is that the right to take property by will or descent is derived from and regulated by municipal law; that, in assessing a tax upon such right or privilege, the state may lawfully measure or fix the amount of the tax by referring to the value of the property passing; and that the incidental fact that such property is composed, in whole or in part, of Federal securities, does not invalidate the tax or the law under which it is imposed."

III.

War risk insurance is not subject to the Missouri Inheritance Tax.

We have heretofore had occasion to discuss the above proposition, and we are enclosing copy of an opinion of this Department holding that such insurance is not subject to inheritance taxation in Missouri.

CONCLUSION

In view of the foregoing, it is the opinion of this Department that Missouri Road Bonds and United States Treasury Bonds are subject to the inheritance tax imposed by the laws of the State of Missouri for the reason that the Missouri Inheritance Tax is not a tax on property, but rather a tax upon the right to succeed to property. We are further of the opinion that War Risk Insurance is not subject to inheritance taxation in Missouri.

Respectfully submitted,

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

APPROVED:

J. E. TAYLOR, Acting
Attorney General