

INHERITANCE TAX: Taxability of moneys received as damages under Federal Employers' Liability Act.

January 26, 1937



Mr. R. J. Green
Farmers Bank of Trenton
Trenton, Missouri

Dear Sir:

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

"I have been appointed appraiser to determine any tax due as Inheritance in the estate of Charles A. Collier, Deceased, who came to his death by accident, and the Administratrix, having brought suit to recover under the Federal Employers Liability Act, and it thought that a compromise settlement will be made, and in such case the amount paid will go into the estate and finally disbursed to his sister who is sole heir to the net estate.

I desire a ruling from your department as to whether or not same would be subject to a tax under the Inheritance law. Thanking you, and awaiting the favor of an early reply, I am."

In the first place, there are four forms of transfer of property subject to inheritance taxation in Missouri (Section 570, Laws Missouri 1931, Page 130):

- 1) By will;
- 2) By the intestate laws of Missouri;
- 3) In contemplation of death or intended to take effect in possession or enjoyment after death;
- 4) In trust where the transferor has retained the income for life or the right to name the persons who shall possess the property or income therefrom.

Section 51, Title 45 U.S.C.A., provides:

"Section 51. Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence.
 Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment. (Apr. 22, 1908, c. 149, Section 1, 35 Stat. 65.)"

The damages received, therefor, if any, under and by reason of this Federal Act are received in case of death by the personal representative of the deceased employee for the benefit of the beneficiaries named in the Act. Whatever these beneficiaries receive, they received, not by reason of any of the four forms of transfer taxable under the inheritance tax laws of Missouri, but purely by reason of this federal law. In the case of Wells v. Davis, 303 Mo. 388, 1.c. 402, 404, the Court, in speaking of this Act, said:

"It is held everywhere, however, that a case of action of the class here under consideration is not assets of the estate of the deceased, is not subject to the claims of creditors of the deceased, and is for the exclusive benefit of the persons designated as beneficiaries under the law which gives the right."

* * * * *

"The representative does not hold it in his

strict representative capacity as representing all the persons interested in an estate; but, being the representative, he becomes by virtue of the Act the trustee of a statutory express trust. The money he may recover is not to be administered, but is to be distributed and not according to the law of the state of his appointment, or the order of a probate court, but in accordance with the Act. These various considerations are discussed in numerous cases."

CONCLUSION

In view of the foregoing, it is the opinion of this department that money received as damages under the Federal Employers' Liability Act by a personal representative of a deceased employee is not subject to tax under the inheritance tax laws of Missouri.

Respectfully submitted,

JOHN W. HOFFMAN, JR., Assistant
Attorney General

Approved:

(Acting) Attorney General