

RE: PROBATE COURTS: ADMINISTRATION OF INHERITANCE TAX LAWS.

January 12, 1938.



Honorable S. J. Holloway,  
Probate Court,  
Versailles, Missouri.

Dear Sir:

This department is in receipt of your letter of January 6th requesting an opinion as to the following:

"I had a situation arise in my Court a few days ago that bothered me at the time and I am still not satisfied as to the legality of the proceedings that were taken. A will was presented for probating, leaving to the widow all real estate consisting of about 240 acres and all personal property, the value of which I have not the slightest idea. The attorney for the estate in this case argued that all that was necessary was to have the proof of will made and the recording of the same in my Court and by the Recorder of Deeds. The attorney also prepared a paper setting forth the election of the widow regarding the property.

The point is this: I have been under the impression that a report was necessary showing No Inheritance Tax Due the state in the event the estate was not large enough to be subject to an Inheritance Tax. I am unable to see just how a decision could be reached in the matter, unless Letters Testamentary were issued and an Inventory and Appraisement made. I can hardly see how the law can require a "No Inheritance Due" report in estates that are probated and Letters granted and then allow these estates to escape administration.

I trust that I am not imposing upon you in asking a ruling on the matters I have set forth."

Section 565, Revised Statutes of Missouri 1929, provides, in part, as follows:

"The probate court which grants letters testamentary or of administration, either original or ancillary, on the estate of any decedent, shall have jurisdiction to determine the amount of the tax provided for in this

article and the person, persons, association, institution or corporation liable therefor, and to determine any question which may arise in connection therewith, and to do any act in relation thereto which is authorized by law to be done by such court in other matters or proceedings coming within its jurisdiction. Such court or the judge thereof in vacation shall immediately upon the filing of the inventory and appraisement of the estate of a decedent, examine the same, and if it is apparent, in the opinion of the said court or judge, that such estate is not subject to the tax provided for in this law, such finding and opinion shall be entered of record in said court, and thereupon the provisions of section 583 shall become inoperative as to the holders of funds or other property thereof, and there shall be no further proceedings relating to such tax, unless upon the application of interested parties the existence of other property or an erroneous appraisement be shown. \*\*\*\*\* "

This is the only section of the inheritance tax laws requiring a finding by the Probate Court that an estate is not subject to tax, and this section refers specifically to estates on which letters testamentary or of administration shall have been granted. If letters are granted, then, of course, by reason of sections 58 and 61 of our general laws relating to administration, the Court is furnished with ample information as to whether the estate may or may not be subject to tax.

If letters of administration are not granted, it is only because the Court has been satisfied by proof that there will be nothing in the estate after the widow, widower or minor children have been allowed their absolute property. Section 2, Revised Statutes of Missouri 1929. Of course, in such an instance, there can be no possibility of any tax being assessed and the inheritance tax laws do not require a finding that the estate is not subject to tax. We reiterate, however, that the Probate Court should be satisfied by proof that nothing will be left in the estate after the allowance of absolute property rights.

However, even if the Court refuse to grant letters of administration, if, at a later date, it appear that there is property in the estate subject to tax, any person may file an affidavit to that effect, and the Court shall appoint an appraiser and assess the tax in accordance with the provisions of the Inheritance tax laws of Missouri. Section 591, R. S. Mo. 1929.

Respectfully submitted,

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

APPROVED

*J. E. Taylor*  

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Acting Attorney General