TAXATION:
ADMINISTRATORS AND
EXECUTORS:
DISTRIBUTION OF ESTATES:

An executor or administrator may at his own peril distribute personal property of the estate without an order of the Probate Court and if such distribution is made before the tax-assessment date, then the estate is not subject to be taxed on the properties so distributed.

July 13, 1943

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Hon. Jesse A. Mitchell
Chairman, State Tax Commission
Jefferson City, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you submit the following questions:

> "(1) Is an administrator or an executor or the estate liable or subject to a personal property tax on property distributed by an administrator or executor, when distributed prior to June 1st, the taxable date, without obtaining an order of distribution from the Probate Court.
>
> "(2) Is an administrator or an executor or the estate liable or subject to a personal property tax on property distributed prior to June 1st, the taxable date, without obtaining an order of distribution from the Probate Court, if the Probate Court thereafter approves such distribution by the approval of a settlement subsequently made in which credit is taken for such distribution.
>
> "(3) May an administrator or an executor of an estate distribute personal property without an order of the Probate Court. (The determination of this question will be a guide to be followed by the tax-collecting agencies should the Probate Court at any time refuse to approve a settlement in which credit is sought for distribution made without a prior order of the Court)."

Under Section 10940 R. S. 1939, it is provided that every person holding or owning property on the first day of June shall be liable for taxes thereon.

Under Section 10950 R. S. 1939, it is the duty of each taxpayer to list all property owned by such taxpayer or under his care, charge or management. Under Section 10957 R. S. 1939, provisions are made for the assessing of the assets of estates which are in Probate Court. This section reads in part as follows:

> "It shall be the duty of every judge of the probate court in each county in this state to certify to the county assessor, on the first Monday of June in every year, a written list of every administrator, executor and guardian, and of every other person legally in charge and control of any estate in the probate court; and thereafter, and upon such certification, it shall be the duty of the county assessor to take from each administrator, executor, guardian, andevery other person legally in charge and control of any estate in such probate court, or from the papers and records of the court relating to such estates, a list of personal property, and to assess the same according to law--such property hereby being declared to be subject to taxation in said county for all lawful purposes whatsoever, so long as the probate court thereof retains jurisdiction of such estate; * * * *"

Your first question goes to the question of the liability of the executor for taxes on property which he distributed prior to the first of June and without an order of court authorizing such distribution. In searching the statutes on this question, we do not find any provisions therein which would prohibit the executor or administrator of an estate from making a distribution before the time the semi-annual settlement expires.

Under provisions of Section 235 R. S. 1939, it is provided that the executors shall not be compelled to make a distribution

untill six months after the date of letters. It will be noted however, that this does not prohibit the executor from making a distribution sooner than the six months after the date of letters if he is willing to assume the responsibility that he may acquire on account of making the early distribution.

Under Section 105 R. S. 1939, it is provided that the Probate Court may at any time make such orders as the interest of the estate may require for the speedy collection of debts or for the sale and distribution of personal property. However, under this section, even if the Probate Court makes an order of distribution within six months after letters have been granted, the executor under Section 235 would not be required to make the distribution until after six months of the date of the letters. In Volume 2 of "Missouri Practice and Forms" by Limbaugh at Section 927, the author makes this statement:

> "Since settlement cannot be made until after the est to has been in the process of administration for six months, no partial distribution can be made until six months after the date of letters."

This statement may be correct. However, it does not hold that a distribution which is prematurely made would be void and that ownership of property so distributed would not pass to the distributee. In Volume 24 C. J. at page 473, Section 1281, we find the rule as to making distribution of estates stated as follows:

> " * * * Nevertheless, it is the duty of the representative to make distribution as soon as is consistent with the rights of creditors and his own safety; and where it is made apparent that there are more assets on hand than will be necessary for the payment of debts and expenses of administration, the court may direct distribution before the time ordinarily allowed for settlement of estates has elapsed, or, under such circumstances, the representative may pay over legacies or distributive shares in advance of such time, taking a refunding bond from those who are thus paid. * * *"

In the case of Young v. Thrasher, 48 Mo. Appeal 327, 335, a question similar to the one here under consideration was before the St. Louis Court of Appeals. In that case, the executor previous to final settlement paid out amounts to distributees without an order of court. In speaking of this payment, the court said:

> "* * * * * The mere fact that the money was paid to Henry C., without first obtaining an order of distribution, could not affect the question on the merits, because, if nothing had been paid Henry C., he would have been entitled to an order of distribution in his favor for at least $300. * * *"

This case is cited as authority for the rule that an administrator is entitled to credits in his settlement with estate for payment made to a distributee without any order of the probate court, if the amount paid is not more than the distributee is entitled to.

The only reason the executor could be held liable for taxes on properties of the estate which he distributed without and order of Probate Court would be that such distribution is without authority and void and therefore under the law, the executor still has these assets under his care, charge or management and therefore should list them for taxes.

In 24 C. J. at page 498, paragraph 1339:

> "Voluntary payments to distributees without an order or decree of court authorizing the same are made by the representative at his own peril, although the representative acted in good faith in making such payments, and in ignorance of the existence of any debt or claim against the estate. Such distribution is, however, perfectly legal, and divests the personal representative of title to the property delivered to the legatee or distributee. Furthermore the representative may be entitled to credit for the payments made, if they

> are correct and not more than the recipient's distributive share, and will be protected by a subsequent decree authorizing such payments, or allowing an account in which such payments are stated."

Also in Woerner American Law of Administration, Third Edition, Volume 3, page 1793, paragraph 519, we find the rule stated as follows:

> "The same rule holds good in respect of payments to a adult distributees and legatees. The accountant (administrator or executor) is entitled to credit against these to full extent of payments made to them whether ordered by the court or not. The executor or administrator may vest in the distributees both title and possession of their respective shares before an order of distribution is made, or without any such order."

In the case of Burns v. Burns, 137 Federal 781, the court held that a conveyance by an administrator to distributees of their respective shares of personal properties of an estate which is not previously authorized but which is subsequently approved by the Probate Court divests the administrator of all title and interest therein and invests it in the distributee as on the date of the conveyance. In Volume 126 A. L. R. the annotator treats the subject of the right of the executor or administrator to credit on account of advances of distributee before obtaining an order of distribution. At page 781, the general rule is stated as follows:

> "It is a general rule that an executor or administrator is entitled to credit on account of advances to, or disbursements in behalf of, distributees before obtaining an order of distribution, where such distributees would have been entitled to such sums upon final distribution."

Decisions from the courts of twenty-eight states and Federal Court of the United States are cited in this annotation as supporting this rule. The case of Young v. Thrasher,

supra, is cited as authority for application of this rule in Missouri.

CONCLUSION.

From the foregoing, it is the opinion of this department that;

(1) An administrator or executor of the estate administered upon is not liable or subject to a personal or property tax on property distributed by an executor or administrator prior to the tax assessment date where such distribution is made without an order of Probate Court.

(2) The rule announced in paragraph 1 herein is applicable even though the Probate Court approves the distribution by the approval made subsequent to such distribution.

(3) An administrator or executor of an estate may distribute personal property without an order of Probate Court, but he is liable under his bond for making an unauthorized distribution without an order of court.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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