ESTATE TAX: (1) Applicability of Federal estate tax statutes in determining Missouri estate tax.
(2) Applicability of Federal estate tax on property exempt from Missouri inheritance tax in determining Missouri estate tax.

March 2, 1945

FILED
35

Honorable Charles S. Greenwood
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Dear Sir:

Reference is made to your letter under date of February 24, 1945, requesting an official opinion of this office, and reading as follows:

> "I am writing relative to Section 574, Revised Statutes, 1939. This has to do with the tax imposed upon the net estate of the decedent after the Federal Estate Tax has been determined.
>
> "The question is: Which of the Federal Estate taxes is taken into consideration; that is, is the basic tax (Federal) the only one considered in determining the 80% mentioned in it; or do you take into consideration the additional estate tax (Federal) also? In other words, in determining the tax due under this section, is the basic Federal Estate Tax and the additional estate tax considered; or is it the basic tax alone?
>
> "Another question: In determining the amount of the tax under the Federal Estate Tax law property held in joint tenancies by the entirety is considered a part of the decedent's estate. Under the Missouri inheritance tax law, joint tenancies and tenancies by the entirety are

> not considered a part of the estate. Are they considered a part of the estate in determining the amount due under this section 574?"

For convenience in writing the opinion, we have divided your request into its two elements.

I.

The Missouri estate tax is imposed by Section 574, R. S. Mo. 1939, which reads as follows:

> "In the event that the total of the inheritance taxes imposed upon the several interests and property comprising the estate of the deceased, by law, less exemptions allowed by law, and all other state inheritance taxes, shall not equal eighty per centum of the amount of the tax imposed upon the value of the net estate of said decedent, under the federal estate tax law, whenever the federal estate tax is determined an additional tax shall then be imposed upon the value of the net estate of said decedent as of the date of such determination equal to the difference between the total of the tax imposed under said section 573 as amended and eighty per centum of the tax imposed by said act of congress."

This section is a reenactment of Section 573, R. S. Mo. 1929, which section first appeared in Laws 1929, at page 103. The last mentioned act repealed the original Missouri estate tax law, found in Laws 1927, at page 100.

No cases appear in the reports of the Missouri appellate courts construing this section in regard to the matters about which you inquire. It, therefore, becomes necessary to determine by the rules applicable to the construction of

statutes whether or not the additional Federal estate tax, together with the basic Federal estate tax, is to be used in determining the total Missouri estate tax. The primary rule is stated thusly:

> "The fundamental rule in the construction of statutes is to ascertain and give effect to the purpose of the Legislature." (State ex rel. v. Hackmann, 258 S. W. 1011.)

The purpose of the Legislature in enacting the original Missouri estate tax law has been declared by the Supreme Court in the case of Brown v. State, 19 S. W. (2d) 12, from which we quote, l. c. 15:

> "The apparent purpose is to amend the then existing article entitled 'Inheritance Tax' by providing in two new sections for a minimum tax on the estate of decedents of 80 per cent. of the amount of tax imposed under a designated act of Congress, and it is clearly expressed in the above title."

Inspection of the original Missouri estate tax act, found in Laws 1927, at page 100, discloses that the act by its terms designated Title III of the Revenue Act of 1926 as the basis to be used in computing the Missouri estate tax. Examination of the Federal law referred to is explanatory of why this was done. The Federal act provided that an estate should be allowed as a credit against the tax imposed thereunder all state inheritance and estate taxes paid to an amount not in excess of eighty per centum of the federal tax computed thereunder. The effect of the Missouri estate tax law was to secure for the State of Missouri considerable revenue, without adding to the total tax to be paid by the estate, which would have otherwise been payable to the Federal Government.

The basic Federal estate tax has remained unchanged with respect to the credit allowance mentioned, although

amended in other matters. In addition, by Act of June 6, 1932, and amendments thereto, an additional Federal estate tax has been imposed upon the estates of decedents. However, in neither such act, nor the amendments thereto, has the eighty per centum credit provision been incorporated.

Another rule for the construction of statutes is this:

> "Long-continued interpretation of statute by public officers charged with its execution should be considered in construing statute." (State ex rel. v. Bank, 249 S. W. 619.)

The collection of the Missouri estate tax is imposed upon the State Treasurer, whose uniform practice since the enactment of the additional Federal estate tax law has been to disregard such law in computing the Missouri estate tax. We think this action on the part of the State Treasurer persuasive in construing this statute.

A third rule of construction of statutes is said to be:

> "A statute limiting thing to be done in particular manner includes in itself a negative, namely, that such thing shall not be done otherwise." (State ex rel. v. Holtcamp, 14 S. W. (2d) 646.)

In this regard, your attention is directed to the following portion of Section 574, R. S. Mo. 1939:

> " * * * shall not equal eighty per centum of the amount of the tax imposed * * * under the federal estate tax law * * * and eighty per centum of the tax imposed by said act of congress."

It is apparent that such phrases so incorporated in the act indicate an intention on the part of the Legislature to retain the basic Federal estate tax law as a means of determining the Missouri estate tax, particularly in the light of the use of the eighty per centum clause, which credit is not allowed under the additional Federal estate tax law.

We, therefore, conclude that in view of the declared purpose of the Legislature in enacting the original Missouri estate tax law, the retention in the revision of the original law of specific reference to a Federal estate tax law coupled with words fixing the Missouri estate tax at eighty per centum of the estate tax computed under such Federal estate law, and the failure of the Federal Government to allow any credit for state inheritance or estate taxes against the additional Federal estate tax, that the Legislature did not intend to impose a Missouri estate tax equal to eighty per centum of the Federal estate tax computed under the provisions of the additional Federal estate tax law. To give such effect to the law would require the estates of Missouri decedents to pay dual Federal and Missouri estate taxes upon a portion of the assets of such estates, which result was specifically avoided in the original Missouri estate tax law by limiting the liability for Missouri estate tax thereunder to an amount for which full credit could be obtained against the Federal estate tax due on the same estate.

II.

With respect to the inquiry contained in the last paragraph of your letter, we think the following pertinent.

In the case of Brown v. State, 19 S. W. (2d) 12, the original Missouri estate tax law was attacked upon a number of grounds. In ruling two of the objections, the Supreme Court said:

> "'Six: Said statute attempts to levy a tax on the interests of a widow allowed by law in the estate of her deceased husband.'

"We do not think so. The amending act and the law it amends must be read together. From such a reading it appears that the imposition of a tax under the original act should precede the imposition of the 'additional tax'; that the total amount of this tax should be applied as a credit upon the amount represented by 80 per cent. of the federal estate tax; and that the remainder would be the total amount of the 'additional tax' to be imposed. In computing the first tax the widow is allowed her exemptions under the state law. If the 'additional tax' be regarded as of the same kind and character, it seems obvious that the widow should not be allowed exemptions again. If, on the other hand, it be regarded as an estate tax, and we think it must be, it comes out of the estate, is not deducted from the widow's share, and, hence, is not levied upon her interest or right to receive. In either event the amendment is not open to the objection raised.

"'Seven: The effect of said act is to tax insurance, in violation of the law of Missouri, in that it seeks to adopt portions of the Federal Statute under which insurance over a certain amount is taxed.'

"What we have said in answer to objection No. 6 applies in principle to this objection, and it is overruled."

By analogy, we think the same reasoning would further apply to property held in joint tenancy. We believe that it is only the amount of the Federal estate tax that is material to the determination of the Missouri estate tax, without regard to the kind or nature of the property included in computing such amount.

CONCLUSION

In the premises, we are of the opinion that only the Federal estate tax computed under the basic Federal estate tax law is to be used in determining the amount of the Missouri estate tax.

We are further of the opinion that the Missouri estate tax is to be fixed at the difference between the total of Missouri inheritance taxes and eighty per centum of the basic Federal estate tax, without regard to the kind or nature of the assets of the estate used in computing such basic Federal estate tax.

Respectfully submitted

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APPROVED:

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