

ESTATE TAX: Intangible personal property estate of nonresident subject to Missouri estate tax.

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Dear Sir:

Reference is made to your inquiry of recent date requesting an official opinion of this department upon the following question:

Is the estate of a nonresident which consists solely of intangible personal property subject to the Missouri estate tax?

The Missouri estate tax is imposed under the provisions of Section 574, R. S. Mo. 1939, as reenacted, Laws of 1945, page 66, which reads as follows:

"In the event that the total of the estate, inheritance, legacy and succession taxes imposed upon the several interests and property comprising the estate of the decedent, by law, less exemptions allowed by law, and all other state inheritance and estate taxes, shall not equal the maximum credit now or hereafter allowable to the estate of such decedent against the United States federal estate tax imposed with respect thereto, 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, including all other state inheritance and estate taxes, and the credit for estate, inheritance, legacy and succession taxes allowable to the estate of such decedent against the United States federal estate tax."

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You will note that no exemption from this tax appears in the act. It, therefore, by its own terms, is applicable to all estates subject to administration within the State of Missouri, whether of residents or nonresidents, and without regard to the nature of the property comprising the assets of the estate.

While it is true that a primary rule for the construction of revenue statutes is that they must be most strongly construed against the taxing power, yet a different rule prevails with respect to those who claim exemption from statutes imposing valid taxes. Your attention is directed to *In re First National Safe Deposit Co.*, 173 S.W.2d 403, wherein the Supreme Court of Missouri said, citing *State ex rel. v. Gehner*, 11 S.W.2d 30, 1.c. 34:

"* * * "Such statute and constitutional provisions are construed with strictness and most strongly against those claiming the exemption. * * * the burden is on the claimant to establish clearly his right to exemption." * * *"

We note in the letter accompanying your request for this opinion that it is urged that by reason of a certain amendment having been made to the inheritance tax statute, which had the effect of exempting estates of the nature here under consideration from that tax, a similar exemption has also been made with respect to the estate tax. This theory has many aspects of verity, but we believe that a complete examination of the applicable statutes and appellate court decisions discloses it to be erroneous.

At the outset, it may be well to point out that in Missouri there exists two distinct types of succession taxes. The first, commonly known as the "inheritance" tax, is one based upon the right to receive the property of a decedent by a legatee or devisee. See *In re McKinney's Estate*, 173 S.W.2d, 898. Secondly, under the statute now under consideration, there is imposed upon the right to transmit property at death what is commonly known as the "estate" tax. See *Brown v. State*, 19 S.W.2d 12. The legal power to transmit property at death or privilege of succession, or both, may be the basis of classification for inheritance tax purposes. See *Stebbins v. Riley*, 45 S.Ct. 424, 268 U.S. 137, 69 L.Ed. 884.

With these distinctions in mind, we now examine the legislative enactment said to form the grounds for holding estates of nonresidents consisting solely of intangible personal property exempt from the Missouri Estate Tax Act.

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Prior to 1941, Section 571, R. S. Mo. 1939, and prior similar statutes, if literally construed, had the effect of subjecting the estates of nonresidents to the Missouri inheritance tax without regard to the nature of the property comprising such estates. However, in *Missouri v. Baldwin*, 19 S.W.2d 732, reversed, *Baldwin v. State of Missouri*, 50 S.Ct. 436, 281 U.S. 586, 74 L.Ed. 1056, the Supreme Court of the United States held that to the extent the Missouri Inheritance Tax Act sought to impose an inheritance tax upon the intangible personal property of nonresident decedents, it was in conflict with the Fourteenth Amendment of the Federal Constitution and void. This decision of the Supreme Court of the United States represented a complete departure from a long line of prior decisions by that court, culminating in *Blackstone v. Miller*, 188 U.S. 189, 47 L.Ed. 439, 23 S.Ct. 277.

It was after this decision that the General Assembly of Missouri amended Section 571, R. S. Mo. 1939, which is the statute enumerating the transfers of property subject to the Missouri inheritance tax, by adding thereto the following proviso:

"* * * and provided further that nothing herein contained shall be construed as imposing a tax upon any transfer as defined in this Act, of intangibles, however used or held, whether in trust or otherwise, by a person, or by reason of the death of a person, who was not a resident of this state at the time of his death."

It is apparent that this action on the part of the General Assembly has specifically relieved the estates of nonresidents of the Missouri inheritance tax when such estates consist solely of intangible personal property. No such action, however, was taken with respect to the statute, quoted supra, imposing the Missouri estate tax, which is at least indicative of an intention on the part of that body that such exemption should not be extended with respect to that distinct tax.

In view of the holding in *Baldwin v. Missouri*, cited supra, it might be urged at this point that to construe the Missouri Estate Tax Act as we have herein would render it subject to the same vice of unconstitutionality as was found in the Missouri Inheritance Tax Act. This, we do not believe to be true, however, as the entire effect of the opinion in *Baldwin v. Missouri* has been completely overturned by the subsequent cases of *Curry v. McCanless*, 307 U.S. 357, 83 L.Ed. 1339, 59 S.Ct. 900, and *Tax Commission v. Aldrich*, 316 U.S. 174, 86 L.Ed. 1358, 62 S.Ct. 1008.

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These cases have had the effect of restoring the taxation of intangible personal property to the status it occupied prior to Baldwin v. Missouri. We quote from Tax Commission v. Aldrich, supra:

"* * *In other words, we restore these intangibles to the constitutional status which they occupied up to a few years ago. See Greves v. Shaw, 173 Mass. 205, 53 NE 372; Larson v. MacMiller, 56 Utah 84, 189 P 579; and cases collected in 42 ALR pp. 365 et seq."

We now examine the historicity of the Missouri Estate Tax Act.

By an Act of the Congress, approved February 26, 1926, the Federal estate tax was imposed. Among other provisions found in the act was one permitting an exemption against the tax imposed thereunder to the extent of eighty per cent in the event that state succession taxes amounted to that sum or more. To take advantage of this provision, the General Assembly of Missouri immediately thereafter enacted what now appears as Section 574, R. S. Mo. 1939, as reenacted, Laws of 1945, page 66. The original act is found in Laws of 1927, page 100.

The intent and purpose of the enactment are plain. The State of Missouri thereby secured for itself revenue which otherwise would have been paid to the Federal Government, and did not impose any additional tax burden upon the estate of the decedent. As appears from its provisions, the estate tax in each instance is merely computed as the difference between the sum total of all inheritance taxes payable by an estate and the maximum credit allowable under the Federal Estate Tax Act.

Because of the distinct nature of this tax, and since it is not imposed upon the right to receive property, but upon the right to transmit property, we think the reason is clear why the General Assembly did not see fit to amend the act at the time of the amendment of the Inheritance Tax Act. The Inheritance Tax Act, insofar as it sought to impose a tax upon the transfer of intangible personal property of nonresident decedents, was voided by Baldwin v. Missouri, supra, but the Estate Tax Act had not been so affected.

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CONCLUSION

In the premises, we are of the opinion that the estate of a nonresident decedent consisting solely of intangible personal property is subject to the Missouri estate tax, computed at eighty per cent of the basic Federal estate tax, less credit for all other state, inheritance and estates taxes.

Respectfully submitted,

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APPROVED:

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