

TAXATION: Irrevocable trust created December 30, 1909, subject to provisions of the Collateral Inheritance Tax Law
REVENUE: found Laws of 1899, page 328, R. S. Mo. 1909, Section 309.

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Mr. C. L. Gillilan
Assistant Supervisor
Inheritance Tax Unit
Department of Revenue
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"I am enclosing copies of correspondence relative to an irrevocable trust created in 1909 in which the grantor retained the income from the corpus during her lifetime,

"The question presented is whether or not a claim of exemption from Inheritance Tax can be maintained because of the fact that the trust was created prior to the enactment of our present Inheritance Tax laws."

From further correspondence attached to your letter of inquiry, we note that the trustor died on June 4, 1946, being at that time a resident of the State of Missouri.

At the time this trust referred to in your letter of inquiry was created, there was in existence Section 309, R. S. Mo. 1909, imposing a collateral inheritance tax and reading in part as follows:

"All property * * * * * or any interest therein or income therefrom, which shall be transferred by deed, grant, bargain, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor, bargainor, vendor or donor, to any person or persons, or to any body politic or corporate, either directly or in trust or otherwise, or by reason whereof

any person or body politic or corporate shall become beneficially entitled in possession or expectancy, to any property or the income thereof, other than to or for the use of the father, mother, husband, wife, legally adopted children, or direct lineal descendant of the testator, intestate, grantor, bargainor, vendor or donor, except property conveyed for some educational, charitable or religious purpose exclusively, shall be and is subject to the payment of a collateral inheritance tax of five dollars for each and every one hundred dollars of the clear market value of such property, * * "

This statute was originally enacted together with others relating to the same subject matter in an act found Laws of 1899, page 328. Its validity, with respect to numerous constitutional objections, had been sustained in State ex rel. vs. Henderson, 160 Mo. 190. It is apparent that the transfer of the corpus of the trust estate to the trustee was subject to liability for the tax imposed by the quoted statute. However, under the further provisions of Section 314, R. S. Mo. 1909, the time for the payment of such tax was delayed until the persons having the beneficial interest therein actually came into possession of the corpus of the trust estate. Section 314 reads in part as follows:

"When any grant, gift, legacy or inheritance upon which a tax is imposed by section 309 of this article, shall be a remainder, reversion or other expectancy, real or personal, the tax on such estate shall not be payable, nor interest begin to run thereon, until the person or persons liable for the same shall come into actual possession of such estate, by the termination of the estate for life or years, and the tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner as aforesaid: * * * * "

Although we have not been favored with a copy of the trust instrument itself, yet we gather from your letter of inquiry and the correspondence attached thereto that the trust terminated upon the date of the death of the trustor, viz.:

June 4, 1946, and that at that time the beneficiaries of the trust became entitled to the possession of the corpus thereof.

It might be urged that in view of the subsequent repeal of the Collateral Inheritance Tax Act under which liability was imposed upon the transfer in trust, such tax has thereby been abated. In this regard your attention is directed to Section 33 of an act found Laws of 1917, page 115, repealing the Collateral Inheritance Tax Act. The section mentioned contained a savings clause with respect to taxes which were then due or which might become due thereafter, and read as follows:

"That article 14 of chapter 2 of the Revised Statutes of the state of Missouri of 1909, entitled 'Collateral inheritance tax' and all amendments thereto and all acts and parts of acts in conflict with this act are hereby expressly repealed; provided, however, that such repeal shall in nowise affect any suit, prosecution or court proceeding pending at the time this act shall take effect, or any right which the state of Missouri may have at the time of the taking effect of this act, to claim a tax or lien upon any property under the provisions of the act or acts hereby repealed, for which no proceeding has been commenced; nor affect any appeal, right of appeal in any suit pending or orders fixing tax, existing in this state at the time of the taking effect of this act."

CONCLUSION

In the premises, we are of the opinion that a transfer in trust of the type and nature mentioned in your letter of inquiry made under date of December 30, 1909, was subject to the tax imposed under Section 309, R. S. Mo. 1909.

Mr. C. L. Gillilan

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We are further of the opinion that such tax became due and payable upon the beneficiaries of such trust coming into the actual possession of the corpus of the trust estate.

Respectfully submitted,

WILL F. BERRY, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WFB:VLM