

INHERITANCE TAX: Damages received under wrongful death statutes  
not subject to Inheritance Tax.

March 17, 1950.

3/18/50

Mr. C. L. Gillilan, Ass't. Supervisor,  
In Charge of Inheritance Tax,  
Department of Revenue,  
Capitol Building,  
Jefferson City, Missouri.

FILED  
33

Dear Mr. Gillilan:

We have your recent request for an opinion. Your letter  
of request is as follows:

"I am enclosing a letter from Mr. John W.  
Adams, Public Accountant, Marshall, Missouri,  
which is self-explanatory.

"This question is frequently presented and  
this Department would appreciate an opinion  
from your Office for future guidance.

"We have in our file an opinion written by Mr.  
John W. Hoffman, Assistant Attorney General,  
bearing date of January 26, 1937, addressed to  
Mr. R. J. Green, Farmers Bank of Trenton,  
Trenton, Missouri, in which he held that damage  
recovered under the Federal Employers Liability  
Act was not subject to the State Inheritance  
Tax.

"This Department has, however, in the past  
asserted claim for tax in cases similar to the  
one herewith presented. In fact, in many in-  
stances administration is had for the sole pur-  
pose of obtaining damage, either by judgment  
or settlement agreement, and the amount recovered  
represents the entire estate, out of which is paid  
allowed claims.

"In all cases brought to our attention the tax  
has been paid on the amount recovered and paid into  
the estate, or the administrator, for distribution  
under Probate Court Order."

March 17, 1950.

Mr. Gillilan:

The letter from Mr. Adams, referred to in your letter is as follows:

"Under appointment from the Probate Court of Saline County I am serving as appraiser for state inheritance tax in the estate of a decedent who was killed in an automobile collision with a Greyhound Bus.

"Suit was brought against the bus company for damages for the death of the decedent by his heirs in the name of the administrator of decedent's estate (I am informed that said administrator is the only person permitted to bring such action under Missouri law). Settlement was effected with the bus company without trial under the terms of which they paid the administrator as trustee the agreed upon amount.

"There is now a difference of opinion among local attorneys (including the Judge of the Probate Court) as to whether the amount received from the bus company should be included in the assets of the decedent's estate subject to the Missouri Inheritance Tax."

Section 571 R.S. Mo. 1939 is in part as follows:

"Property subject to inheritance tax. - A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or any interest therein or income therefrom, in trust or otherwise, to persons, institutions, associations, or corporation, not hereinafter exempted, in the following cases: When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.

" \* \* \* When the transfer is made by a resident or by a non-resident when such non-resident's property is within this state or within its jurisdiction, by deed, grant, bargain, sale or gift made in contemplation of the death of grantor, vendor or

March 17, 1950.

Mr. Gillilan:

donor, or intending to take effect in possession or enjoyment at or after such death.

"\* \* \* When the transfer is made by a resident or by a non-resident when such non-resident's property is within this state or within its jurisdiction, in trust or otherwise and the transferor has retained for his life or any period not ending before his death, (1) the possession or enjoyment of or the income from the property, or (2) the right to designate the persons who shall possess or enjoy the property or income therefrom, except in case of a bona fide sale for an adequate and full consideration in money or money's worth."

(Underscoring ours)

It is clear from the above that there are four, and only four, forms of transfer of property subject to inheritance taxation in Missouri:

- (1) By will;
- (2) By the intestate laws of this state;
- (3) In contemplation of death or intended to take effect in possession or enjoyment after death;
- (4) In trust where the transferor has retained the income for life or the right to name the persons who shall possess the property or income therefrom.

Section 3653 R.S. Mo. 1939 is as follows:

"Whenever the death of a person shall be caused by a wrongful act, neglect or default of another, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who or the corporation which would have been liable if death had not ensued shall be liable

March 17, 1950.

Mr. C. L. Gillilan:

to an action for damages, notwithstanding the death of the person injured."

Section 3654 R.S. Mo. 1939 (as amended, Laws 1945, page 846, Section 1) is as follows:

"Damages accruing under the last preceding section shall be sued for and recovered by the same parties and in the same manner as provided in Section 3652; and in every such action the jury may give such damages, not exceeding fifteen thousand dollars, as they may deem fair and just, with reference to the necessary injury resulting from such death, to the surviving parties who may be entitled to sue, and also having regard to the mitigating and aggravating circumstances attending such wrongful act, neglect or default."

Section 3652 R.S. Mo. 1939 provides for suit for, and recovery of, damages in part as follows:

"\* \* \* First, by the husband or wife of the deceased; or, second, if there be no husband or wife, or he or she fails to sue within six months after such death, then by the minor child or children of the deceased, whether such minor child or children of the deceased be the natural born or adopted child or children of the deceased: \* \* \* third, if such deceased be a minor and unmarried, whether such deceased unmarried minor be a natural born or adopted child, if such deceased unmarried minor shall have been duly adopted according to the laws of adoption of the state where the person executing the deed of adoption resided at the time of such adoption, then by the father and mother, who may join in the suit, and each shall have an equal interest in the judgment; or if either of them be dead, then by the survivor; or, fourth, if there be no husband, wife, minor child or minor children, natural born or adopted as hereinbefore indicated, or if the deceased be an unmarried minor and there be no father or mother, then in such case suit may be instituted and recovery had by the administrator

March 17, 1950.

Mr. C. L. Gillilan:

or executor of the deceased and the amount recovered shall be distributed according to the laws of descent, and such corporation, individual or individuals or such officer, servant, agent, employee, master, pilot, engineer, or driver, may show as a defense that such death was caused by the negligence of the deceased. \* \* \* "

The damages were received in this case under and by virtue of the section set out above, by the administrator for the benefit of the beneficiaries named in this same act. Whatever these beneficiaries received, was not by reason of any of the four forms of taxable transfers heretofore set out, but solely under the terms of this state law.

In the case of Troll v. Laclede Gas Light Company, 182 Mo. App. 600 the court said as follows, after setting out the Death Act statutes, supra, l.c. 605, 607:

"In Holton v. Daley, Admx., 106 Ills. 131, where the action was under a statute in terms the same as our section 5426 (3653 supra), it is said: 'In construing this section this court said, in City of Chicago v. Major, 18 Ills. 356: "The Legislature intended that the money received should not be treated as a part of the estate of the deceased . . . The personal representatives bring the action, not in right of the estate, but as trustees for those who have a more or less direct pecuniary interest in the continuance of the life of the deceased and who had some claim at least upon his or her natural love and affection." \* \* \* "'

(Words in parenthesis ours)

"In such case the executor or administrator, in prosecuting the action is a mere nominal party,

March 17, 1950

Mr. C. L. Gillilan:

who sues for the benefit of the real party in interest; and such damages as he may recover do not go to the estate of the deceased, nor belong to him in his representative capacity, but to the person for whose benefit the right of action is given by the statute. \* \* \* "

In 28 Am. Jur. 49 the following appears:

"The phrase, 'receivable by the executor,' as used in the United States Revenue Act means 'collectable by the executor for distribution' under the laws of the jurisdiction pursuant to which he acts; and, in view of this rule, the proceeds of life policies aggregating less than \$40,000 cannot be regarded as a part of the insured's gross estate, although made payable to his estate, where, under the applicable state laws, such proceeds do not become a part of the general estate, or subject to the claims of creditors, but pass, through the executor as a mere conduit, to the statutory beneficiaries, who take a vested interest as of the time of the insured's death, free from the claims of creditors."

(Underscoring ours)

In an opinion by this office, dated January 26, 1937, addressed to R. J. Green, the same question was presented. It concerned the applicability of the Missouri Inheritance Tax to damages received under the Federal Employers' Liability Act. This act is similar to the Missouri Death Act in its major provisions. This office ruled as follows:

"In view of the foregoing, it is the opinion of this department that money received as damages under the Federal Employers' Liability Act by a personal representative of a deceased employee is not subject to tax under the inheritance tax laws of Missouri."

In passing, we refer to the statement in the appraiser's letter that he understands that the administrator is the only person permitted to bring this action, and we quote from Cummins v. Kansas City Public Service Co. 66 S.W. (2d), l.c. 926:

"\* \* \* An administrator is not entitled to

March 17, 1950.

Mr. C. L. Gillilan:

bring suit for the benefit of the next of kin if other designated beneficiaries do not do so within a definite time, as minor children are; therefore, it is not unreasonable to hold that he may do so only when there are none of the designated beneficiaries, who did suffer actual loss surviving at the time of the death. The same construction, as to similar beneficiaries, has since been put upon the Federal Employers' Liability Act (45 USCA Secs. 51-59) by the Supreme Court of the United States. \* \* \* "

CONCLUSION

It is therefore the opinion of this office that damages recovered under the wrongful death statutes of this state are not subject to the Missouri Inheritance Tax.

Respectfully submitted,

H. JACKSON DANIEL,  
Assistant Attorney General.

APPROVED:

---

J. E. Taylor,  
Attorney General.

HJD:cg