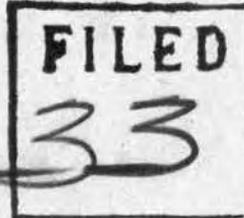


INHERITANCE TAX

) Deferred payment of inheritance tax under law prior to  
) Laws of 1921, page 110, bears interest at rate of six  
) per cent per annum from death of decedent until pay-  
) ment of tax. Inheritance tax supervisor may not com-  
) promise claim for such interest.

August 15, 1950

8/18/50



Mr. C. L. Gillilan  
Assistant Supervisor  
In Charge of Inheritance Tax  
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"I am enclosing herewith a self-explanatory letter from Mr. O. M. Lambur, from the trust Department of the Mississippi Valley Trust Co. relative to the above estate; also copy of letter bearing date of Jan. 24, 1921, signed by Stratton Shartel, Ass't. Attorney General, which will explain the position of the Attorney General's Office at that date.

"Tax liability in this estate was definitely determined in the original assessment and there is no question of a re-determination of tax liability at this time. The only question involved here is liability for interest on deferred payments."

The letter from Mr. Lambur, referred to in your opinion request, is as follows:

"Mr. Samuel E. Hoffman died on the 3rd day of May, 1920 leaving a last Will and Testament which was probated on the 18th day of June, 1920 and on the 1st day of October, 1920 the Probate Court appointed an inheritance tax appraiser who filed his report on the 18th day of October, 1920, which was approved by the Court and an order assessing the tax was entered, as per Exhibit 'A' hereto attached.

Mr. C. L. Gillilan

"In the aforesaid proceedings a tax of \$585.00 was assessed against a legacy of \$20,000.00 to Louise Scott Simpkins which was paid and a further tax of \$4,219.83 was assessed against the contingent life interest of Louise Scott Simpkins and inasmuch as her interest might never vest in possession or enjoyment, she elected, under the then effective provisions of Section 562, Revised Statutes of Missouri 1919, not to pay said tax until she came into actual possession and enjoyment of the property and therefore filed in the Probate Court a bond in the amount of \$14,414.49 with the Aetna Casualty and Surety Company as security, which bond was approved, by the Probate Court on the 30th day of October, 1920. (a photostatic copy of the form of the bond as renewed on October 29, 1930 is attached as Exhibit 'B'.)

"Mrs. Louise Scott Simpkins, on the date of death of Samuel E. Hoffman, became a contingent life beneficiary under his Will in the residue of his estate subject to a preceding life estate of Ruth Scott, which estate was to vest in Mrs. Simpkins only in the event she survived said preceding life tenant. Mrs. Ruth Scott died a resident of the City of St. Louis, Missouri on the 25th day of May, 1950, being survived by Mrs. Simpkins, thus vesting the later's interest in this estate in actual possession and enjoyment.

"Pursuant to Section 562, Revised Statutes, 1919, as aforesaid, said tax of \$4,219.83 is now due and payable.

"On June 21, 1950 Mrs. Simpkins filed a petition in the Probate Court offering to pay the sum of \$4,219.83 originally assessed claiming that no interest or penalties had accrued thereon and requesting an order directing her to pay said amount in full satisfaction of all tax due. The Probate Court has not acted on said petition but has

Mr. C. L. Gillilan

suggested that no reassessment of tax is required and that the payment of said tax and release of said bond might be effected through your office and requested that the matter be taken up with you.

"Under circumstances set out more fully in a letter of even date regarding the Estate of Horace L. Brady we discussed this matter with you and on behalf of Mrs. Simpkins we are offering to pay the sum of \$6,705.58 in full satisfaction of this tax. This sum is the principal amount of the tax plus 2% interest on 97 $\frac{1}{2}$ % of the balance from May 3, 1920, the date of death of Samuel E. Hoffman. This interest rate is arrived at by considering the average rate of return on the entire estate and the premium cost of the bond for the thirty year period.

"This offer is made purely as a compromise and is not an abandonment of the position that no interest is due and is made without prejudice to this or any other point that may be involved in finally determining the amount to be paid in full satisfaction of the tax claim.

"We would appreciate a prompt answer in this case as the tax liability makes the payment of current income to Mrs. Simpkins dubious and she requires this income to meet her living expenses. If this offer is not acceptable we would appreciate any suggestions you can make as to the way in which the tax liability can be finally determined as the question is causing serious embarrassment in the administration of the Trust. This offer is made with the understanding that it will not be binding until a final agreement is reached which will be acceptable to the Probate Court and the Surety Company and that it may be withdrawn at any time."

The letter signed by Stratton Shartel is as follows:

"In re matter of deferred payment collateral

Mr. C. L. Gillilan

inheritance tax, Estate of Samuel E. Hoffman, deceased.

"We are in receipt of your letter of January 7th, enclosing the bond of Louise Scott Simpkins for the purpose of deferring payment of the tax. The conditions of the bond should include not only the payment of the tax, but also the payment of six per cent interest upon the tax from the date of the death of decedent, and we are therefore returning the bond to you for correction. Kindly have this correction made and the bond returned to us at your early convenience."

Section 577, R. S. Missouri, 1939, provides:

"When any property, interest therein or income therefrom belonging to any estate in course of administration, shall pass or be limited for the life of another or for a term of years, or to terminate on expiration of a certain period, the property so passing shall be appraised immediately after the death of the decedent and the value of said life estate, term of years or period of limitation, shall be valued according to mortality tables, using the interest rate or income rate of five per cent, and the value of the remainder in said property so limited shall be ascertained by deducting the value of the life estate, term of years or period of limitation from the clear market value of the property so limited and the tax on the transfer of the separate estate or estates, remainder or remainders, or interest shall be immediately due and payable, to the state treasurer together with interest thereon and said tax shall accrue as provided in section 578 of this article and remain a lien upon the entire property until paid: Provided, that the persons, institutions, association or corporation beneficially interested in property chargeable with said

Mr. C. L. Gillilan

tax may elect not to pay the same until they shall come into actual possession or enjoyment of such property, then in that case said person, association or corporation shall give bond payable to the state of Missouri, in a penal sum three times the sum or amount of taxes due upon such transfer, with such sureties as the probate court, or any other court having jurisdiction of the matter, may approve, conditioned for the payment of said tax and interest thereon from the date such tax is due at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, which bond shall be executed in duplicate and one copy filed in the office of the probate judge of the proper county, and the other with the state treasurer: Provided further, that every person, institution, association or corporation shall make and file with the probate court of the county a full verified return of said property, or interest therein, within one year of the death of the decedent, with the bond and sureties as above provided; and provided further, said person, institution, association or corporation shall renew said bond every five years after the date of the death of decedent."

(Underscoring ours.)

The underscored words in the above quoted section "from the date such tax is due" were not found in Section 562, R. S. Missouri, 1919, which was in effect at the time of death of Mr. Hoffman. Those words were added by an act of the Legislature found in laws of 1921, page 110.

Section 578, R. S. Missouri, 1939, provides, in part, as follows:

"All taxes imposed by this article, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of six per cent per annum shall be charged and collected thereon for such time as said taxes are not paid, unless the payment of interest is

Mr. C. L. Gillilan

abated or time of payment extended by order of the probate court, because without negligence final assessment of tax cannot be made: Provided, that if said taxes are paid within nine months from the accrual thereon, or within the period of said extension for the payment thereof interest shall not be charged or collected thereon, and in all cases where the executor, administrator, or trustee does not pay such tax within one year from the death of the decedent they shall be required to give bond in the form and to the effect prescribed in section 577 of this article for the payment of said tax, together with interest at the rate of one per cent per month, unless abated or extended as aforesaid.  
\* \* \*

This section makes inheritance tax due and payable from the date of the death of the decedent and provides for interest at the rate of six per cent per annum for such time as taxes are not paid. At the time of the giving of the bond in this case the Attorney General had ruled that under the statute then in effect, the tax which had been determined bore interest at the rate of six per cent per annum until paid. This conclusion appears to be in accord with the statute in effect at that time.

In our opinion Section 562, R. S. Missouri, 1919, did not change the time at which the tax was due but merely postponed payment thereof upon giving of the bond provided in that section. Whether or not the 1921 amendment indicates an intention on the part of the Legislature to make the time the tax is due the time at which the beneficiary comes into actual possession or enjoyment of the property is not of moment here inasmuch as that amendment was made subsequent to the determination of the tax here involved. We are, therefore, of the opinion that interest is due on the amount of the tax at the rate of six per cent per annum from the date of the death of the decedent.

Mr. Lambur in his letter offers the payment of a sum in settlement of the claim for interest which is less than the six per cent per annum rate provided by law. We find no provision in the Missouri inheritance tax law authorizing the state official charged with the administration of the law to compromise any claim for inheritance taxes or interest thereon. The general rule is stated in 28 Am. Jur., Inheritance, Estate and Gift Taxes, Section 273, page 134, as follows: "The statutes sometimes authorize compromise settlements of taxes between a state tax officer and executors or trustees in certain cases. Any such compromise must find its source within the statute."

Mr. C. L. Gillilan

Applying such rule in this instance, there being no authority given you to accept a compromise offer such as that made here, we are of the opinion that you have no authority to accept such offer.

Section 578, R. S. Missouri, 1939, authorizes the probate court to abate interest under certain circumstances. Whether or not this is a proper case for such abatement is a matter for determination of the probate court, and, therefore, we will not attempt to pass on that question.

CONCLUSION

Therefore, it is the opinion of this department that where a bond was given in 1920 to secure the deferred payment of inheritance tax under Section 562, R. S. Missouri, 1919, the amount of such tax bears interest at the rate of six per cent per annum from such date until payment of the tax unless abated by order of the probate court. We are further of the opinion that the assistant supervisor in charge of the inheritance tax unit of the department of revenue has no authority to accept as a compromise of a claim for interest on such tax any sum other than that computed in accordance with the statute at the rate of six per cent per annum.

Respectfully submitted,

ROBERT R. WELBORN  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

RRW/feh