

INHERITANCE) Supervisor may not accept compromise offer for
TAX) interest on tax. Interest must be abated by probate court.

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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 self-explanatory letter from Mr. O. M. Lambur with the Trust Department of the Mississippi Valley Trust Co., together with copy of petition filed with the St. Louis City Probate Court seeking a re-determination of tax liability in the estate of Horace L. Brady; also recomputation of tax filed with the above petition which appears to be correct.

"The question under consideration is the liability of the surviving beneficiary under the trust for interest on deferred payment of tax; the payment of which is secured by bond (Section 577).

"Also involved is the authority of the Probate Judge to abate interest and penalties on final determination, or re-determination, of tax liability (Section 578, first paragraph)."

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

"Mr. Horace L. Brady, a single man, formerly a resident of the City of St. Louis, Missouri,

Mr. C. L. Gillilan

died on May 31, 1940, leaving a last will and Testament which was duly admitted to Probate in the Probate Court of the City of St. Louis, Missouri, on or about June 3, 1940 and said Probate Court on June 6, 1940 issued Letters Testamentary to Warren F. McElroy and the Mississippi Valley Trust Company as Co-Executors of the Estate of said decedent.

"On the 15th day of June, 1942 the Executors filed with the Probate Court their final settlement and were duly and fully discharged as such Executors by order of the Probate Court on the 30th day of March, 1943.

"Under his last will and Testament, testator, after providing for payment of certain specific bequests to various legatees bequeathed and devised all the rest and residue of his estate to the trustees, however, to be held in trust in equal shares for those of his nieces and nephews therein mentioned, to-wit: Mrs. Pearl Cook, Mrs. Helene Brock, Elmer L. Brady, Chester L. Brady, Horace L. Brady, and Robert L. Brady, who might be living at his death and directed that the trust as to each of said shares of said residuary estate should continue for ten years after the death of testator and should thereupon terminate. Chester L. Brady and Horace L. Brady predeceased the testator and Mrs. Pearl Cook died on the 23rd day of March, 1944, Mrs. Helene Brock died on September 18, 1944 and Robert L. Brady died on the 7th day of June, 1948.

"On or about the 4th day of February, 1942 the duly appointed appraiser of said estate directed to fix and determine values of the property of said decedent and the inheritance tax owing the State of Missouri by said estate and the beneficiaries thereof, submitted his report to the Probate Court fixing the amount of tax in the sum of \$86,441.62, based on the highest contingency and the Probate Court did on the 3rd day of March, 1942, make an order assessing said amount of Missouri Inheritance Tax,

Mr. C. L. Gillilan

(a copy of the appraiser's computation of the Missouri Inheritance Tax is attached hereto as Exhibit 'A').

"The Executors in their report submitted to the appraiser computed the Missouri Inheritance Tax at \$42,182.80 on the theory that the four nephews and nieces of the testator would survive on the date of termination of the trust and on the 27th day of March, 1942 the Executors paid a tax of \$42,182.80 and posted a surety bond in the penal sum of \$132,776.00 together with an escrow agreement to guarantee performance of such bond under which a deposit of approximately \$124,000 par value in United States Bonds, having an average yield of 2%, was made. The trust under the Will terminated on May 31, 1950 and in accordance with the terms and provisions of the Will of the testator the trustees will distribute the trust estate free of trust to Elmer L. Brady the last surviving nephew, and not to a stranger in blood.

"Attached hereto and marked Exhibit 'B' is the computation setting forth the correct method of a redetermination of Missouri Inheritance Tax which shows the total final tax due to be \$53,797.63 leaving a balance due of \$11,614.83.

"On June 5, 1950 very shortly after the termination of this trust the Mississippi Valley Trust Company as surviving trustee filed a petition in the Probate Court of the City of St. Louis, Missouri for redetermination of Missouri Inheritance taxes in accordance with Exhibit 'B' attached hereto. Said petition has not been ruled upon by the Probate Court because the Mississippi Valley Trust Company has taken the position that no interest is payable on the balance of the tax now due under the applicable statutes and that if any interest should be due the Probate Court has the power to abate any such interest. The Clerk and Judge of the Probate Court, in preliminary conferences, have indicated that they are of the opinion that interest is due at 6% from the death of Horace L. Brady, that the court has no power to abate such interest and that they are supported

Mr. C. L. Gillilan

in this opinion by information received through your office.

"In a conference with us at your office several days ago, we believe that you said you thought interest was due at 6% but felt that the Court did have jurisdiction to abate the interest in connection with the redetermination of the tax.

"We are still of the opinion that no interest is due and no question of abatement is involved but we did recognize that the statutes are not clear and that as there are no decisions on the point the proposition is debatable.

"Under the circumstances we suggested that this might be a proper case in which to agree with your office on the assessment of the tax thus arriving at a compromise on a reasonable basis. No opinion was expressed by you as to the acceptability of a compromise but after some discussion it was agreed that we might submit any offer we desired to make through your office.

"As surviving trustee under the Will of deceased we are willing to pay the sum of \$13,909.29, being the amount of the tax due plus 2% interest on 97½% of said tax from May 31, 1940, date of the death of Horace L. Brady. We arrived at the interest figure by taking the average return on the \$124,000. par value United States Government Bonds we were required to keep in a segregated account to insure the payment of any tax subsequently found to be due.

"This offer is made purely as a compromise and it is not an abandonment of our position that no interest is due and it is made without prejudice to this or any other point that may be involved in the reassessment of the tax in the event this offer is not accepted by the State and the Probate Court.

"We would appreciate your prompt attention to this matter as our beneficiary is urging us to dispose of this matter as quickly as possible and if our

Mr. C. L. Gillilan

offer is not accepted it will be necessary for us to renew our negotiations with the Probate Court. We are making this offer with the further understanding that it will not be binding until accepted by the State and the Probate Court and that it can be withdrawn at any time prior to a final order assessing the tax in the Probate Court."

Under date of August 15, 1950, this office addressed to you an opinion in which we concluded that you, as the administrative official in charge of administration of the state inheritance tax law, have no authority to compromise claims of the State of Missouri in inheritance tax due the state or interest on such tax. The conclusion of such opinion is applicable here, and we feel, therefore, that you have no authority to accept the tendered compromise.

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 abated or time of payment extended by order of the probate court, because without negligence final assessment of tax cannot be made: * * *"

According to Mr. Lambur's letter he intends to apply to the probate court to abate the interest in this matter, if you do not accept the compromise offer. In view of our conclusion that you have no authority to accept such compromise, we feel that application to the probate court is, under Section 578, quoted above, the proper manner in which abatement by reduction of the interest in this matter may be made.

CONCLUSION

Therefore, it is the opinion of this department that the administrator of the state inheritance tax law has no authority

Mr. C. L. Gillilan

to accept a compromise offer for interest on state inheritance taxes, and that the only manner in which such interest may be abated or reduced is by order of the probate court in accordance with Section 578, R. S. Missouri, 1939.

Respectfully submitted,

APPROVED:

ROBERT R. WELBORN
Assistant Attorney General



J. E. TAYLOR
Attorney General

RRW/feh