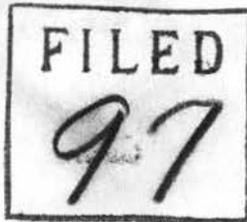


STATE INHERITANCE TAXES
PAID TO WHOM

:Inheritance taxes to be paid by admin-
istrator to Director of Revenue less
:2½% to be paid to probate judge as fees.
:Judge to account and pay over such fees
:to Director of Revenue.



December 22, 1950

1-2-51

Honorable Bryan A. Williams
Probate Judge and Ex-Officio Magistrate
Bollinger County
Marble Hill, Missouri

Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion of this department, which request reads as follows:

"I would appreciate an opinion with regard to the following question:

"Are all inheritance taxes due in an estate payable direct to the State Treasurer, or is 2½% of the same collected by the Probate Judge and accounted for on his monthly report of fees collected and payable to State Collector of Revenue?"

Under the provisions of Section 580, page 68, Laws of Missouri, 1945, it is the duty of the executor, administrator, or trustee to pay inheritance taxes due from funds of the estate within thirty days from the date said funds shall have come into his possession, except two and one-half percent of such taxes, which shall be paid to the probate judge as his fees. Said section reads as follows:

"Every sum of money retained by any executor, administrator, or trustee or paid into his hands for any taxes on any property or

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derived from any source whatever for the payment of any such taxes shall be paid by him within thirty days thereafter to the Director of Revenue except two and one-half per cent of such tax which he shall pay to the probate judge as fees, and which fees shall be deposited by the probate judge as provided by law. Upon the payment to the Director of Revenue of any taxes due under this law, such Director of Revenue shall issue a receipt therefor in triplicate, one copy of which he shall deliver to the person paying said tax. Said Director of Revenue shall retain one of said receipts and the other he shall countersign and immediately transmit to the clerk of the court fixing such tax and no executor, administrator, or trustee shall be entitled to credit in his account or be discharged from liability from said tax, nor shall such estate be distributed or closed unless a receipt issued by the Director of Revenue shall have been filed with the court."

Section 13404, page 356, Volume II, Laws of Missouri, 1947, provides each fee that may be charged against and collected from the estates or parties requiring the services of the probate judge, clerk or court. Since we are concerned here with the fees of the probate court in connection with collection of state inheritance taxes, only that part of the section relating to this subject will be quoted, as follows:

"* * * * *

"For supervising all estates in each court and having appraised such of said estates as may be liable for taxes under the state inheritance tax law, in addition to the fees applicable as hereinbefore provided, a fee of two and one-half per cent of all such inheritance taxes finally assessed and paid on property assessed through the respective courts shall be charged, the same to be collected by

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said judges from the person whose duty it is to pay such tax: Provided, in all estates in which the state treasurer (director of revenue) or the executor, administrator or trustee in charge thereof, shall be required under the provisions of the inheritance tax law to refund to the person entitled thereto any inheritance tax collected by them, the state or county receiving same shall refund to the person entitled thereto out of the two and one-half per cent fee on such tax the proportional part thereof to which any such person may be entitled to a refund.

"It shall be the duty of the judge and clerk of the probate court to charge upon behalf of the state or county as the case may be every fee that accrues for the services of such judge, clerk or court; except that in counties now or hereafter having more than 250,000 inhabitants the duty to charge such fees shall be imposed on the clerk of the probate court.

"In counties now or hereafter having 30,000 inhabitants or less, the judge or clerk of the court shall, at the end of each month, file with the director of revenue a written report, verified by his affidavit specifying the name and court number of each estate in which fees were paid during such month and at the same time pay over to the director of revenue, to be deposited by him with the state treasurer in the 'magistrate fund,' all moneys collected by him or his clerk as fees, taking two receipts therefor, one of which he shall immediately file with the state treasurer. Each judge or clerk of the court shall, within thirty days after the expiration of calendar year file with such director of revenue a written report, verified by his affidavit specifying the name

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and court number of each estate in which fees accrued in his court in such calendar year, and the amount of fees unpaid and due in each estate at the end of such year. Such judge or clerk of the court shall also specify in said written report to the director of revenue all fees which have been due and unpaid for more than one year, the amounts thereof and the name of the estate in which the same are due, which report shall be verified by affidavit of the judge or clerk of the court that he has been unable after the exercise of diligence, to collect the same; and it shall thereupon be the duty of the director of revenue to cause the same to be collected by law and turned over to the state treasurer."

It is our thought that under the provisions of the above cited statutes it is the duty of the executor or administrator of the Estate of W. L. Tinnin, deceased, to pay the amount of inheritance taxes found to be due, from funds of the estate within thirty days of the receipt of said funds by said executor or administrator. That such payment of taxes shall be made to the Director of Revenue of Missouri, except two and one-half percent of such taxes which shall be paid to the Probate Judge of Bollinger County as his fees for the supervision and appraisement of the estate for inheritance tax purposes.

Upon receipt of said amount, it becomes the duty of the probate judge to promptly pay over such fees to the State Director of Revenue, and to account for his fees, by making the written report required by the above section, last cited.

CONCLUSION.

It is the opinion of this department that inheritance taxes due from an estate shall be paid by

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the executor or administrator thereof from any estate funds received or retained by him for the payment of taxes, within thirty days of the receipt or retention of such funds. That such taxes shall be paid to the Director of Revenue of Missouri, less two and one-half percent of same, which amount shall be paid as fees to the probate judge of the county where said estate is being administered.

It is the further opinion of this department that upon receipt of fees amounting to two and one-half percent of inheritance taxes paid on the estate, from the executor or administrator thereof. That a probate judge of a county now having or which may hereafter have a population of 30,000 or less, and in whose court the estate is being administered, pay over said fees and any others that he may have received in his official capacity to the Director of Revenue of Missouri, and to account for all such fees so received within the time and manner provided by Section 13404, page 358, Volume II, Laws of Missouri, 1947.

Respectfully submitted,

PAUL N. CHITWOOD
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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