

ADMINISTRATION:
INHERITANCE TAX
REFUNDS, PROCEDURE:
STATUTE OF LIMITATIONS:

Arkansas Court judgment obtained by Missouri executor binding; court lacked jurisdiction of inheritance tax matters under Missouri statutes. Such jurisdiction in Probate Court of Livingston County, Mo., where administration was pending. Court could find erroneous tax payment under Sec. 145.150 but lacks power to order State Treasurer to make refund. Refunds to be ~~made~~ by Director of Revenue ~~under~~ under Sec. 145.250. Right to refund accrued when it was settled by probate court tax was erroneous. Statute of Limitations runs from such time.

May 18, 1951



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

Dear Sir:

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

"I am giving you a brief outline of the facts revealed by documents contained in our file in the above estate, and I am enclosing correspondence indicating the Department's position relative to a refund of transfer or inheritance tax claimed to have been erroneously assessed and paid in this estate.

"The inheritance tax as originally assessed amounted to \$6,610.07, 97½% of which, \$6,444.82, was paid to R. W. Winn, State Treasurer, on June 3, 1946. \$6,000.00 of the amount was assessed on a purported gift to one Lawren W. Baker some three weeks prior to decedent's death and was paid by Baker to the executor of the estate. 97½% of this assessment, or \$5,850.00, was included in the executor's remittance to the State Treasurer.

"On April 27, 1948 a suit was filed by the Missouri executor in the Pulaski Chancery Court of Arkansas against Baker, he having moved to that State, seeking recovery of the purported gift upon which transfer tax has been paid to this State. The Arkansas Supreme Court mandate affirming judgment against Baker and in favor of plaintiff is dated December 5, 1949.

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"On April 10, 1950 the executor filed a petition in the Probate Court of Livingston County seeking a redetermination of inheritance tax liability on the ground that the \$6,000.00 tax paid on the purported gift to Baker had been erroneously assessed and paid, and that the Probate Court make proper certification to the State Director of Revenue authorizing refund of the amount claimed to have been overpaid.

"The Probate Court, in response to the petition, appointed Mr. Don Chapman as inheritance tax appraiser to reappraise the estate for a determination of tax. On June 19, 1950, before the appraiser had submitted his reappraisal, the Probate Court, on petition of the executor, entered an order directing a refund of \$5,850.00, a copy of which order was certified to this Department on June 20, 1950.

"Later, on February 7, 1951, the appraiser, Mr. Chapman, who was appointed on April 10, 1950, filed his report, reappraising the estate for inheritance tax purposes. This reappraisal showed a recovery in the net amount of \$11,741.70 under the Arkansas judgment and the total tax fixed by this appraisal was \$1,314.17 which would mean an over-assessment in the amount of \$5,295.00 in the original report. The reappraisal was approved by the Probate Court and certified to this Department on the 22nd day of February, 1951, but our file contains no copy of a Probate Court order bearing that date and authorizing a refund in the amount of \$5,295.00.

"The legal questions involved and on which the Department requests an opinion are as follows:

"1) What is the obligation of the Director of Revenue of the State of Missouri under the Arkansas Supreme Court mandate as it affects imposition of a Missouri transfer or inheritance tax?

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"2) What is the obligation of the Director of Revenue in regard to a Probate Court order directing the refund of transfer or inheritance tax?

"3) Under the provisions of Section 145.250, Revised Statutes 1949, application for refund must be made within two years from date of the accrual of the right to such refund. Does Statute of Limitations run from the date of the payment of this tax, June 3, 1946; the date of the Arkansas Supreme Court mandate, December 5, 1949; the date of the Livingston County Probate Court order of reappraisal, April 10, 1950; the date the Livingston County Probate Court ordered a refund in the amount of \$5,850, June 19, 1950; or the date reappraisal, finding a tax in the amount of \$1,314.57, was filed?

"This reappraisal was objected to by the Department but no formal exceptions were filed in Probate Court. Our complete file is available if further information is desired."

Your first question is, "What is the obligation of the Director of Revenue of the State of Missouri under the Arkansas Supreme Court mandate as it affects the imposition of a Missouri transfer or inheritance tax?"

The mandate of the Arkansas Supreme Court rendered on December 5, 1949, was conclusive as to all questions raised or that might legally have been raised in the trial of the case. This judgment was, and is entitled to full faith and credit under the provisions of Section 1, Article 4, of the Constitution of the United States.

In the trial of the case it was shown that no gift had been made to one Lawren W. Baker by the deceased during his lifetime, but that Baker had appropriated at least \$54,000.00 belonging to the deceased, to the use of said Baker, and judgment against Baker and the other dependents was rendered in the sum of \$54,000.

It has long been the law in Missouri, and the principle is so well settled that we believe it is unnecessary to cite any statutes or court decisions to the effect that an inheritance tax is a tax upon the right or privilege of receiving a gift, upon

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the death or in anticipation of the death of another, whether the donor died testate or intestate, and that the incidence of the tax falls upon the recipient of the gift, and only those transfers by which the donee receives a gift, or rather the net value of same coming into possession and enjoyment of the donee is taxable.

Certainly there is abundant evidence that no gift passed to Baker, and that the funds illegally procured from the deceased by him was not a taxable transfer, and hence no inheritance taxes were due the State of Missouri by reason of such facts.

No reference appears to have been made in the trial of the case in Arkansas to the inheritance taxes which might or might not be due on the purported gift to Baker, under Missouri inheritance tax statutes, the court had no jurisdiction to determine such matters if they had been injected into the case, as the courts of one state have no jurisdiction, and lack the power to enforce the statutes of any other state imposing an inheritance tax on certain transfers. Such statutes are to be enforced only in the state in which they are enacted, and in the manner provided in such statutes, they have no extra-territorial effect.

Section 145.150, RSMo 1949, vests jurisdiction in the probate court of the county in which administration proceedings are pending to determine whether or not any taxes are due, the amount of same, and the persons liable for payment, and to determine any question which may arise in connection therewith.

Said section reads in part as follows:

"1. The probate court which grants letters testamentary or of administration, either original or ancillary, on the estate of any decedent, shall have jurisdiction to determine the amount of the tax provided for in this chapter and the person, persons, association, institution or corporation liable therefor, and to determine any question which may arise in connection therewith, and to do any act in relation thereto which is authorized by law to be done by such court in other matters or proceedings coming within its jurisdiction."

* * * * *

It is our thought that the Probate Court of Livingston County, Missouri, had exclusive jurisdiction to determine matters relating to Missouri inheritance taxes which might be due from beneficiaries of the estate of Charles V. Eibler, and in which court administration proceedings on said estate were pending.

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Our answer to your first question is that there is no obligation of the Director of Revenue of Missouri under the Arkansas Supreme Court mandate as it affects the imposition of a transfer or inheritance tax.

Your second question is, "What is the obligation of the Director of Revenue in regard to a probate court order directing the refund of transfer or inheritance tax?"

We understand your inquiry to specifically refer to the order of the Livingston County Probate Court of June 19, 1950, ordering a refund of inheritance taxes in the sum of \$5,850.00. We have a certified copy of that order before us and quote from that part of same having to do with the refund, said order reads as follows:

"IT IS THEREFORE ADJUDGED BY THE COURT that the Sum of \$5,850.00 paid as a gift tax as aforesaid was an over payment of \$5,850.00 by said Executor to the State Treasurer of the State of Missouri on the 3rd day of June 1946 under section 584 laws of Missouri and sections 596 and 597 of the revised statutes of Missouri for the year 1939, AND THE COURT FURTHER ADJUDGES that the whole amount of \$5,850.00 be refunded by the State Treasurer of the State of Missouri to Antonius P. Eibler, Executor of the estate of Charles V. Eibler, deceased under section 584 laws of Missouri 1945 and sections 596 and 597 of the revised statutes of Missouri for the year 1939, and it is further ordered that a certified copy of this judgment be certified to the Honorable M. E. Morris, State Treasurer of the State of Missouri to the end that said sum of \$5,850.00 be refunded to Antonius P. Eibler as Executor of the estate of Charles V. Eibler, deceased."

Section 584, of the 1939 statutes, relating to the procedure for making application for refund of taxes erroneously paid, and referred to in that portion of above quoted order, has been repealed and section 145.250, RSMo 1949, now provides the procedure to be followed in making such applications, and reads as follows:

"When any tax shall have been paid erroneously to the director of revenue and satisfactory proof of said erroneous payment is presented to him, the director of revenue shall certify

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such claim for refund to the state comptroller, who shall verify the same and issue a warrant for the amount of such tax so erroneously paid, payable to the executor, administrator, or trustee, person or persons who paid the same, and the state treasurer shall pay such warrant out of any funds appropriated for such purposes; provided, that all applications for the refund of said tax shall be made within two years from the date of the accrual of the right to such refund."

Under the provisions of Section 145.150, supra, the Probate Court of Livingston County had jurisdiction to determine the amount of taxes originally paid on June 3, 1946. Upon a proper showing of the facts in the Arkansas case, the court had power to order a reappraisal which showing is assumed to have been made, that there had been no gift to Baker and no taxes due on the funds of the deceased taken by Baker, and to find that an overpayment had been made by reason thereof, and to order that an application for refund be made to the Director of Revenue by the executor, as evidenced by the order of June 19, 1950. This order recited that an overpayment had been made in the sum of \$5,850.00, but we are not giving our opinion as to the correctness of this amount, but only on the questions found in the opinion request. However, it is our further opinion that that part of the court order quoted above ordering the Missouri State Treasurer to refund the taxes paid in the sum of \$5,850.00, is void and of no binding force or effect. Section 145.150, supra, did not give the Probate Court of Livingston County power to make such an order, and he exceeded his lawful authority when he made same.

Section 145.250, supra, sets out the procedure for making applications for refunds, and it is noted that such applications must be made to the Director of Revenue and not to the State Treasurer.

Upon receipt of an application for refund of taxes made under Section 145.250, supra, the Director of Revenue must examine all proof submitted regarding the overpayment. Upon sufficient proof of the erroneous payment it then becomes his duty to certify the claim for refund to the State Treasurer for payment. While the Director of Revenue may consider a court order, and particularly the one of the Livingston County Probate Court of June 19, 1950, along with other proof submitted in connection with the claim for refund, it is our thought that the Director of Revenue is not required to obey the order of the Court for the same reason that the order is in conflict

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with Section 145.250, supra, and attempts to provide a method of refund contrary to this section. The section of the statute and not the court order is to be followed in receiving applications for refunds, and in certifying those found to be valid claims to the State Treasurer for payment.

In answer to your second question, it is our thought that the Director of Revenue of Missouri is not required to obey the order of the Livingston County Probate Court directing the payment of a refund, for the reason that the Court has no jurisdiction to make any such order, and by so doing attempts to direct the payment of a refund in a manner different from that prescribed by Section 145.250. The Director of Revenue must follow the procedure set out in this section, and not that found in the court order.

Your third question refers to Section 145.250, RSMo 1949, particularly the latter portion which provides that all applications for refund of erroneous payment of inheritance taxes shall be made within two years from the date the right accrued. This is in the nature of a statute of limitation and you make the further inquiry as to whether the limitation begins to run from the day of the payment of taxes on June 3, 1946, that of the Arkansas Supreme Court mandate on December 5, 1949; the date of the Livingston County Probate Court order of reappraisal on April 10, 1950; the date the court ordered a refund in the amount of \$5,850.00, on June 19, 1950; or the date of the reappraisal and finding a tax in the amount of \$1,314.57 was filed. In other words, on what date did the right to apply for a refund accrue, and on what date did the statute of limitation provided by this section begin to run? We repeat that part of Section 145.250, supra, in which the twoyear limitation is found, and which reads as follows:

"* * *provided, that all applications for the refund of said tax shall be made within two years from the date of the accrual of the right to such refund."

Upon first thought it would appear that if a tax had been paid erroneously, the right to apply for a refund would accrue and was complete as soon as payment was made, and that the statute of limitation would begin to run against the right on the date of such payment. However, the only Missouri Supreme Court decision we have been able to find in point is that of

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In Re Estate of Kinsella, 293 Mo. 545, which seems to hold to the contrary. In this case questions were considered and passed upon by the court of the nature of those given above, and which decision involved an interpretation of certain sections of the old collateral Inheritance Tax Law of 1917. The provisions of Section 12 of that law are similar to those of Section 145.250, supra. In discussing the law and determining when the right to apply for a refund accrued and when the two year statute of limitations therein provided began to run, the court at l.c. 559, said:

"The plan of attack in this case has been in the form of pointing out alleged inconsistencies in the Act of 1917. We have just dealt with one of them in the first portion of the opinion. It is urged that the remaindermen (as they call the beneficiaries of this trust) can never have the benefit of a refund of the excess taxes paid, if the class which ultimately gets the fund is entitled to pay at a less rate than the highest rate. This for the reason, as they say, Section 12 of the act only allows two years in which to make application for repayment. Section 12 reads:

"When any tax shall have been paid erroneously to the State Treasurer it shall be lawful for him, on satisfactory proof of said erroneous payment, to refund and pay to the executor, administrator, or trustee, person or persons who paid the same the amount of such tax so erroneously paid; Provided, that all applications for the refund of said tax shall be made within two years from the date of the said payment."

"A sentence in Section 25 reads: 'Such return of over-payment shall be made in the manner provided by Section twelve of this act, upon the order of the court having jurisdiction.'

"Section 12, supra, clearly has reference to an erroneous payment of a tax as a whole, and not to an excess payment provided for by Section 25 for the emergencies of that section. The parties named in Section 12, to whom repayment is to be made, are all in esse, and can make their application within two years.

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This two-year provision in said Section 12 is in the nature of a statute of limitations. The parties must proceed within two years or be barred. The two years begins from the time they were entitled to the refund. If it was an erroneous payment they were entitled to an immediate refund. In other words, their claims for refund arose immediately upon the payment of the erroneous tax.

"When we examine the sentence from Section 25, quoted, supra, it will be noticed that it only provides for a repayment of an over-payment 'in the manner provided for in Section 12 of this act.' That manner is upon satisfactory proof. Under Section 25 no claim arises at the time of payment, but only at the time when it is determined to what particular class the fund goes. A reasonable construction of these two provisions is, that as to the claims for excess payment of taxes under Section 25, the parties would have the two years from the date it becomes settled that there was an excess payment of taxes. This harmonizes this alleged conflict."

Applying the ruling announced in that case to the facts of the instant one, it appears that the right to apply for a refund did not accrue until it had been settled that there had been an erroneous payment, and that the statute of limitation would start running from that date.

As we understand the effect of the ruling in the Kinsella case, there must be a finding of an erroneous payment of the tax, and when this fact is once settled the right to apply for a refund accrues, and at the same time the statute of limitation begins to run.

The probate court of Livingston County by its order of June 19, 1950, found that an erroneous payment of inheritance taxes had been made by the executor of the Eibler Estate. The fact of the erroneous payment was settled on this date, and the right accrued to apply for a refund, and the statute of limitations began to run on the same date.

Therefore, in answer to your third question it is our thought that the right to apply for refund of taxes erroneously paid, accrued on June 19, 1950, and that an application for refund must be made within two years from that date in the manner provided by Section 145.250, supra.

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CONCLUSION

In view of the foregoing it is the opinion of this department that the Chancery Court of Pulaski County, Arkansas, in which the executor of the estate of Charles V. Bibler, deceased, obtained a judgment of \$54,000.00 against one Lawren W. Baker and others for wrongful conversion of funds of the deceased, and which judgment was affirmed by the Arkansas Supreme Court on December 5, 1949, lacked jurisdiction to determine whether a tax was due on the purported gift to Baker under the Missouri Inheritance Tax Statutes. Said judgment did not create any obligation on the Director of Revenue of Missouri with reference to the imposition of a Missouri inheritance tax upon the purported gift to Baker.

While the Probate Court of Livingston County, Missouri, where said estate is being administered, had jurisdiction under provisions of Section 145.150, RSMo 1949, to determine that an erroneous tax had been paid, and that no inheritance taxes were due on the purported gift to Baker, yet, it is our opinion that that part of the probate court order of June 19, 1950, directing the State Treasurer of Missouri to refund \$5,850.00 was void. A probate court has not been granted power under any Missouri statutes to effect a refund of inheritance taxes erroneously paid, in this manner. Section 145.250, RSMo 1949, provides the exclusive procedure for making application for refunds, which must be made to the Director of Revenue of Missouri. The duties of the Director of Revenue in receiving such applications are clearly stated, and said statutory provisions must be strictly followed by him. He has no authority to accept applications, or to certify claims to the State Treasurer for payment, except in the manner provided in said section.

It is the further opinion of this department that the accrual of the right to refund was complete on June 19, 1950, this being the date on which the Probate Court of Livingston County determined that no gift had been made to Baker, there was no tax due on such purported gift, and that there had been an erroneous payment of inheritance taxes by the executor on June 3, 1946. It was also on June 19, 1950 that the matter was finally settled, and on this date that the two year statute of limitations imposed by Section 145.250, supra, began to run against the right to make application for such refund.

Respectfully submitted,

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APPROVED:



J. E. TAYLOR
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