

INHERITANCE TAXES:  
PAYMENT: PROCEDURE ON  
LEGATEE'S DEATH:

In determining amount of inheritance taxes on C's inheritance from B's estate, value of B's interest in A's estate when paid to B's administrator will become part of assets of B's estate.

September 24, 1951

9-25-51

Honorable Samuel E. Semple  
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Randolph County  
Moberly, Missouri



Dear Sir:

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

"This situation has arisen in connection with the appraisement of an estate for state inheritance tax purposes, and since I am notified of these appraisements, and have certain official duties in connection with them, I desire your opinion on the following matters:

"A died intestate on 6/3/50, leaving, among others, an heir B. The estate of A is in process of administration. An appraisement for state inheritance tax purposes was made in A's estate, and the tax determined to be due on what B would inherit was paid by the administrator of A's estate, out of estate funds. Before any order of distribution was made in A's estate, and before any actual distribution from A's estate was made to B, the death of B occurred. B died intestate, leaving a daughter, C. B's estate is in process of administration. Shortly, an order of distribution will be made in A's estate, and the share which B would have received will be paid to the administrator of B's estate.

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"My questions are: (1) When the tax due from C on her inheritance from B is determined, will the amount which B's estate will receive from A's estate be added in and counted an asset of B's estate, for the purpose of determining the amount of tax C will pay as B's heir, in view of the fact that B never received anything from A's estate during B's lifetime, and could not have received anything before an order of distribution was made?

"(2) If the amount of the tax in B's estate is increased by what B's estate will receive from A's estate, will B's estate receive any credit because of the fact that the tax on B's supposed inheritance from A was paid out of A's estate, and, therefore, deducted from the inheritance B would have received if B had lived?"

Your first question is concerned with the proposition as to whether or not property, or rather its value passing from A's administrator to B's administrator, is to be included in the assets of B's estate for the purpose of determining the state inheritance tax upon the interest of such estate passing to C, since B, never came into the possession or enjoyment of any property during his lifetime, from the estate of A.

In the case of *In re Costello's Estate* 92 S. W. (2d) 723, a very similar state of facts existed to those outlined in your letter and since we rely on that case as authority for our holding herein, we call attention to the facts, and shall quote from a part of the opinion before entering upon our discussion.

From the facts given, James Costello died in Clay County, Missouri on December 27, 1933, his sisters, Miss Nellie Costello and Mrs. Katie F. Robison, were to share equally as residuary legatees under his will.

Before any distribution had been made to her from her brother's estate, Mrs. Robison died, leaving a will by which her two daughters Mrs. Francis R. King and Miss Henrietta Robison, the appellants, were sole legatees, and executrices of her estate under said will.

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The inheritance tax appraiser of the James Costello estate, filed his report finding a tax due on the interest in said estate left to Miss Nellie Costello and on that left to Mrs. Katie F. Robison. The daughters of Mrs. Robison filed exceptions to such report, and upon it being overruled by the Probate Court, took an appeal.

The appellants contended that under the inheritance tax statutes a tax can be imposed only when the beneficiary comes into possession and enjoyment of the property, and that if Katie F. Robison died before she came into possession and enjoyment of the property willed to her by James Costello, that no tax could be imposed upon her share of said estate.

The section of the statute involved is Section 570, Laws of Missouri 1931, page 130. Said section reads as follows:

"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 by will, or intestate law of property within the state. When the transfer is by will, or intestate law of property within the state or within the jurisdiction of the state and decedent was a non-resident of the state at the time of his 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, by deed, grant, bargain, sale or gift made in contemplation of the death of grantor, vendor, or donor, or intending to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift made within two years prior to the death of grantor, vendor, or donor, of a material part of his estate or in the nature of a final disposition or distribution thereof without an adequate valuable consideration shall be construed to have been made in contemplation of death within the meaning of this section. When the transfer is made by a resident or by a non-resident

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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. Such tax shall be imposed when any person, association, institution or corporation actually comes into the possession and enjoyment of the property, interest therein or income therefrom, whether the transfer thereof is made before or after the passage of this law: Provided, that property which is actually vested in such persons or corporations before this law takes effect shall not be subject to the tax."

(Italics Courts.)

It is noted that the above quoted section is the same in substance and effect as Subsection 1 and 2, of Section 145.020, RSMo 1949.

In passing upon the contentions of the appellants, the court called attention to certain portions of Section 570, and we quote from that part of the opinion at l. c. 725, as follows:

"We now state the applicable provision of section 570, which follows:

"A tax shall be and is hereby imposed upon the transfer of any property \* \* \* not hereinafter exempted, in the following cases: When the transfer is by will \* \* \* from any person dying possessed of the property while a resident of the state. \* \* \*

"Such tax shall be imposed when any person, \* \* \* actually comes into the possession and enjoyment of the property."

"The act does not expressly exempt the property in question. Even so, appellants contend that said italicized words should be construed as an exemption. In considering the question, it would be noted that the original assessment is made by section 570 in words as follows: 'A tax shall be and is hereby imposed upon the transfer of

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any property.' This assessment is a lien on the property for payment. It also should be noted that section 578 (Mo. St. Ann. Sec. 578, p. 358) makes reference to the 'final assessment of tax.' It is clear that the Legislature intended an original assessment and a final assessment of the tax.

"It also is clear that the Legislature did not intend by said italicized words to require the executor or administrator, on distribution, to pay the distributee the share and thereafter impose the tax. Indeed, it is provided in section 578 that the tax must be deducted or collected before delivery of the property to the distributee. But defendant argues that Mrs. Robison never actually came into the possession and enjoyment of the property. In this connection it also should be noted that the italicized words provide that the tax shall be imposed when any person actually comes into the possession and enjoyment of the property. The words 'any person,' as used, mean a person or persons lawfully entitled to possession and enjoyment. If so, the act provides for the imposition of the tax when the executrices of the estate of Mrs. Robison actually come into the possession and enjoyment of the property. As used, the word 'enjoyment' does not mean personal enjoyment. It means control.

"Furthermore, Mrs. Robison had a vested interest in her share of James Costello's property, subject to administration and lawful charges. She shared in any income from the property. Furthermore, she enjoyed the privilege of transferring the property by will to her daughters. We think she actually came into the enjoyment of the property within the meaning of the act. In other words, the Legislature, by the above-italicized words, only intended the time of distribution to be the time of the final assessment of the property."

Applying the rule laid down in the Costello case to the facts given in your letter, it appears that B had a vested in-

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terest in the estate of A, subject to the administration and all other lawful charges against the estate of A, and that upon final distribution of said estate, B would have personally received his share or the value of same from A's administrator. However, B never came into the personal possession or enjoyment of any property from A's estate, since B died before the distribution of such estate property could be accomplished. When such distribution has been consummated, B's administrator will receive the property, or the value of same to the extent of B's interest in A's estate, from the administrator of same, and such property will then become a part of the assets of B's estate.

In that portion of the above quoted opinion it is noticed that in discussing that part of Section 570, supra, to which attention was specifically called, the court held that "any person" as used, meant persons entitled to the lawful possession of the property, and that "enjoyment" did not mean personal enjoyment, but control.

Likewise, in our present situation, although B did not have actual personal possession and enjoyment of any property, or interest therein from B's estate, yet, since his interest was vested at the time of his death, he did have the enjoyment thereof during his lifetime, and upon his death, whatever interest he had in A's estate passed to B's administrator.

Whenever the final order of distribution is made of A's estate, B's interest in same, consisting of property or its value in money will be transferred from A's administrator to B's administrator who will then come into possession and enjoyment thereof within the meaning of the inheritance tax law. Such property will then become a part of the assets of B's estate.

Therefore, for the reasons given above, and in answer to your first question, it is our thought that when the inheritance tax is determined on C's interest in B's estate, the value of the property or interest therein, which B's estate will receive from A's estate will be included in, and become a part of the assets of B's estate.

Your second question has been further clarified by your letter of September 19th, which reads in part as follows:

"Question 2: Assume that the administrator of A's estate paid the Missouri inheritance tax on the part of A's estate which B would have received if B had lived, and has deducted that tax from the part of A's estate which will now be distributed to B's administrator. Assume, further, that you hold, in answer to Question 1,

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that the amount which B's estate received from A's estate must be added to the other assets of B's estate, to determine the amount of tax which C will pay as B's heir. The question, then is - - will B's estate be entitled to any credit in determining the tax which C must pay as B's heir, in view of the fact that the inheritance which B's estate received from A's estate has been so recently taxed?"

This inquiry involves similar facts, and the same principles of the inheritance tax laws as those discussed in an opinion of this office furnished the Honorable Martin E. Lawson, Attorney at Law, Liberty, Missouri. It is believed that this opinion fully answers your second question, and a copy of that opinion is enclosed for your consideration.

CONCLUSION

In view of the foregoing it is the opinion of this department, that in determining the state inheritance tax of C on her inheritance from B's estate, that the value of the interest of B in A's estate will upon final distribution pass from A's administrator to B's administrator and become a part of the assets of B's estate.

Respectfully submitted,

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APPROVED:

  
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