

INHERITANCE TAXES:  
PROBATE COURT TO DETERMINE  
WHEN ESTATE SUBJECT TO:

Under Section 145.150, RSMo. 1949, in every instance when administration proceedings are pending in probate court having jurisdiction thereof, immediately upon filing of inventory and appraisal, if in court's opinion estate is not subject to inheritance tax, it is mandatory duty of court to enter such finding and opinion in the records of said court. If estate appears subject to tax, the court shall set a day for hearing and determination of tax. Before such hearing, the court may, upon its own motion, or that of any interested party, appoint one to appraise estate property, interest therein, or income therefrom, at clear market value subject to tax, and make written report of appraisal to court. If court finds report correct, then it is mandatory duty of court to make an order approving report and assessing tax at amount shown therein. Said finding and order shall be entered in records of said court.



January 11, 1954

Mr. Donald P. Thomasson  
Prosecuting Attorney  
Bollinger County  
Marble Hill, Missouri

Dear Sir:

This department is in receipt of your recent request for a legal opinion which reads as follows:

"In the matter of inheritance tax, particularly with reference to the provisions of Section 145.150, RSMo. 1949, is it mandatory that the Probate Court make a finding with reference to such tax in every estate that is probated in said court, whether in fact the estate is or is not liable for such a tax?"

Section 145.150, RSMo. 1949, provides what duties are imposed upon the probate court and the procedure that shall be followed by such court in the determination and assessment of state inheritance taxes.

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.

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"2. Such court or the judge thereof in vacation shall immediately upon the filing of the inventory and appraisement of the estate of a decedent, examine the same, and if it is apparent, in the opinion of the said court or judge, that such estate is not subject to the tax provided for in this law, such finding and opinion shall be entered of record in said court, and thereupon the provisions of section 145.210 shall become inoperative as to the holders of funds or other property thereof, and there shall be no further proceedings relating to such tax, unless upon the application of interested parties the existence of other property or an erroneous appraisement be shown.

"3. If it appear that said estate may be subject to such tax, it shall be the duty of the court to set a day for the hearing and determining the amount of said tax and to cause notice thereof to be given in the same time and manner and to the same parties as is herein provided for appraisers, or the court, before determining such matters, may of its own motion, or on the application of any interested person, including the director of revenue, the prosecuting attorney or attorney general, appoint some qualified tax-paying citizen of the county, who is not executor, administrator or beneficially interested in said estate or the attorney for any of such parties, as appraiser to appraise and fix the clear market value of any property, estate or interest therein, or income therefrom which is subject to the payment of a tax under the provisions of this chapter."

Section 145.150, supra, provides that the probate court which grants letters testamentary or of administration on the estate of any decedent, has jurisdiction to determine the amount of inheritance tax, and those liable for the payment of same, to determine any question arising in connection therewith, also to do any act relating thereto authorized by law and coming within the jurisdiction of that court.

Said section further provides that immediately upon the filing of the inventory and appraisement of a decedent, it shall be the duty of the probate court in which the administration proceedings are pending to examine such inventory and appraisement.

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If, after such examination the court is of the opinion that the estate is not subject to inheritance taxes, then the finding and opinion of the court shall be entered of record in said court, and no further proceedings relating to the taxes shall be had, unless upon the application of interested parties the existence of other estate property, or an erroneous appraisement is shown.

If, upon the examination of the inventory and appraisement it appears that the estate may be subject to inheritance taxes, it shall be the duty of the probate court to set a day for hearing and determination of the amount of tax, and to notify all interested parties in the same time and manner as provided for appraisers.

The section further provides that before the determination of the tax liability, and amount due, on the day set for the hearing of such matters the court may, instead of making the determination of the tax liability and assessment of the tax itself, upon its own motion, or upon that of interested parties, including those specifically named in said section, appoint some qualified taxpaying citizen of the county who is not executor, administrator, or is beneficially interested in the estate, or for the attorney of any such parties as appraiser to appraise and fix the clear market value of any estate property or interest therein, or income therefrom, subject to the payment of state inheritance taxes.

Upon the filing of the appraiser's report within the time and manner authorized by Section 145.160, RSMo. 1949, if the court approves such report, then it is the mandatory duty of the court to make an order approving same and assessing the tax at the amount shown in said report, which finding and report shall be entered in the records of said court. The order and judgment of the court as to the tax liability becomes final and the payment of the tax due immediately, subject however, to the filing of exceptions to the appraiser's report within the time provided by Section 145.170, RSMo. 1949.

#### CONCLUSION

It is the opinion of this department that under the provisions of Section 145.150, RSMo. 1949, in every instance when

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administration proceedings are pending in the probate court having jurisdiction thereof, immediately upon the filing of the inventory and appraisal, if after examination of same the court is of the opinion that the estate is not subject to inheritance taxes, then it is the mandatory duty of the court to enter its findings and opinion as a matter of record in said court. If the court is of the opinion that such estate may be subject to the tax, it shall set a day for hearing and determination of the tax, and shall give notice of such hearing within the time and manner prescribed by the statute. That before the date of said hearing the court may, upon its own motion, or that of any interested party, including those specified by the statute, appoint an appraiser to appraise and fix the clear market value of any estate property, interest therein, or income therefrom, subject to the tax, which appraiser shall make a written report of his appraisal to the court as provided by Section 145.160, RSMo. 1949. If the court finds the report to be correct, then it is the mandatory duty of said court to make an order approving same and to assess the tax at the amount shown in said report and to enter its findings and order in the matter in the records of said court.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul N. Chitwood.

Very truly yours,

JOHN M. DALTON  
Attorney General

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