

INHERITANCE TAX WAIVERS: The decision of the Missouri Supreme Court in the case of Estate of Osterloh v. Carpenter does not affect the waiver requirements contained in Section 145.210, M.S.R.

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Mr. M. E. Morris
Director of Revenue
Jefferson Building
Jefferson City, Missouri

Dear Mr. Morris:

This is in reply to your request for an opinion from this office which reads as follows:

"We respectfully request an opinion from your office as to whether or not it is necessary for banks to secure a waiver from the Director of Revenue and the Attorney General before transferring jointly-held bank accounts, or other jointly-held property to the survivor.

"This request is made in view of the recent Supreme Court decision in the Osterloh case . . . "

The requirement of securing a waiver from the Director of Revenue and the Attorney General is contained in Section 145.210, M.S.R., the pertinent parts of which read as follows (subparagraphs 2, 3 and 4):

"2. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who is a resident or nonresident, or belonging to or standing in the joint names of such a decedent and one or more persons, including the shares of capital stock or other interest in a safe deposit company, trust company, corporation, bank or other institution making a

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delivery or transfer herein provided, shall deliver or transfer the same to the executor, administrator, or legal representative of said decedent or the survivor or survivors when in the joint name of a decedent and one or more persons or upon their order or request unless notice of the time and place of such intended delivery or transfer be served upon the director of revenue and attorney general at least ten days prior to said delivery or transfer; nor shall any safe deposit company, trust company, corporation, bank or other institution, person or persons, deliver or transfer any securities, deposits, or other assets belonging to or standing in the name of decedent or belonging to or standing in the joint names of decedent and one or more persons, including the shares of capital stock of or any other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits, or other assets, including the shares of capital stock or other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer under the provisions of this chapter unless the director of revenue and the attorney general consent thereto in writing.

"3. And it shall be lawful for the director of revenue together with the attorney general, personally or by representative, to examine said securities, deposits or assets at the time of such delivery or transfer.

"4. Failure to serve such notice or failure to allow such examination or failure to retain a sufficient portion or amount to pay such tax or interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or

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persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits, or other assets, including the charges of capital stock of, or other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto a penalty of one thousand dollars; and the payment of such tax and interest thereon or the penalty above prescribed or both may be enforced in an action brought by the attorney general at the relation of the director of revenue, in any court of competent jurisdiction."

The recently decided case of Osterloh's Estate v. Carpenter, 337 S. W. 2d 942, held that the creation of a joint tenancy is not a transfer of property within the ambit of our inheritance tax laws relating to transfers in contemplation of death. A prior decision of the Missouri Supreme Court in the case of In re Gerling's Estate, 303 S. W. 2d 915, held there was no transfer of property subject to inheritance tax upon the death of the joint tenant.

Put in its simplest terms, this opinion request hinges on whether the requirements as set forth in Section 145.210 are premised upon the taxability of the transfers noted. If this were true, the above noted Supreme Court decisions holding that neither the creation of a joint tenancy nor the death of the joint tenant are taxable transfers within the purview of our inheritance tax statutes, would effectively abrogate the requirements of this section as to the securing of waivers.

A careful reading of this statute convinces us this is not so. It is to be noted that Section 145.210 specifically includes jointly held property, the type of ownership here under inquiry. It is also to be noted that the statute repeatedly refers to the "delivery or transfer" of the property. It would appear, therefore, that the legislature, in setting forth the waiver requirements, was not concerned exclusively with the taxability of the transaction. If it were, Section 145.210 would have been limited to "transfers" of property, the only type of transaction taxable under our inheritance tax statutes. The legislature, as noted above, included the word "delivery" which may or may not be taxable. The statutes specifically state that a waiver is required before the

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"delivery" of jointly held property. Therefore, the Supreme Court decision that there is no transfer cannot affect the requirements as set forth in the statute.

The statutes themselves provide the one exception where the provisions of Section 145.210, RSMo 1959, become inoperative. Subsection 2, Section 145.150, RSMo 1959, reads as follows:

"The court 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 court, that the estate is not subject to the tax provided for in this law, its finding and opinion shall be entered of record in the court and thereupon the provisions of section 145.210 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 is shown."

It would appear, therefore, that if, after the filing of the inventory and appraisement of the estate of the decedent, it is the opinion of the court that these items are not taxable, then and only then do the provisions of Section 145.210 become inoperative.

It is apparent that the provisions of Section 145.210 are designed to put the state on notice as to the existence of the described property purported to be jointly held, so that a determination might be made as to the correctness of this designation.

CONCLUSION

In conclusion, the decision of the Missouri Supreme Court in the case of Osterloh's Estate v. Carpenter, supra, does not affect the waiver requirements in Section 145.210.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Robert D. Kingsland.

Very truly yours,

RDK:LC:BJ

THOMAS F. EAGLETON
Attorney General