

OPINION REQUEST NO. 303
ANSWERED BY LETTER
(Kingsland)

-1962

#24(1963)

February 5, 1963



Honorable Edgar J. Keating
Home Savings Building
1006 Grand Avenue
Kansas City, Missouri

Dear Senator Keating:

This is in answer to your letter dated August 2, 1962 involving the construction of a previous Attorney General's opinion dated April 25, 1946 which concluded that Series E bonds issued to two persons in co-ownership form are not taxable "unless purchased in contemplation of death or intended to take effect in possession or enjoyment at or after the death of the purchaser".

As the facts in that opinion request were limited to "co-ownership" the opinion dealt only with that type of ownership and not with the beneficiary form of ownership.

The 1946 opinion referred to in your letter was written prior to the decisions of the Missouri Supreme Court in the cases of *In re Gerling's Estate* (1957), 303 SW 2d 915; and *Osterloh v. Carpenter* (1960), 337 SW 2d 942. The Gerling case, supra, held that there was no transfer of property subject to inheritance tax on the death of a joint tenant. The subsequently decided Osterloh case, supra, held that there was no transfer of property subject to inheritance tax upon the creation of a joint tenancy even though within the statutory two year period before decedent's death so as to create a statutory presumption that it was in contemplation of death. The effect of these two decisions was to effectively remove jointly held property from Missouri inheritance tax.

Under the authority of these two cases the only question presented with Series E savings bonds is whether the "co-ownership" of these bonds is the legal equivalent of "joint ownership".

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If so, the Osterloh and Gerling cases, supra, would be controlling and the bonds would not form part of the taxable estate.

In the case of Valentine v. St. Louis Union Trust Company (1952), 250 SW 2d 167, the Supreme Court of Missouri construed the effect of co-ownership of United States savings bonds, and noted, l. c. 169:

"The Treasury regulation pertaining to co-ownership of United States savings bonds, with respect to such co-owners, creates a joint tenancy with right of survivorship."

This being so, these bonds are not taxable as part of decedent's estate as they are in effect jointly held property and therefore come within the rule as announced in the Osterloh and Gerling cases, supra.

In any event, as stated in your letter this co-ownership estate was established more than two years prior to decedent's death and therefore was not made in contemplation of death as defined in our inheritance tax statutes.

It is, therefore, the conclusion of this office that United States savings bonds, held in co-ownership, are not taxable on the death of a co-owner. It is further the opinion of this office that the Attorney General's opinion dated April 25, 1946, is no longer controlling and is therefore withdrawn.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

RDK:MM