TAXATION: INHERITANCE TAX: State of Israel within terms "persons, institutions, associations or corporations" as terms are found in Sec. 145.020, RSMo Supp. 1957, levying inheritance tax on transfers. Testamentary devises and bequests to State of Israel, without further condition, are transfers solely for charitable purposes within exemption provision of Sec. 145.090, RSMo Supp. 1957, such exemption to be effective only if State of Israel grants a similar exemption.

January 12, 1959

FILED
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Honorable Norman H. Anderson
Prosecuting Attorney
St. Louis County
Clayton, Missouri

Dear Sir:

This opinion is rendered in reply to the request of your immediate predecessor which posed the following question:

> "Is an inheritance tax due under the provisions of Section 145.020, on a transfer to a foreign national state made in the will of the deceased, or is said transfer exempted under provisions of RSMo 145.090."

The language of the will to be considered directed bequests to "the Government of the State of Israel." Section 145.020, RSMo Supp. 1957, imposes an inheritance tax on transfers of property in the following general language:

> "1. A tax 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 corporations, not herein exempted, in the following cases: * * *."

Section 145.020, supra, from which we have quoted general language, is of considerable length and it is not necessary in this opinion to quote the statute in full. It will suffice to say that the character of the property transferred to "the Government of the State of Israel" in this instance does not release the property from the above quoted general language of the statute levying the inheritance tax. Consequently, we consider one single question at this point, and it may be phrased as follows:

> Is the Government of the State of Israel comprehended in the terms "persons, institutions, associations or corporations" as the same are used in the foregoing language quoted from Section 145.020, RSMo Supp. 1957?

For the purpose of this opinion, we concede that the State of Israel is a foreign state or nation. The terms "persons, institutions, associations or corporations" as used in Section 145.020, RSMo Supp. 1957, are at most generally descriptive and the statute does not define the terms, consequently, doubt exists as to the full scope of such terms. In such circumstance, we take note of a rule of statutory construction found in the following language from In re Clark's Estate, 194 S.W. 54, 270 Mo. 351, l.c. 362:

> "Statutes by which the State taxes the property of the citizens are to be strictly construed. [Blakemore and Bancroft, Inheritance Taxes, 32; Matter of Enston, 113 N.Y. 174; Matter of Vassar, 127 N. Y. 1; 37 Cyc. 1556.] This rule is not, however, to be followed so far and so technically as to defeat the intention of the Legislature. [State ex rel. v. Switzler, 143 Mo. 287.]."

In Union Electric Co. v. Coale, 146 S.W.(2d) 631, 347 Mo. 175, l.c. 183, we find the rule referred to in the following language:

> "Also, it must not be overlooked that 'taxing statutes should be construed strictly against the taxing authority unless a contrary legislative intent appears.' [In re Kansas City Star Company, supra, 346 Mo. 659, 142 S.W.(2d) l.c. 1039; Artaphone Corporation v. Coale et al., 345 Mo. 344, 133 S.W.(2d) 343, l.c. 347.]."

In State ex rel. Hatten v. Kansas City Power & Light Company, 281 S.W.(2d) 784, 365 Mo. 296, l.c. 301, we find the rule alluded to in the following language:

> "The rule is that 'taxing statutes are construed strictly in favor of the taxpayer, bearing in mind that they should be applied with due regard to the apparent intention of the Legislature as expressed in the statute, with a view to promoting the apparent object of the legislative enactment.' * * * "

One additional statement of a rule of statutory construction is referred to before proceeding to a discussion of the statutes in question. It is found in the following language from Powers v. Johnson (Mo. App.), 306 S.W.(2d) 616, l.c. 621:

> "In construing two or more statutes relating to the same subject it is the court's duty to read them together and to harmonize them, if possible, and to give force and effect to each."

We now proceed to examine particular statutes in our inheritance tax law found at Chapter 145, RSMo 1949, as amended, in an effort to discover the legislative intent touching the meaning of the terms "persons, institutions, associations or corporations" as the same are used in the first sentence of Section 145.020, RSMo Supp. 1957, heretofore quoted.

The inheritance tax is imposed on the "transfer" of property. Section 145.010, RSMo 1949, defines "transfer" in the following language:

> "The word 'transfer' as used in this chapter shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment in the manner herein described."

The foregoing definition of the term "transfer", containing as it does descriptive language of all known methods of transfer of property by a decedent, clearly discloses a legislative intent to tax all transfers of property which may be received by the donee or devisee. We find no provision in the inheritance tax law prohibiting any described person, institution, association or corporation from receiving a "transfer."

Exemptions are common to taxing statutes, and the very nature of exemption statutes demands that they operate only on those who have been subjected to the tax. Consequently, in a tax exemption statute, we are able to discern the legislative intent touching the objects of the tax. A general exemption statute appears in our inheritance tax law as Section 145.090, RSMo Supp. 1957, which provides in part as follows:

> "The following are exempt from taxes imposed in this chapter:
>
> * * * * * * * * * * * *
>
> (2) All transfers, direct and indirect, including transfers from a trustee to another trustee

> of any property or beneficial interest therein to be used solely for county, municipal, religious, charitable or educational purposes in any other state or territory of the United States, foreign state or nation, which at the time of the death of the decedent imposed no legacy, succession or death tax of any character in respect to property transferred for similar uses in this state, or which by law exempts transfers made for similar uses in this state from all such tax on condition that this state shall exempt transfers made for such uses in such other state, territory or nation from any such taxes imposed by this state."

Language in the exemption provision just quoted from Section 145.090, RSMo Supp. 1957, discloses that the Legislature was cognizant of the fact that direct and indirect transfers of property are made by donors to be used for "county, municipal, religious, charitable or educational purposes" in a foreign state or nation. To effect the exemption implies a prior intent to levy the tax.

Section 145.060, RSMo 1949, sets forth the percentage rates of inheritance tax to be paid. Here we have an instance where the Legislature associates the word "person" with a "body politic" in the following language:

> "Where the person to whom such property or any beneficial interest therein passes shall be in any other degree of collateral consanguinity than as herein stated, or shall be a stranger in blood to the decedent, or shall be a body politic, association, institution, or corporation, at the rate of five per cent of the clear market value of such property or interest therein." (Underscoring supplied.)

The legislative intent with reference to the meaning of the word "persons" as used in Section 145.020, RSMo Supp. 1957, has been sought from language appearing in the related statutes of our inheritance tax law. We now seek to cite adjudicated cases wherein the scope of the word "person" may be determined.

In the case of United States v. Cooper Corporation (1940), 312 U. S. 600, the Supreme Court of the United States refused to hold that the United States was a "person" within the meaning of

the Sherman Anti-Trust Act so as to be entitled to damages for certain breaches of said act. However, in stating the rule to be applied, the Supreme Court of the United States spoke as follows at 312 U.S. 600, l.c. 604, 605:

> "Since in common usage, the term 'person' does not include the sovereign, statutes employing the phrase are ordinarily construed to exclude it. But there is no hard and fast rule of exclusion. The purpose, the subject matter, the context, the legislative history, and the executive interpretations of the statute are aids to construction which may indicate an intent, by the use of the term, to bring state or nation within the scope of the law."

A strong dissenting opinion in United States v. Cooper Corporation, supra, was written by Justice Black. In the course of his dissent, he quoted approvingly from Cotton v. United States and Helvering v. Stockholms Enskilda Bank, the following language found at 312 U.S., l.c. 619:

> "And certainly it can hardly be denied that the language of the Act, giving all persons a right of action, should if liberally construed be held to justify suit by the United States. For in Cotton v. United States, 11 How. 229, 231, decided forty years before the Sherman Act was adopted, this Court said in speaking of the United States: 'Every sovereign State is of necessity a body politic, or artificial person, and as such capable of making contracts and holding property. . . It would present a strange anomaly, indeed, if, having the power to make contracts and hold property as other persons, natural or artificial, they were not entitled to the same remedies for their protection.' And, speaking in similar vein in Helvering v. Stockholms Enskilda Bank, 293 U.S. 84, 92, after having cited Blackstone for the proposition that the sovereign is a 'corporation', and after having gone even beyond this to hold that the statutory word 'resident' included the United States, the Court said: 'This may be in the nature of a legal fiction; but legal fictions have an appropriate place in the administration

> of the law when they are required by the demands of convenience and justice.'"

In the case of Board of Regents U. W. v. Illinois (1949), 404 Ill. 189, we find a testator, a resident of Illinois, bequeathed the residue of his estate to the Board of Regents of the University of Wisconsin. The Illinois Inheritance Tax Act levied the tax on a "person," "institution," or "corporation." The levy of the tax was upheld. In referring to the State of Wisconsin and its instrumentality, the Board of Regents of the University of Wisconsin, the Supreme Court of Illinois spoke as follows at 404 Ill. 193, l.c. 196, 197:

> "This legislation presents a clear inference that the State and its instrumentalities are included in the act unless specifically exempted. We find further support in the case of United States v. Perkins, 163 U. S. 625, 16 Sup. Ct. Rep. 1073, which holds the United States is within the word 'corporation' as used in the New York act imposing an inheritance tax upon 'persons' or 'corporations' not exempt by law from taxation. From what we have above pointed out it is apparent that the act applies to the State of Wisconsin or its instrumentalities."

In the case of Board of Regents U. W. v. Illinois, cited above, the Court cited with approval the case of The People v. Richardson (1915), 269 Ill. 275, 109 N.E. 1033. In such case, the Supreme Court of Illinois was construing that State's inheritance tax statute which imposed the tax "upon the transfer of any property by will or by the intestate laws of this State to persons, institutions or corporations not specifically exempted." The property involved was real estate which, under the statute and circumstances, escheated to the county of Jefferson in the State of Illinois. In holding that the county of Jefferson was liable for the inheritance tax, the Supreme Court of Illinois spoke as follows at 269 Ill. 275, l.c. 276, 277:

> "It is insisted that the county does not come within the meaning of the statute because it is an involuntary public corporation established as a part of the government of the State; that its property is not private property but public property, and therefore exempt from

> taxation. The word 'corporation,' used in the Inheritance Tax law imposing the tax, is broad enough to include municipal corporations of every character, and the language purports to apply to every corporation not in the statute afterwards exempted. * * * The tax is not a tax upon the property of the county but a limitation upon the county's right to succeed to the title. The right to the amount of the tax vested in the State on the decedent's death, and that amount never became the property of the county. Whether the tax should be imposed upon public municipal corporations was a question for the consideration of the legislature, and no reason exists for giving a construction to the language used different from its natural meaning, which includes such corporations. * * * The tax imposed upon transfers of property by the statute applies to the transfer of the property of an intestate to a county by escheat."

From the foregoing, it must be concluded that the government of the State of Israel is within the terms "persons, institutions, associations or corporations," as the same are used in Section 145.020, RSMo Supp. 1957, and a "transfer" to such foreign state or nation is subject to the inheritance tax as provided by said statute.

We now consider the general exemption statutes of our inheritance tax law to determine if a bequest to "the Government of the State of Israel," as found in paragraphs IV and V of the will in question are exempt from the tax. The bequests made in the will executed on January 10, 1958, contain no directive relative to the use to which said bequests are to be put, but merely bequeath the same "to the Government of the State of Israel."

Our inheritance tax law contains two general exemption statutes. Section 145.100, RSMo Supp. 1957, exempts transfers "to or for the use of any hospital, religious, educational, Bible, missionary, scientific, benevolent or charitable purpose in this state," and transfers "to any trustee, association, or corporation, bishop, Minister of any church, or religious denomination in this state to be held and used and actually held and used exclusively for religious, educational, or charitable uses and purposes," etc. Such exemption statute contains a reciprocity clause applicable to "other states." The transfers in question are obviously not within this exemption

statute for the bequests are not made to the persons or institutions therein named, and no uses to which said bequests are made are named.

Section 145.090, RSMo Supp. 1957, is another exemption statute found in our inheritance tax law. The applicable portion thereof reads as follows:

> "The following are exempt from taxes imposed in this chapter:
>
> * * * * * * * * * * * * *
>
> (2) All transfers, direct and indirect, including transfers from a trustee to another trustee of any property or beneficial interest therein to be used solely for county, municipal, religious, charitable or educational purposes in any other state or territory of the United States, foreign state or nation, which at the time of death of the decedent imposed no legacy, succession or death tax of any character in respect to property transferred for similar uses in this state, or which by law exempts transfers made for similar uses in this state from all such tax on condition that this state shall exempt transfers made for such uses in such other state, territory or nation from any such taxes imposed by this state."

In view of the preceding quotation from Section 145.090, RSMo Supp. 1957, may we say that a bequest or gift "to the Government of the State of Israel" is a gift to be used "solely for county, municipal, religious, charitable or educational purposes" as such language is used in the exemption statute? The bequests in question are simply worded and an intention to make the gift solely available to the government of the State of Israel is apparent. The gift is to a government and will, to a greater or lesser degree, lessen the burdens of that government. At this point, we quote from Salvation Army v. Hoehn, 354 Mo. 107, l.c. 114, 188 S.W.(2d) 826, on the question of interpretation of tax exemption statutes:

> "The rule of strict construction in the matter of exemption from taxation is not questioned, but 'strict construction must be reasonable construction.'"

In Salvation Army v. Hoehn, supra, the Supreme Court of Missouri quoted with approval the following language relative to a definition of charity, such language being found at 354 Mo. l.c. 114, 115:

> "'Probably the most comprehensive and carefully drawn definition of a charity that has ever been formulated is that it is a gift, to be applied with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government . . . . . A charity may restrict its admissions to a class of humanity, and still be public; it may be for the blind, the mute, those suffering under special diseases, for the aged, for infants, for women, for men, for different callings or trades by which humanity earns its bread, and as long as the classification is determined by some distinction which involuntarily affects or may affect any of the whole people, although only a small number may be directly benefited, it is public.'" (Emphasis supplied.)

In Mississippi Valley Trust Co. v. Ruhland, 359 Mo. 616, l.c. 622, 222 S.W.(2d) 750, the Supreme Court of Missouri quoted approvingly the following language:

> "'It may be stated generally that a devise or bequest to a country or political subdivision, which tends to reduce taxation, and lessen the burdens of government, will be held valid as a charitable gift, although no particular purpose is specified.'"

It must reasonably be concluded that the bequests in question to "the Government of the State of Israel," though no particular use is specified, are to be considered as transfers of property to be used solely for charitable purposes and within the exemption clause found at subparagraph (2) of Section 145.090, RSMo Supp. 1957.

While the transfers of property in question are of a character to become exempt from inheritance tax, such exemption is to be

effective only in the event the Government of the State of Israel affords a like exemption to like transfers to the State of Missouri. The burden of proving such exemption is upon those claiming it and they must make their showing to the probate court entertaining jurisdiction of the estate.

CONCLUSION

It is the opinion of this office that the Government of the State of Israel is comprehended in the terms "persons, institutions, associations or corporations" as the same are found in Section 145.020, RSMo Supp. 1957, of Missouri's inheritance tax law and transfers of property, or interest therein, are subject to the tax provided in said statute; and that testamentary devises or bequests "to the Government of the State of Israel," without further condition, are transfers to be used solely for charitable purposes and within the exemption provision of Section 145.090, RSMo Supp. 1957, such exemption to be conditioned upon the fact of the State of Israel affording a similar exemption.

The foregoing opinion which I hereby approve was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General

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