INHERITANCE TAX: Joint bank accounts not subject to tax.
Irrevocable trust with reservation of life income to grantor subject to tax.

11-6

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FILED

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Dear Sir:

This department is in receipt of your letter requesting an opinion as to the following state of facts:

> " * * * a certificate of deposit made payable to Sarah E. or Susan Simmons for $80,526.83; cash in the bank in the name of Sarah E. or Susan Simmons, $28,728.69. Both of these items are in addition to the gross estate as previous mentioned.
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> "There is in addition to these two items found in the estate, a third item on which I mainly desire the opinion of your office, which is as follows:
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> "On the 17th day of October, 1925, the deceased executed an Indenture of Trust, whereby she refers to herself as a 'Donor' and assigned, transferred and delivered certain personal property, consisting of stock and bonds, which are itemized in the trust agreement, which had been transferred and sold in some instances until now the sum in the trust estate is $50,316.73. The St. Louis Union Trust Company is made the trustee of this sum to be used for this purpose - that they shall have full power and authority to manage and control the trust estate and power and

> authority to sell, exchange, lease, rent, mortgage, pledge, assign, transfer or otherwise dispose of all or any part thereof, upon such terms and conditions as it may see fit, and after paying all reasonable costs and expenses incurred, shall pay over the entire net income in equal monthly or other convenient installments unto the said 'Donor' for and during her natural life, and after the date of the Donor's death, the entire trust estate and undistributed income shall be divided into four equal shares, to be disposed of by bequests to certain relatives mentioned in the trust agreement.
>
> "Please advise me if, in making this estate up for taxation purposes, I should assess taxes on this trust estate and on the money held jointly by the deceased and her sister."

In reply to your question with reference to joint bank accounts, I wish to say that there is no inheritance tax assessed against the survivor, provided the property has been held in the names of one or more persons as joint tenants with right of survivorship and not as tenants in common. If they hold the property as tenants in common, the interest passing by reason of the death of one of the joint depositors is subject to inheritance tax; however, where they hold as joint tenants with right of survivorship, the joint deposit agreement is sufficient to pass the title to the survivor without any inheritance tax.

Section 5400, R.S. Mo. 1929 provides in part as follows:

> "When a deposit shall have been made by any person in the name of such depositor and another person and in form to be paid to either, or the survivor of them, such deposit thereupon and any additions thereto made by either of such persons, upon the making thereof, shall become the property of such persons as joint tenants, and the same, together with all interest thereon, shall be held for the exclusive use of the persons so named, and may be paid to either during the life time of both, or to the survivor after the death of one of them."

In the very recent case of Murphy v. Wolfe, (Sup. Ct. Mo.) 45 S.W. (2d) 1079, decided February 6, 1932, Judge Ragland, after quoting Section 5400, supra, said:

> "As construed by this court in two recent cases, the statute gives rise to a presumption that a deposit made within its purview becomes the property of the depositors as joint tenants, and in the absence of competent evidence to the contrary, actually fixes the ownership of the fund in the persons named as joint tenants with the attendant right of survivorship. Ambruster v. Ambruster, 326 Mo. 51, 31 S.W. (2d) 28; Mississippi Valley Trust Co. v. Smith, 320 Mo. 989, 9 S.W. (2d) 58."

In view of the foregoing, it is apparent that each of the joint tenants owns the whole of the deposit, so that upon the death of one there is no transfer of ownership and therefore there can be no inheritance tax assessed against the survivor.

In answer to your second question, it appears that the trust in question was created on the 17th day of October, 1925.

Section 570, R.S. Mo. 1929 (being the statute with which we are here concerned) provides, as far as is pertinent, as follows:

> "A tax shall be and is hereby imposed upon the transfer of any property, * * * *. 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.

> * * * 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."

We recognize that the very purpose of the provision in the above section imposing a tax on transfers intended to take effect in possession or enjoyment at or after death, is to establish a bar to frequent attempts to transmit estates to beneficiaries, unimpaired by the payment of inheritance taxes, by means of trusts or conveyances whereby the grantor reserves the beneficial enjoyment of the property during his life.

This department on May 27, 1933, in an opinion rendered to Mr. Pryor A. Stewart, ruled that an irrevocable transfer in trust with reservation of life income to the grantor was not subject to the inheritance tax laws of the State of Missouri. This opinion was written on the authority of the case of May v. Heiner, 281 U. S. 238. However, in view of recent decisions construing this case, we at this time overrule our former opinion and now hold conveyances of this nature subject to tax.

The Supreme Court of Connecticut in the case of Blodgett v. Guaranty Trust Co., 114 Conn. 207, in holding a conveyance similar to the one under discussion as subject to the inheritance tax, despite the decision of the Supreme Court of the United States in the case of May v. Heiner, supra, said:

> "The first question reserved in each case is: Did the property which was the subject of transfer 'pass by deed, grant, or gift....intended to take effect in possession or enjoyment at the death of the grantor or donor' within the meaning of the Connecticut succession tax statute, in force at the date of the deed, or within the meaning of any subsequent amendment or revision of said succession tax statute?
>
> * * * * *

"The original Connecticut Act, Chapter 180, Public Acts 1889, Sec. 1, included provision for a tax on 'property within the jurisdiction of this State, and any interest therein,..... which shall pass....by deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor, to any person in trust or otherwise.' In 1897 (Public Acts, Chap. 201) this provision does not appear, but it was restored in substance, by Sec. 3 of Chapter 332, Public Acts of 1915, and has since continued unchanged in any respect materially affecting the present inquiry. General Statutes (1918) Secs. 1261-1271; Public Acts 1929, Chap. 299, Secs. 1 and 2; General Statutes (1930) Chap. 77, Secs. 1360, 1361.

* * * * *

"This court has not had occasion to pass directly upon the question, freed from the element of retrospective operation, but our full concurrence with the general view just stated is clearly indicated in Blodgett v. Union & New Haven Trust Co., 97 Conn. 405, 410, 116 Atl. 908. We there pointed out that the 'qualifying and enlarging phrase,' 'in possession or enjoyment,' included in our original succession tax Act (1889), dropped from the law in 1897, and reinserted in 1915, 'marks the difference between a tax on the privilege of succeeding to the property of a decedent, and a tax on the privilege of succeeding to the possession and enjoyment of property which the decedent has conveyed away during his lifetime reserving only a right to the income during his own life.

* * * *

"It is stated in Milliken v. United States (1931) 283 U. S. 15, 19, 20, 51 Sup. Ct.

324, 326, that in the Reinecke case and May v. Heiner 'the only relevant question was one of construction, whether (the gifts) were of the class intended by Congress to be taxable under Sec. 402 (c) as transfers "intended to take effect in possession or enjoyment at or after death."'

* * * * *

"It is obvious from the quotation from the opinion in the Reinecke case which we have given above, that the decision, upon which the succeeding cases relied, was motivated by the nature of the Federal estate tax, which is upon the transfer of, rather than the succession to, property of the decedent. Knowlton v. Moore, 178 U. S. 41, 20 Sup. Ct. 747; Y. M. C. A. of Columbus v. Davis (1924) 264 U. S. 47, 44 Sup. Ct. 291; Edwards v. Slocum (1924) 264 U. S. 61, 62, 44 Sup. Ct. 293. 'The tax is on the act of the testator not on the receipt of property by the legatees.' Ithaca Trust Co. v. United States (1929) 279 U. S. 151, 155, 49 Sup. Ct. 291; Corbin v. Townshend, 92 Conn. 501, 505, 103 Atl. 607; Gleason & Otis, Inheritance Taxation (4th Ed.) p. 2 et seq. On the other hand, with a few exceptions, the State inheritance tax statutes levy a duty or excise upon the beneficiary for the privilege or right of succession to property.

* * * * *

"Therefore, we feel that we are not constrained to place a similar construction upon our own statute and are still at liberty to adhere to the views as to its meaning and scope which usually have been held as to State statutes of similar nature and terms and which we indicated in Blodgett v. Union & New Haven Trust Co., supra; these lead to the conclusion that the property which was the subject of transfer was within the

meaning of the statute, and taxable accordingly. 'The transaction was within the description of the statute. The property passed from the decedent to the beneficiary "by deed, grant or gift." Though upon the creation of the trust an equitable remainder in the trust fund, after the life estate of the decedent in such fund, vested in interest in the beneficiary, she was not entitled to "possession or enjoyment" of the fund or any part of it until the death of the decedent....Her present right to the future "possession or enjoyment" of the trust fund, which was "vested" in the sense of being assignable and transmissible by her during the life of the decedent....was not "possession or enjoyment," within the meaning of the statute. The statute recognizes the familiar distinction between taking effect in possession or enjoyment and vesting in right, title or interest.... Apparently the legislature intended to reach for the purpose of taxation the shifting of the enjoyment of property--the "economic benefits" thereof or "economic interest" therein (compare Saltonstall v. Saltonstall, 276 U. S. 260, 271, 48 Sup. Ct. 255, 72 L. Ed. 565; Reinecke v. Northern Trust Co., 278 U. S. 339, 346, 49 Sup. Ct. 123, 73 L. Ed. 410, 66 A. L. R. 397)--from a former owner at his death, even though such shifting of enjoyment followed necessarily from a prior transfer of title <u>inter vivos</u>. As was said in State Street Trust Co. v. Treasurer & Receiver General, 209 Mass. 373, 379, 95 N. E. 851, 852, "The policy of the law is, that the owner of property shall not defeat or evade the tax by any form of conveyance or transfer, where after death the income, profit or enjoyment enures to the benefit of those who are not exempted."' Worcester County National Bank v. Commissioner of Corporations and Taxation, supra."

This case was later affirmed by the United States Supreme Court in Guaranty Trust Co. v. Blodgett, 287 U. S. 509.

The Supreme Court of Minnesota in the case of In re Estate of Rising, 186 Minn. 56, had before it a trust similar to the one here under consideration. The statute of Minnesota, or so much thereof as is pertinent, provides as follows:

> "Section 1. A tax shall be and is hereby imposed upon any transfer of property.....
>
> "(1) When the transfer is by will or by the intestate laws of this state...
>
> "(3) When the transfer is of property made by a resident or by a nonresident when such nonresident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.
>
> "(4) Such tax shall be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer whether made before or after the passage of this act."

The Supreme Court of Minnesota in holding said trust taxable because of the reservation of the income therefrom by the donor, employed substantially the same reasoning as did the Supreme Court of Connecticut, saying:

> "The opposing argument seeks justification in May v. Heiner, 281 U. S. 238, 50 S. Ct. 286, 74 L. ed. 826, 67 A. L. R. 1244. Consideration of that decision must begin with Reinecke v. Northern Tr. Co. 278 U. S. 339, 49 S. Ct. 123, 73 L. ed. 410, 66 A. L. R. 397, involving

seven trusts. Two were revocable and so taxable. The other 'five trusts,' not revocable, were yet held not taxable because there was no transfer by reason of death, within the meaning of the federal law. Life interests in income were created but not for the settlor. There were provisions for accumulation of income but not for the donor. The gifts were instantly complete, inter vivos, because nothing of substance remained to pass from donor to or for the benefit or enjoyment of donees at or after death of the donor.

"The reason why there was no transfer subject to the federal tax was thus stated (278 U. S. 347):

"'In its plan and scope the tax is one imposed on transfers at death or made in contemplation of death and is measured by the value at death of the interest which is transferred. * * * It is not a gift tax, * * *. One may freely give his property to another by absolute gift without subjecting himself or his estate to a tax, but we are asked to say that this statute means that he may not make a gift inter vivos, equally absolute and complete, without subjecting it to a tax if the gift takes the form of a life estate in one (other than the donor) with remainder over to another at or after the donor's death. It would require plain and compelling language to justify so incongruous a result and we think it is wanting in the present statute.'

"This language was lifted bodily, by quotation, to justify and explain the result in May v. Heiner, 281 U. S. 238,

244, 50 S. Ct. 286, 74 L. ed. 826, 67 A. L. R. 1244, notwithstanding the very different sort of gift there considered--different in that there was reserved to the donor a very substantial kind of right and enjoyment not to cease until her death. The gift was in trust to pay income to the donor's husband for life, then to the donor if she survived him, with remainder over. Again, simply because there was doubt of construction, to be resolved in favor of the taxpayer, it was held there was no taxable transfer.

" * * * Of course such decisions end debate as to the construction of the act of congress which they interpret. But, however persuasive, they are not binding upon us in the construction of our own statute, as to which it is our privilege to err, if that be the result of our deliberate judgment. That aside, our state tax is so far different, in incidence, from the federal excise that the cases are easily distinguishable. 'In its plan and scope' the latter is 'on transfers at death or made in contemplation of death.' 'It is not a gift tax.' Our law, on the contrary, does tax gifts. The federal 'exaction is not a succession tax * * *. The right to become beneficially entitled is not the occasion for it.' Nichols v. Coolidge, 274 U. S. 531, 541, 47 S. Ct. 710, 71 L. ed. 1184, 52 A. L. R. 1081. Our law imposes not alone a transfer tax but a succession tax also. State v. Brooks, 181 Minn. 262, 232 N. W. 331. * * * *

"Incongruous or not, our state tax is expressly put on successions of the kind now involved. Doubt, if any, left by subd. 3 of Sec. 1 is removed by subd. 4, explicitly taxing the receipt of 'any

> property or the income thereof' when the donee becomes 'beneficially entitled, in possession or expectancy.'"

CONCLUSION

In view of the foregoing, it is the opinion of this department that an irrevocable transfer in trust with reservation of life income to the grantor is subject to the inheritance tax laws of the State of Missouri. The distinction between the case of May v. Heiner and the later Connecticut and Minnesota cases cited herein undoubtedly rests upon the proposition that the Supreme Court of the United States in the case of May v. Heiner had before it an estate tax or a tax upon the right to transmit property, while in the Blodgett case and the Rising case the statutes construed were statutes placing a tax upon the right to receive the property. In view of the recent decision by the Supreme Court of the State of Missouri in the case of In re Rosing's Estate, 85 S. W. (2d) 495, there can no longer be any question that the Missouri inheritance tax is a tax on the right to receive property. In that case Judge Tipton said:

> "Taking the Act as a whole, there is no doubt but what our inheritance tax is a tax upon the right of the heir or legatee to receive the property."

Respectfully submitted,

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APPROVED:

ROY McKITTRICK,
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JWH:HR