

INHERITANCE TAX:
STATUTE OF LIMITATIONS:

Applicability to Sec. 577, R.S. Mo. 1939,
and Sec. 597, R.S. Mo. 1939 (prior to
amendment, Laws 1943, p. 307).

*Tax maybe reassessed
prior to distribution of estate*



October 25, 1945

11/7

Mr. F. Leland Carpenter, Clerk
Probate Court
City of St. Louis
Civil Courts Building
St. Louis, Missouri

Dear Sir:

Reference is made to your letter, dated April 26, 1945,
requesting an official opinion of this office, and reading as
follows:

"The St. Louis Union Trust Company has suggested that I ask you for an opinion on the inheritance tax problems described in this letter and the attached copy of a letter from the St. Louis Union Trust Company.

"The inheritance law prior to 1943 required the Court in assessing the inheritance tax to fix a tax based on the highest possible contingency, and further provided that the payment of this tax could be postponed by the filing of a bond. In a large number of cases, the highest possible contingency was extremely remote, and as a consequence, a considerable number of bonds have been filed in this Court to secure the future payment of such taxes.

"Due to the expense of procuring such bonds, the Court was asked to accept personal bonds. It was our idea that such bonds were unsatisfactory, and the Court was unwilling to accept a personal bond without some further security. After considerable discussion, a procedure was worked out by which the Court agreed to accept

a personal bond on condition that assets of an equal value are deposited with some bank or trust company under an escrow agreement permitting the release of the assets only upon the final determination of the tax liability.

"In a number of these cases, the wills have provisions permitting partial vesting of interest from time to time, and prior to the time at which a final determination of the tax can be made. In such cases the ultimate liability from payment of tax is reduced, and the taxpayer is probably entitled to have his bond reduced and a portion of the escrow estate released.

"The mechanical procedure for so reducing the bond and releasing the estate is quite complicated. It usually requires a complete tentative re-determination of the tax which necessitates a lengthy order by this Court. It is then necessary that all the records relating to the tax be changed and a copy of the amended order be sent to the State Treasurer, and that all the State's records be changed.

"Several cases have now arisen in which the reduction of tax liability is quite small and does not justify the expense of making a complicated re-assessment. A petition for re-assessment in one such case involving a reduction of \$40.00 has been presented for our consideration, and when I suggested that such a change seemed unnecessary, the petitioner stated that they were afraid that the statute of limitation might begin to run against their claim, unless the change was made. As I did not think that a statute could run under these circumstances, and as the St. Louis Union Trust Company has no other reason for filing such a petition, I was requested to seek your opinion on this question.

"You will note that under these circumstances there is no present claim for a refund of any taxes which have been already paid, but simply

a reduction of the State's contingent rights to collect additional taxes at a future date. It would appear to me that no statute of limitation can run until a claim arises in favor of the estate for a refund or a claim in favor of the State for the payment of additional tax.

"I would appreciate your opinion on this question."

The letter received by you, under date of March 22, 1945, from John E. Gaskill, Jr., Trust Officer, St. Louis Union Trust Company, reads, in part, as follows:

"As you know the Missouri inheritance tax has been assessed in many estates on the highest possible contingency basis. In a great many instances the executors and the heirs have decided to pay a smaller amount of tax (usually based on a probable basis) and have posted a Surety Bond in three times the difference between the tax paid and the tax determined on the highest possible basis. These Surety Bonds are generally secured by escrowing assets having a readily marketable value equal to or in excess of the amount of the Surety Bond.

* * * * *

"Our experience is that frequently encroachments on the principal for hospital bills, doctor bills, operations, etc., become necessary. * * * * *

"It has been the practice of this company to have the inheritance tax re-determined, the Surety Bond reduced and the escrowed assets released as each such encroachment, as suggested above, happens. However, you have called my attention to the fact that this runs up considerable court costs and there is no urgency about having the tax re-determined on a lower basis. You likewise suggested that I defer action from time to time until more sizable amounts are involved.

"Frankly the only reason that we have indulged in this practice, upon the happening of each encroachment, is because we wanted to be sure that we filed the application for the reduction timely. I must admit that as far as I know there is no statute of limitation running against us and I do not think that the two year statute, applicable to refunds of taxes paid, is applicable to the matter about which this letter is written. It is my understanding that where the statute is silent there is no statute of limitation applicable."

The question which you have proposed deals solely with the mechanics involved in redetermination of the inheritance tax due and the period within which such redetermination should be made. Section 597, R. S. Mo. 1939 (prior to its amendment, found in Laws of 1943, page 307), to which you have referred, reads, in part, as follows:

"* * * When the property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are wholly dependable upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith by the executor, administrator, or trustee out of the property transferred:
* * * Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore

made of the particular estate for purposes of taxation, upon which said estates in expectancy may have been limited. * * * "

From the last quoted paragraph it is apparent that the valuation to be used in determining the amount of inheritance tax due on such transfers is to be ascertained at the date that the persons entitled thereto shall come into the beneficial enjoyment or possession thereof. The payment of such tax may have been postponed until such time, under the provisions of Section 577, R. S. Mo. 1939, reading, in part, as follows:

" * * * provided, that the persons, institutions, association or corporation beneficially interested in property chargeable with said tax may elect not to pay the same until they shall become into actual possession or enjoyment of such property, then in that case said person, association or corporation shall give bond payable to the state of Missouri, in a penal sum three times the sum or amount of taxes due upon such transfer, with such sureties as the probate court, or any other court having jurisdiction of the matter, may approve, conditioned for the payment of said tax and interest thereon from the date such tax is due at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, which bond shall be executed in duplicate and one copy filed in the office of the probate judge of the proper county, and the other with the state treasurer: provided further, that every person, institution, association or corporation shall make and file with the probate court of the county a full verified return of said property, or interest therein, within one year of the death of the decedent, with the bond and sureties as above provided; and provided further, said person, institution, association or corporation shall renew said bond every five years after the date of the death of decedent."

Considering the two sections together, it becomes apparent that in each instance there can be no increase in the tax due, but necessarily a reduction will take place, as the tax was required to have been originally assessed at the rate applicable upon the happening of the most remote contingency. After the bond has been given, as provided by Section 577, R. S. Mo. 1939, no payment of tax is required until such time as the tax shall have been determined as provided by Section 577, supra. Until the date that such liability becomes fixed in amount, even the penalty of the bond is subject to change as conditions affecting the ultimate amount of property to be received by the heir, legatee or devisee may vary. It is only upon the final determination of the ultimate tax liability that any cause of action accrues in favor of the State of Missouri.

It is elementary law that under no circumstances do statutes of limitation begin to run until the cause of action accrues. We quote from *Baron v. Kurn*, 164 S. W. (2d) 310, 1. c. 316:

" * * * Ordinarily a plaintiff's cause of action accrues upon a defendant's failure to do the thing at the time and in the manner contracted, and a statute of limitation begins to run when a suit may be maintained therefor. * * *" (Emphasis ours.)

Application of this rule necessarily involves consideration of the time when a cause of action for the collection of inheritance tax accrues in favor of the State of Missouri under circumstances in which a bond has been given. We direct your attention to a portion of Section 577, R. S. Mo. 1939, which reads as follows:

" * * * conditioned for the payment of said tax and interest thereon from the date such tax is due at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, * * *" (Emphasis ours.)

From the above quoted portion of the statute, it is apparent that a right of action accrues to the State of Missouri only

at such time as the beneficiaries come into the actual possession of the property transferred. Such being the case, it is clear that, until such time, the penalty of the bond is contingent and subject to change in the event that interests may vest. Inasmuch as no right of action can previously accrue in favor of the State of Missouri, any changes in the bond cannot affect the right of the State of Missouri to make collection thereon should default be made in the payment of such inheritance tax as may be found to be due at the time provided by the quoted statute.

Prior changes in the amount of the bond must necessarily all be toward reducing the amount of the penalty thereof. Changes which are made are solely for the convenience of the persons interested in the estate and are of no concern to the State of Missouri, so long as the bond is maintained at an amount equal to three times the prospective maximum ultimate liability. We do not believe that any statute of limitation is applicable to the time when such changes may be made prior to the final determination of such liability for inheritance tax.

CONCLUSION

In the premises, we are of the opinion that application may be made to the probate court having jurisdiction of the administration of an estate for reduction in the penalty of the bond given under the provisions of Section 577, R. S. Mo. 1939, at any time prior to the determination of the tax due from the beneficiaries of such estate, as provided by said section, and that no statutes of limitation are applicable to the right of the beneficiaries to have such penalty of the bond so changed to conform with conditions resulting from the vesting of interests, as no right of action accrues to the State of Missouri until the beneficiaries come into the actual possession of the property transferred from such estate.

Respectfully submitted,

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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