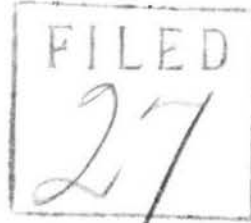


INHERITANCE TAX: Legacy of U.S. bonds or other government securities not exempt from provisions of inheritance tax laws of State of Mo.

2-19

February 17, 1936.



Hon. John A. Eversole,
Prosecuting Attorney,
Washington County,
Potosi, Missouri.

Dear Sir:

This department is in receipt of your request for an opinion as to the following question:

"Will your office please furnish me with an opinion as to whether United States Government Bonds, which are exempt from other taxation, are subject to the payment of inheritance tax under our Missouri Statute?"

In the first place, the Missouri Inheritance Tax is not a tax on property, but is an excise tax on the right to receive property. In *Re Rosing's Estate* (Supreme Court of Missouri), 85 S.W. (2d) 495. Since the tax is not on the property transferred, it would seem to make little difference that the property transferred was comprised of government bonds.

In the case of *In Re Sherman*, 153 N.Y. 1, Chief Judge Andrews said:

"The so-called tax is an exaction made by the state in the regulation of the right of devolution of property of decedents, which is created by law, and which the law may restrain or regulate. Whatever the form of the property, the right to succeed to it is created by law, and if the property consists of government securities, the transferee derives his right to take them as he does his right

to take any other property of the decedent, under the laws of the state, and the state by these statutes makes the right subject to the burden imposed."

And, in the case of *Plummer v. Coler*, decided by the Supreme Court of the United States, 44 L. Ed. 998, the Court held that a legacy of United States bonds was not exempt from the inheritance tax laws of New York. Specifically, the Court said (1008):

"We think the conclusion fairly to be drawn from the state and Federal cases is that the right to take property by will or descent is derived from and regulated by municipal law; that, in assessing a tax upon such right or privilege, the state may lawfully measure or fix the amount of the tax by referring to the value of the property passing; and that the incidental fact that such property is composed, in whole or in part, of Federal securities, does not invalidate the tax or the law under which it is imposed."

CONCLUSION

In view of the foregoing, it is the opinion of this department that a legacy of United States Bonds, or other government securities, is not exempt from the provisions of the inheritance tax laws of the State of Missouri.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK,
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