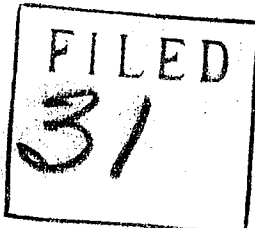


INHERITANCE TAX:

Method of computing Missouri Inheritance
Tax on trust estates.



March 19, 1954

Honorable W. C. Frank
Prosecuting Attorney
Adair County
Kirksville, Missouri

Dear Sir:

Reference is made to your request for an official opinion
of this department reading in part as follows:

"We have an inheritance tax appraisal pending in connection with an estate being administered in the Probate Court of Adair County and the ascertainment of the correct tax involves some rather complicated legal problems and as Prosecuting Attorney of Adair County, I request your opinion in the premises.

"The deceased, by last will and testament, left the rest and residue of the property of which he die seized to three trustees. The trust instrument providing:

"My said Trustees shall make available to my said wife, such sum or sums as she may need for her proper care, comfort and support during her lifetime and for that purpose may expend any amount of the principal that they may determine is so needed. It being my primary intention that my said wife throughout her lifetime shall have from such trust estate whatever may be necessary for her proper care, comfort and support and I

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declare that the provisions for disposition of the remainder are secondary in importance.

"At the death of my said wife, the remaining trustees shall after the payment of her burial expenses and the expenses of her last illness, divide the assets remaining in their hands equally between Ruth Tinsman, my niece, Wilmont S. Tinsman, my great nephew, James Tinsman, my great nephew, Marietta Jonas Jayne, my wife's niece, and Harry S. Jonas, Jr., my wife's nephew, and I now give, devise and bequeath the remaining assets in such trust estate to said named parties in equal parts and subject to the use to which my said trustees shall make of the same under the authority herein given them."

"The property is valued at something in excess of \$100,000 and the widow, at the time of her husband's death, was 73 years of age. * * *

"Your aid and assistance by way of an opinion in the premises will be greatly appreciated."

The answer to your question will depend upon the determination of the nature of the bequest to the widow. We have examined the phraseology employed in the will of the decedent under which the trust was created and have reached the conclusion that thereby a completed gift in praesenti of the entire corpus of the trust estate became effective. We are persuaded to this view by reason of the incorporation in the trust provisions of the power granted to the trustees to encroach upon the principal to any extent which such trustees may deem necessary for the maintenance of the widow and to insure her proper care, comfort and support. We also feel it significant that the testator contemplated the possibility of the complete exhaustion of the trust estate during the lifetime of the widow, as is evidenced by his declaration that the executory contingent distribution of the remainder

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of the estate was of secondary importance. From the foregoing we believe that the entire value of the corpus of the trust estate should be taxed against the widow after the allowance of her statutory marital exemptions.

We believe that the provisions of Section 145.230, RSMo 1949, are pertinent to the determination of the liability of this portion of the estate for inheritance tax and that such statute offers some guide to the procedure to be followed upon the decease of the widow if any of the trust estate at such time be unexpended. This section reads as follows:

"In determining the value of any estate, property, interest therein or income therefrom to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled, no allowance shall be made on account of any contingent encumbrance thereon, nor on account of any contingency upon the happening of which the estate, property, interest or income or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such encumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgement, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall be made to the persons properly entitled thereto of a proportionate part of such tax on account of the encumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section 145.250 upon order of the court having jurisdiction."
(Emphasis ours.)

There yet remains the question which arises with regard to the imposition of any tax upon the contingent remainders which have been provided in the will in favor of the persons named therein. We believe that Subsections 2 and 3 of Section 145.240, RSMo 1949, are germane to the subject and we therefore quote them verbatim:

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"2. 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 lowest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this chapter, and such tax so imposed shall be due and payable forthwith by the executor, administrator, or trustee out of the property transferred; provided, however, that on the happening of any contingency or condition whereby the said property or any part thereof is transferred to a person or corporation, which under the provisions of this chapter is required to pay a tax at a higher rate than the tax imposed, then such transferee shall pay the difference between the tax imposed and the tax at the higher rate, and the amount of such increased tax shall be enforced and collected as provided in this chapter; provided further, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this chapter, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this chapter. Such return of overpayment shall be made in the manner provided by section 145.250, upon the order of the court having jurisdiction.

"3. 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

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value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation therefore made of the particular estate for purposes of taxation, upon which said estates in expectancy may have been limited. Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting."

You will note that under Subparagraph 2 quoted supra, the taxes required to be computed upon the basis of the lowest rate upon which was the happening of any contingency, would be applicable. Having determined that the entire trust estate should be treated primarily as a bequest to the widow for purposes of inheritance taxes it therefore appears that no tax should be assessed upon the contingent remainders at this time. In the event that at the time of the decease of the widow there remains a portion of the trust estate which is subject to distribution to the named contingent beneficiaries, then the inheritance tax upon such contingent remainders will be determined in accordance with the provisions of Subsection 3 of Section 145.240, RSMo 1949, quoted supra.

One further question presents itself although not mentioned in your letter of inquiry. If the tax be assessed in the manner set forth in this opinion there is a distinct possibility that the widow will pay a greater tax than that actually owed. This situation would result from the death of the widow without having received the benefit of the entire trust estate having been expended in her behalf. However, we believe that adequate provision has been made for the refund of any such tax subsequently found to be excessive under the provisions of Section 145.230, RSMo 1949, quoted supra. You will note in this section a reference to the method to be followed in securing the refund of the tax. Such refunds are provided for in the statute mentioned, namely, Section 145.250, RSMo 1949, which reads as follows:

"When any tax shall have been paid erroneously to the director of revenue and satisfactory proof of said erroneous payment is presented to him, the director of revenue shall certify

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such claim for refund to the state comptroller, who shall verify the same and issue a warrant for the amount of such tax so erroneously paid, payable to the executor, administrator, or trustee, person or persons who paid the same, and the state treasurer shall pay such warrant out of any funds appropriated for such purposes; provided, that all applications for the refund of said tax shall be made within two years from the date of the accrual of the right to such refund."

CONCLUSION

In the premises we are of the opinion that the corpus of testamentary trust provided for the benefit of a widow, as to which the trustees thereof have unlimited power of encroachment for the purpose of providing care and comfort and support during the lifetime of such widow and for the payment of burial expenses and expenses incident to the last illness of such widow after her decease, is to be taxed for Missouri Inheritance Tax purposes as a bequest to the widow at the full value of the principal of such trust estate, less the statutory marital exemptions allowed such widow.

We are further of the opinion that no tax should be assessed upon the contingent remainders limited over to persons taking the residuum of such trust estate remaining unexpended at the time of the decease of the widow but that the tax upon such contingent remainders shall be computed at the time that the beneficial interest in such residuum shall actually come into the hands of such contingent remaindermen.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

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