

INHERITANCE TAXES: United States Savings Bonds, Series E,  
UNITED STATES SAVINGS purchased more than two years prior to  
BOND TRANSFERS: decedent's death, registered in her name,  
WHEN TAXABLE: and on her death payable to her son, is  
a gift intended to come into possession  
and enjoyment of decedent's son at or after her death, and is a  
taxable transfer within the meaning of subsection 3, Section  
145.020 RSMo Cum. Supp. 1957. It is immaterial as to whether or  
not transfer was made in contemplation of decedent's death with-  
in the two-year period referred to in subsection.

July 28, 1958

FILED  
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Honorable Edward W. Garnholz  
Prosecuting Attorney  
St. Louis County  
Clayton 5, Missouri

Dear Mr. Garnholz:

This department is in receipt of your request for a legal  
opinion which reads as follows:

"Mr. Irl B. Baris, an attorney who has been ap-  
pointed appraiser for Missouri inheritance tax  
purposes in an estate presently pending in the  
St. Louis County Probate Court, has requested  
that I obtain a ruling from you on the following  
legal question:

"Is a tax to be imposed under the laws per-  
taining to Missouri inheritance tax upon  
United States Savings Bonds, Series 'E',  
purchased more than two years prior to the  
death of decedent and registered in the name  
of decedent, payable on her death to a sur-  
viving beneficiary."

From your letter of May 21, 1958, clarifying the opinion  
request, it appears the United States Savings Bonds, Series "E",  
were registered only in the name of decedent, and upon her death  
are payable to her son, and these are not co-ownership form of  
bonds registered in the name of decedent and her son.

The issuing of United States Savings Bonds of the type re-  
ferred to in the opinion request are authorized by Section 757c,  
Chapter 12, Title 31 U.S.C.A., which reads:

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"(a) The Secretary of the Treasury, with the approval of the President, is authorized to issue, from time to time, through the Postal Service or otherwise, United States savings bonds and United States Treasury savings certificates, the proceeds of which shall be available to meet any public expenditures authorized by law, and to retire any outstanding obligations of the United States bearing interest or issued on a discount basis. The various issues and series of the savings bonds and the savings certificates shall be in such forms, shall be offered in such amounts, subject to the limitation imposed by section 757b of this title, and shall be issued in such manner and subject to such terms and conditions consistent with subsections (b)-(d) of this section, and including any restrictions on their transfer, as the Secretary of the Treasury may from time to time prescribe."

Section 747 of said Chapter 12 reads as follows:

"All bonds and certificates authorized by sections 752, 754, and 757 of this title shall be exempt, both as to principal and interest from all taxation imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess profits and war-profits taxes, imposed by the United States, upon the income or profits of individuals, partnerships, associations, or corporations. The interest on an amount of such bonds and certificates the principal of which does not exceed in the aggregate, \$5,000, owned by any individual, partnership, association, or corporation, shall be exempt from the taxes provided for in subdivision (b) of this section."

In accordance with the authority granted to him by Section 757c, supra, and with the approval of the President, the Secretary of the Treasury has offered various issues of United States Savings Bonds to the public, designated by a letter and the year in which they were issued.

The Secretary of the Treasury has promulgated rules pertaining to the issuance of and information in general concerning United States Savings Bonds as shown under Title 31, part 315 of the Code of Federal Regulations. Section 315.2 of said regulations provides that such bonds shall be issued only in registered

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form, and Section 315.4 contains further restrictions on the form of registration of Series "E" Bonds, which reads in part as follows:

"Authorized forms of registration, Series E, and general provisions relating to their use -

(a) Forms of registration. Bonds of Series E may be registered only in the names of individuals (natural persons), whether adults or minors, in their own right in one of the following forms:

"(1) One person. In the name of one person, for example: 'John A. Jones.'

"(2) Two persons; coownership form. In the names of two (but not more than two) persons in the alternative as coowners, for example:

John A. Jones or Mrs. Ella S. Jones.

"No other form of registration establishing co-ownership is authorized.

"(3) Two persons; beneficiary form. In the name of one (but not more than one) person, payable on death to one (but not more than one) other person, for example:

John A. Jones, payable on death to  
Miss Mary E. Jones.

"'Payable on death to' may be abbreviated as 'p.o.d.' The first person named is hereinafter referred to as the owner or registered owner, and the second person named as the beneficiary or designated beneficiary."

For the purpose of our present discussion, it will be assumed that the savings bonds referred to in the opinion request have been properly registered in the name of the owner and payable on her death to her son named therein, in compliance with Section 315.4, supra.

In considering the question asked in the opinion request, as to whether or not a tax can be imposed on the bonds referred to, we believe it is proper to consider the kind or character of the Missouri inheritance tax.

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In the case of *Friedeman v. Jamison et al.*, 202 SW2d 900, in discussing the State Inheritance Tax, the court said at l.c. 903:

"It has been said succession taxes cover both real and personal property. Such a tax is an exercise on the privilege of taking property by will or by inheritance or by succession in other form upon death of the owner.\* \* \*"

In *re Rosing's Estate*, 85 SW2d 495, at l.c. 500, the court said:

"To our mind it is clear that the last sentence of this section applies to all four kinds of transfers that are mentioned in this section. This sentence says: 'Such tax shall be imposed when any person \* \* \* actually comes into the possession and enjoyment of the property.\* \* \*' It follows, therefore, that our state inheritance tax is a tax on the right to receive property and not a tax on the right to transfer property after death."

From these decisions, which are typical of those of the appellate courts of Missouri, it is readily seen that inheritance taxes are not taxes levied on property transferred to another at or after the owner's death, but rather, such taxes are those levied on the right to receive property at or after the owner's death.

In *re McKinney's Estate*, 173 SW2d 898, l.c. 900, it appears the court so stated in the following language:

"It is no longer debatable that our inheritance tax is a tax on the right to receive or take property rather than on the right to transfer property after death (*In re Bernay's Estate*, 344 Mo. 135, 126 S.W.2d 209, 122 A.L.R. 169; *In re Zook's Estate*, 317 Mo. 986, 296 S.W. 778), and, therefore, the incidence of the tax falls upon the recipient of the property, the amount of the tax being determined by the net value of the property received by the beneficiary from the gross estate.\* \* \*"

To attempt to levy a tax on savings bonds such as those described above, would not only be contradictory to our present inheritance tax laws, but would also violate Section 747, Title 31 U.S.C.A. supra, which specifically exempts the principal and interest of said bonds from local taxation. The exception as to inheritance taxes in the section does not mean that



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local taxes of any kind on the bonds themselves are permissible, but that a local tax on the right to receive such bonds on the death of the registered owner may be taxed by the states.

Federal court decisions have upheld inheritance taxes levied by the states on the right to receive property upon the death of another, when the property transferred was savings bonds or other types of government securities. In this connection we call attention to the case of *Plummer v. Coler*, 178 U.S. 115, 44 L. Ed., 998, in which the court said at l.c. 1004 and 1008 as follows:

"The decisions of the state courts may be summarized by the statement that it is competent for the Legislature of a state to impose a tax upon the franchises of the corporations of the state, and upon the estates of decedents resident therein, and in assessing such taxes and as a basis to establish the amount of such assessments, to include the entire property of such corporations and decedents, although composed, in whole or in part, of United States bonds; and that the theory upon which this can be done consistently with the Constitution and laws of the United States is that such taxes are to be regarded as imposed, not upon the property, the amount of which is referred to as regulating the amount of the taxes, but upon franchises and privileges derived from the state.

\* \* \* \* \*

"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."

Section 145.020, RSMo Cum. Supp. 1957, provides what transfers are subject to inheritance taxes, and reads in part:

"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, associa-

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tions or corporations, not herein exempted, in the following cases:

"(1) When the transfer, by will or the intestate laws, is from any person who is a resident of this state at the time of his death;

"(2) When the transfer, by will or intestate laws, is of property within this state or within its jurisdiction, and decedent was a non-resident of the state at the time of his death;

"(3) When the transfer is made by a resident or by a nonresident whose 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 intending to take effect in possession or enjoyment at or after such death. Every such transfer made within two years prior to the death of the grantor, vendor or donor, of a material part of his estate or in the nature of a final disposition or distribution thereof without an adequate valuable consideration shall be considered to have been made in contemplation of death within the meaning of this section; \* \* \*."

It appears that such transfers fall within the class of transfers mentioned in paragraph 1, Section 145.020, supra, and if the circumstances under which the transfer is made meet the requirements of this statute, then it is a taxable one. Subsection 3 of said paragraph 1 of Section 145.020, supra, refers to different circumstances under which transfers are made. It is noted the property transferred may be, but is not required to be, a part of decedent's estate, since reference is made to transfers " \* \* \* by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intending to take effect in possession or enjoyment at or after such death."

If property is transferred under any of the circumstances or by any of the methods referred to in said subsection, then the transfer is a taxable one, regardless of the fact that the property transferred is United States Savings Bonds.

In this connection, we call attention to the case of *In re Costello's Estate*, 92 SW2d, 723, in which the term "enjoyment" was construed. The court held in effect, that the terms, when "any person" actually comes into possession and "enjoyment" of property within the meaning of the inheritance tax statute, that the word "enjoyment" meant control and not personal enjoyment.

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From the facts given in the opinion request, it appears that the registered owner of the Series E Savings Bonds intended to and did make a gift of said bonds to her son, and that such gift was not to come into the possession, enjoyment, and/or control of the son until the death of his mother. Until that event occurred the mother still exercised control over, and might have cashed the bonds at any time she desired to do so.

In view of these facts, it would be immaterial as to whether the transfer was made in contemplation of the death of the donor within the two-year period referred to in subsection 3, Section 145.020, supra.

Since the gift of the bonds was one intended by the donor to take effect in possession and enjoyment of the donee, upon the death of the donor, it is believed that such transfer is a taxable one under provisions of Section 145.020, supra.

#### CONCLUSION

Therefore, it is the opinion of this department that when United States Savings Bonds, Series E, were purchased more than two years prior to the death of decedent, and registered in decedent's name, payable on death to her son, the bonds are a gift to the son, intended by decedent to come into the possession and enjoyment of the son at or after decedent's death and constitutes a taxable transfer within the meaning of subsection 3 of paragraph 1, Section 145.020, RSMo Cum. Supp. 1957, and is subject to Missouri inheritance taxes.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Very truly yours,

John M. Dalton  
Attorney General

PNC/lc