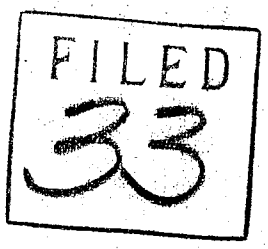
BANKS:
TRUST COMPANIES:
SAFE DEPOSIT COMPANIES:
WAIVERS:
INHERITANCE TAXES:

Bank or other institution having deposits or other assets in joint names of deceased person and another must give ten day's notice of intention to transfer; transfer must have consent of Director of Revenue and Attorney General unless institution retains amount for taxes. Same rule applies to contents of safety deposit boxes; not applicable when estate not subject to inheritance taxes.



March 17, 1954

Mr. C. L. Gillilan
Assistant Supervisor
Division of Collection
Inheritance Tax
Department of Revenue
Jefferson City, Missouri

Dear Mr. Gillilan:

We render, herewith, our opinion based upon your request of October 9, 1953, which request reads as follows:

> "There is often presented to this Department a request for a ruling relative to the duties, responsibility and liability of banks, building and loan associations, brokerage firms and other depositories carrying accounts in the name of an individual, a partnership or joint account; also safe deposit companies and banks that have in their possession and under their control, in safe deposit boxes or otherwise, assets belonging to a deceased owner or standing in the name of a deceased owner and others as joint tenants with survivorship rights, or contained in safe deposit boxes rented to decedent and others under a co-tenant agreement.
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> "We have in our file a copy of an opinion addressed to Ryland, Stinson, Mag & Thomson, Attorneys, First National Bank Bldg., Kansas City, Missouri, dated October 27, 1933, and signed by John W. Hoffman, Jr.,

> Ass't. Attorney General, relative to this matter, but that opinion does not clearly set forth the duties of depositories in connection with the transfer of joint accounts to survivors, particularly as to whether or not the bank, building and loan association or other depository should first obtain consent of the Director of Revenue and Attorney General. The larger city banks and building and loan associations now require consent from the Director of Revenue and Attorney General before transferring joint accounts to survivor, but the small town banks do not. Therefore, we respectfully request a review of this matter and an official opinion relative to the legal application of the provisions of Section 145.210, especially as to whether or not a depository of any character may transfer to survivor balance in joint accounts without first obtaining consent of the Director of Revenue and Attorney General; also as to whether or not banks, safe deposit companies or an individual may deliver to survivor contents of safe deposit boxes, or assets otherwise held, without first obtaining consent of the Director of Revenue and Attorney General.
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> "Also we will appreciate an opinion as to whether or not the provisions of subdivision 2 of Section 145.150 applies only to assets listed in Probate Court inventory or can such a Probate Court Order cover jointly held assets not so listed?
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> "We will appreciate your opinion at an early date."

We will first consider the question whether a bank, having on deposit, an account in form payable to either of two named persons or the survivor of them, can, upon the death of one, pay the account to the other without the consent of the Director of Revenue and the Attorney General.

Our answer, based on the provisions of Section 145.210, RSMo 1949, is a qualified "yes". Subsection 2 of said statute reads as follows:

> "2. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who is a resident or nonresident, or belonging to or standing in the joint names of such a decedent and one or more persons, including the shares of capital stock or other interest in a safe deposit company, trust company, corporation, bank or other institution making a delivery or transfer herein provided, shall deliver or transfer the same to the executor, administrator, or legal representative of said decedent or the survivor or survivors when in the joint name of a decedent and one or more persons or upon their order or request unless notice of the time and place of such intended delivery or transfer be served upon the director of revenue and attorney general at least ten days prior to said delivery or transfer; nor shall any safe deposit company, trust company, corporation, bank or other institution, person or persons, deliver or transfer any securities, deposits, or other assets belonging to or standing in the name of decedent or belonging to or standing in the joint names of decedent and one or more persons, including the shares of capital stock of or any other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits, or other assets, including the shares of capital stock or other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer under the provisions of this chapter unless the director of revenue and the attorney general consent thereto in writing."

This statute requires, before paying of the account to the survivor, that ten day's notice of such intention to transfer be given to the Director of Revenue and the Attorney General. Consent of those two officials to such delivery or transfer is not required.

Upon such transfer, however, the bank is required to retain from the account a sufficient amount to pay "any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities; deposits or other assets * *," unless the Director of Revenue and the Attorney General, in writing, consent to such transfer. Such consent having been obtained, there appears to be no requirement that the bank retain any portion of the account.

So it comes to this: Transfer without such consent and without retaining a sufficient amount to pay the taxes or interest which may thereafter be assessed (under the provisions of Chapter 145, RSMo 1949) renders the bank personally liable to the payment of such taxes and interest and in addition, a penalty of $1,000.00. By retaining a sufficient amount to pay such taxes or interest, the bank may make the transfer without any consent. In any case, it must have given the Attorney General and the Director of Revenue ten day's notice of its intention to make the transfer or delivery.

The question may be raised whether the ordinary checking or savings account with a bank constitutes a "deposit" within the meaning of this statute. While in common parlance, such an account is "money on deposit," it is not strictly so. Title to the money deposited passes to the bank; the depositor has a claim against the bank for that amount of money. The debtor-creditor relationship exists between bank and depositor.

We think, however, that the word "deposit" as used here includes such accounts. If it did not, the use of the word would add nothing whatever to the meaning of the statute; it would be included in the terms "securities * * * or other assets"; conversely, the word "deposits" would include "securities and other assets" in the possession or under the control of the safe deposit company, trust company, corporation, bank or other institution, person or persons.

If such account could not be said to be in the "possession" of the bank, it is certainly under "control" of the bank, since it requires affirmative action on the part of the bank to pay drafts and checks drawn against such account.

For the meaning of the statute, too, we may consider the purpose of the statute as gathered from the statute in its entirety, i.e., to prevent loss of inheritance taxes on property which passes by right of survivorship and not by will or intestate laws and is not included on the probate court inventory. The interpretation we have adopted serves that purpose.

Your request extends to building and loan associations, brokerage firms, and other depositories having accounts, securities and other assets belonging to or standing in the name of a deceased person or in the joint names of deceased and another or others - whether they are within the terms of Section 145.210, supra. The statute applies to any "safe deposit company, trust company, corporation, bank or other institution, person or persons" having in possession or under control securities, deposits or other assets belonging to or standing in the joint names of a decedent and one or more persons. Safe deposit companies, then, come specifically within its terms; building and loan associations would come within the term "corporation" or "other institution"; and brokerage firms within the term "corporation" or, if unincorporated, "person or persons". The statute, therefore, applies to each of the institutions you have mentioned in your request and the rule stated above as to banks is applicable also to them.

You have asked specifically whether the contents of safety deposit boxes which have been leased to the decedent and another person as co-tenants, come within Section 145.210, supra. The language of the statute as to the assets covered is this: " * * * securities, deposits and other assets * * * belonging and standing in the joint names of such a decedent and one or more persons * * *."

The contents of safety deposit boxes so rented are not necessarily subject to this provision simply because of the co-tenancy agreement under which the boxes are leased. Should the box contain only cancelled checks, love letters and property or assets belonging and standing only in the name of the survivor, then the bank or safe deposit company could not refuse, on the grounds of the provisions of this statute, to refuse to deliver to the survivor the contents thereof, nor would the bank or safe deposit company be required to give any notice to the Attorney General or Director of Revenue or retain any part of the contents of the box. On the other hand, should the box contain bonds or other property standing in the name of decedent or in the names of the decedent and another, such contents would come within the terms of this statute. It is the title to the contents of the box that counts and not the nature of the agreement under which the box is leased. Co-tenancy of safe deposit box does not establish co-tenancy of contents. Ann.-Lease-Joint Tenancy, 113 A.L.R. 575.

It remains to determine whether the contents of a safety deposit box comes within the terms of the statute at all. Notice that it applies to a safe deposit company, etc., "having

in possession or under control" securities, deposits or other assets covered by the statute. Does a safe deposit company have in possession or under control the contents of a safe deposit box within the contemplation of this statute?

Notice too, the statute prohibits the "delivery or transfer" of the assets except under the conditions set forth in the statute. When the lessee of a safety deposit box abstracts property therefrom, is the bank or safe deposit company "delivering" or "transferring" the property to him within the meaning of this statute?

We think the contents of a safety deposit box, such contents belonging to or standing in the name of a deceased person or in the joint names of a deceased person and another or others, come within this statute.

We arrive at that conclusion by this avenue: the relationship between lessor and lessee of a safety deposit box as to the contents of the box is that of bailee and bailor. Kramer v. Grand National Bank of St. Louis, (Mo. Sup.) 81 S. W. (2d) 961. In that case the court said at l.c. 967:

> " * * * It is well settled by authority that where a bank, or safe deposit company, leases a safety deposit box or safe, and the lessee takes possession of the box or safe and places therein his securities or other valuables, the relation of bailee and bailor is created between the parties to the transaction as to the property so deposited. * * *"

Bailment implies possession; therefore, the lessor of a safety deposit box has its contents in possession.

Allowing the lessee to remove the contents of the box constitutes a constructive delivery of such contents from lessor to lessee within the meaning of this section. The lessor not only permits, but actually participates in the change of possession from lessor to lessee. See 11 Words and Phrases, Deliver; Delivery, page 654, et seq.

The conclusion that the contents of safety deposit box come within the terms of the statute is buttressed by the view that "safe deposit companies," whose primary or only business will be the renting of safe deposit boxes, are expressly named in the statute.

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You have asked whether subsection 2 of Section 145.150 applies only to assets listed in the Probate Court inventory, or if the order provided therein cover assets held jointly by deceased and another or others, and not listed in the inventory?

Said subsection reads thus:

> "2. Such court or the judge thereof in vacation shall immediately upon the filing of the inventory and appraisement of the estate of a decedent, examine the same, and if it is apparent, in the opinion of the said court or judge, that such estate is not subject to the tax provided for in this law, such finding and opinion shall be entered of record in said court, and thereupon the provisions of section 145.210 shall become inoperative as to the holders of funds or other property thereof - and there shall be no further proceedings relating to such tax, unless upon the application of interested parties the existence of other property or an erroneous appraisement be shown."

This makes it the duty of the court to examine the inventory filed, and, if it is apparent in the opinion of the court that the estate is not subject to the tax provided in Chapter 145, RSMo 1949, he enters his finding to that effect. Then the institutions and persons covered by Section 145.210, RSMo 1949, are no longer obligated to give any notice, obtain any consent, or withhold any assets under that statute, before transferring or delivering assets to the person or persons entitled thereto. The finding made by the court under this section is based solely upon his examination of the inventory filed in the court. Such a finding, according to the statute, does not, however, foreclose the showing to the court of the existence of other property or of erroneous appraisement, which would render the estate subject to tax.

CONCLUSION

It is the opinion of this office that:

1) A safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession

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or under control securities, deposits or other assets standing in the joint names of a deceased person and another, must give the Attorney General and Director of Revenue ten day's notice of its intention to deliver or transfer such property to the survivor; that such delivery or transfer can then be made without consent of the Director of Revenue and the Attorney General, provided that a sufficient amount is retained to pay taxes or interest thereafter assessed. Such transfer or delivery can be made without such retention only with the consent of the Director of Revenue and Attorney General.

2) This applies also to the contents of safety deposit boxes which contents stand in the joint names of the decedent and another although it is the ownership of the assets contained in the box which is the important matter and not the agreement under which the safety deposit box is leased.

3) The finding of the court under Section 145.150, RSMo 1949, is based solely upon his examination of the inventory and appraisement filed. A finding that the estate is not subject to tax renders Section 145.210, RSMo 1949, inoperative.

The foregoing opinion, which I hereby approve, was prepared by my assistant, W. Don Kennedy.

Very truly yours,

JOHN M. DALTON
Attorney General

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