

INHERITANCE TAXES: Surviving owner of estate by entirety desires to sell or  
CORPORATE STOCK: otherwise transfer certain corporate stocks. If certifi-  
ESTATE BY ENTIRETY: cates of stock are in surviving owner's possession or  
TRANSFER BY SURVIVOR: control, before delivery or transfer, he must give  
PROCEDURE: written notice to director of revenue and attorney general  
and comply with other requirements of sec. 145.210 RSMo  
1949, unless he first secures written consent, or waiver, of director of revenue  
and attorney general authorized by sec. If such stock certificates are include  
in inventory and appraisement of estate of deceased joint owner during adminis-  
tration proceedings, and court orders that no inheritance taxes are due on the  
estate as provided by subsec. 2, sec. 145.150 RSMo 1949, then sec. 145.210  
RSMo 1949, shall be inoperative as to surviving owner and no further tax  
proceedings shall be had. If certificates in possession or control of a  
corporation, then before delivery or transfer of same to surviving owner, or to  
another at said owner's direction, corporation must comply with requirements  
of sec. 145.210 RSMo 1949, particularly as to notice to director of revenue and  
attorney general, unless said corporation, as transfer agent, first secures  
consent or waiver authorized by said section.

Honorable Lane Harlan  
Prosecuting Attorney  
Cooper County  
Boonville, Missouri

December 16, 1953

Dear Sir:

This is to acknowledge receipt of your recent request for a legal  
opinion of this department, which reads in part as follows:

"The first question is as follows, and concerns  
Chapter 145. R.S.Mo., 1949: In the event that a  
husband and wife owned certain stock certificates  
as tenants by the entirety, with the right of  
survivorship, and either the husband or the wife  
died, must the survivor obtain a waiver of inheri-  
tance tax from the Department of Revenue before  
selling the stock and transferring the certificates?"

"And, as a corollary to the previous question, is  
the transfer agent for a Missouri Corporation  
justified in demanding an inheritance tax waiver  
from the Department of Revenue as a condition pre-  
cedent to the transfer of such a stock certificate  
in such Missouri corporation when the transfer agent  
has ample proof of the death of one of the tenants by  
the entirety: (Subparagraph (3) of paragraph 1 of  
section 145.020 not being in question.)"

The above quoted inquiry refers to a situation where a husband  
and wife had created a tenancy by the entirety in certain shares of  
corporate stock.

It will be recalled that a tenancy by the entirety is a tenancy  
in common in real or personal property by husband and wife for their  
joint life with remainder to the survivor in fee simple.

Consequently, upon the death of one of the joint owners, the  
surviving owner succeeds to the complete title of such shares of stock,

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to the exclusion of the personal representative of the deceased joint owner.

The question presented in the opinion request is whether or not the surviving owner must secure a waiver of State inheritance taxes from the Director of Revenue before selling or transferring the certificates of stock, and also if the transfer agent must secure such waiver.

In this connection we desire to call your attention to the word "transfer", as used in connection with the inheritance tax laws and as defined by subsection 4, section 145.010 RSMo 1949. Said subsection reads as follows:

"The word 'transfer' as used in this chapter shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment in the manner herein described."

Section 145.210 RSMo 1949 provides that before any of the companies, corporations, institutions, person or persons, having possession or control of securities or other assets standing in the name of a decedent, or in the name of a decedent and one or more persons, shall be delivered to the personal representative of the decedent, or to the surviving owner, that the custodian of such securities or other assets, as transfer agent, shall meet certain requirements. Said section reads as follows:

"If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligation in this state standing in the name of the decedent or in trust for a decedent liable for any such tax, the tax shall be paid to the director of revenue on the transfer thereof.

"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.

"And it shall be lawful for the director of revenue together with the attorney general, personally or by representative, to examine said securities, deposits or assets at the time of such delivery or transfer.

"Failure to serve such notice or failure to allow such examination or failure to retain a sufficient portion or amount to pay such tax or interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits, or other assets, including the charges of capital stock of, or other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto a penalty of one thousand dollars; and the payment of such tax and interest thereon or the penalty above prescribed or both may be enforced in an action brought by the attorney general at the relation of the director of revenue, in any court of competent jurisdiction."

The statement of facts of the opinion request does not indicate what company, corporation, institution, person or persons has possession or control of the certificates of stock referred to, and, not being fully advised as to all of the facts upon which the inquiry is based, it is necessary for us to frame our discussion and conclusion in the alternative, taking into consideration two sets of facts regarding the possession or control of the stock certificates, that is;

1. If the stock certificates are in the possession or under the control of a company, corporation, institution, person or persons, which shall make the necessary transfer and delivery of the certificates to the surviving owner, or to any other person, corporation or institution as directed by such surviving owner.

2. If the stock certificates are in the possession or under the control of the surviving owner, who shall make delivery and transfer of them to the purchaser or other transferee.

1. In the event the certificates were in the possession or under the control of a corporation, as it seems to be intimated from the latter portion of the question presented, then before the corporation as custodian and transfer agent makes delivery to the surviving owner or to another person, corporation, or institution, as directed by such surviving owner, said transfer agent has the mandatory duty of complying with the provisions of Section 145.210 supra, as to the giving of notice of time and place of delivery of the stock certificates, to the director of revenue and attorney general, in the manner provided by the section and also to with-hold a sufficient portion or amount of said stock with which to pay any inheritance tax or interest which may subsequently be found due on account of said delivery or transfer.

The assumption by the transfer agent that no taxes can be legally assessed upon the transfer, in view of the existence of the above mentioned facts, will not excuse said transfer agent from complying with the terms of the section nor release it from the possibility of being subject to the penalties provided by the latter portion of the section, for failure to comply with the provisions of said section. However, in event the custodian and transfer agent does secure the written consent or waiver of the state's right to demand the immediate payment of any inheritance taxes or interest which may be found due, then the stock certificates may be lawfully delivered or transferred to the surviving owner or others, without violating the provisions of section 145.210, supra.

2. If the stock certificates are in the possession, or under the control of the surviving owner, it is our thought that such owner must, before delivering or transferring his ownership of said stock certificates to another, give the required notice, or secure the necessary waiver and consent of the director of revenue and attorney general. By a "transfer" of such certificates to another, we have reference to the passing of said certificates to such other in the manner referred to in the definition given of the term "transfer" by subsection 4, section 145.010 supra.

The terms "transfer agent," are also used in the opinion request, although no explanation of the intended meaning is given. We understand the terms as referring to the corporation which issued its stock certificates to the husband and wife as tenants by the entirety, and came into possession or control of such certificates by permission of the surviving owner for the purpose of reissuing said certificates in the name of the survivor, or in that of another person to whom the survivor desires to sell or otherwise transfer the certificates.

The mere supposition that the surviving owner cannot be legally required to pay any inheritance tax by reason of his intended delivery of the stock to another person, does not exempt him from complying with the provisions of section 145.210 supra, discussed above. Said Statute,

as well as others, imposes the duty upon the director of revenue to determine in every case of this kind whether or not taxes or interest are due, hence the liability for taxes or interest cannot be ascertained until after the director of revenue has had an opportunity to make the necessary examination and determination of the facts.

In event the surviving owner secures the necessary written consent or waiver of the state's right to demand immediate payment of inheritance taxes or interest, from the director of revenue and attorney general, before the contemplated delivery or transfer, then said owner is exempted from the requirements of section 145.210, supra.

Again, under the provisions of section 145.150 RSMo 1949, the surviving owner may be exempted from the provisions of section 145.210, supra, as will be presently noticed. Subsection 2, section 145.150 RSMo 1949 reads as follows:

"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."

Applying the provisions of the section last quoted to the facts before us, in the event administration proceedings of the estate of the deceased joint owner of the corporate stocks is had in that Probate Court having proper jurisdiction, where an inventory and appraisement of the estate property is filed and the corporate stocks referred to in the opinion request are listed therein, the Court makes a finding, which finding and an order are entered of record, that no inheritance taxes are due upon the stock certificates; the Court's action in the matter would preclude any further proceedings relative to inheritance taxes, and would render the provisions of section 145.210, supra, inoperative as to the surviving owner of said corporate stock.

Therefore, in answer to the inquiry of the opinion request, it is our thought that the surviving owner of the stock certificates must strictly comply with section 145.210 supra, with reference to the notice to the director of revenue and attorney general of such owner's intention to sell or otherwise transfer such stock certificates, unless he secures written consent or waiver of the state's right to demand payment of inheritance taxes or interest on account of such delivery or transfer of said stock certificates in the manner provided by section 145.210 supra.

It is our further thought with reference to the inquiry of the opinion request that the transfer agent, in possession or control of the stock certificates, in demanding a waiver of inheritance taxes prior to the date of the intended delivery or transfer of the corporate stock certificates to the surviving owner of same, or to another as may be directed by said owner, is fully justified under the provisions of section 145.210, supra, in making such demand for inheritance tax waiver by the director of revenue and attorney general.

#### CONCLUSION

It is the opinion of this department that when certain shares of Corporate stock are held by husband and wife by an estate in entirety and said certificates of stock are in the possession or control of the surviving owner who desires to sell or otherwise transfer them to another, that before the delivery or transfer, said survivor shall give the written notice of the time and place of same to the director of revenue and attorney general, and also comply with the other requirements of section 145.210 RSMo 1949, unless such surviving owner first secures the written consent or waiver of the state's right to demand immediate payment of any inheritance taxes or interest found due by reason of the sale or transfer, which consent or waiver must be given by the director of revenue and attorney general. That in the event administration is had upon the estate of the deceased joint owner of the stock certificates, and such shares of Corporate stock are included in the assets of the estate, and the Probate Court finds, and enters an order of record that no inheritance taxes are due on the estate, as provided by subsection 2, section 145.150 RSMo 1949, Section 145.210, RSMo 1949, shall be inoperative as to the surviving owner and no further proceedings shall be had regarding inheritance taxes.

It is the further opinion of this department that in the event the certificates of stock referred to above are in the possession or under the control of a corporation, that before delivery or transfer of said certificates to the surviving owner, or to another at such owner's direction, said corporation, as transfer agent, shall strictly comply with the provisions of section 145.210 RSMo 1949, as to the required notice to the director of revenue and attorney general and also as to the other provisions of said section, unless the transfer agent first secures the written consent or waiver to demand immediate payment of such taxes or interest found due as provided by said section.

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

Very truly yours,

JOHN M. DALTON  
Attorney General

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P.S.

Encs. - As per our letter to you of October 17, 1953.

(1) April 26, 1946 - Hon. David E. Impey.

(2) January 19, 1950 - Hon. Robert G. Kirkland.