

HERITANCE TAX: War Risk Insurance }  
Service - connected disability } Not subject to  
Adjusted Compensation } inheritance tax.

May 25, 193<sup>3</sup>.

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Hon. Samuel Richeson,  
Judge of the Probate Court,  
Washington County,  
Potosi, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of May 8th in which you make the following requests:

"Is inheritance tax due the State of Missouri on property, otherwise subject to the tax, but which is a part of the estate of a deceased veteran of the World War, and which was accumulated and derived from the following sources:

1. From the United States Government as compensation for service-connected disability, paid by the Government to the Guardian of the veteran, who was insane and incompetent, held by the guardian until the death of the veteran, then paid by the guardian of the veteran to the administrator of the estate of such deceased veteran, and which will in the ordinary course of administration be paid to the heirs at law of the deceased veteran?

2. Interest and income accumulated by the guardian on such sums, and paid by him to the administrator of the estate of the deceased veteran and which will be distributed to the heirs at law of the veteran?  
3. Proceeds of War Risk Insurance policy paid by the Government to the guardian of the deceased veteran on account of total disability, and turned over by the Guardian to the administrator of the estate of the deceased veteran and which will be distributed to the heirs at law?

4. Interest and income from the accumulation of the proceeds of such war risk insurance, which interest and income was collected on investments made by the guardian for his insane ward, held by the guardian until the death of the ward, then turned over to the administrator and which will be distributed to the heirs at law?

5. Amount received from Government upon an adjusted compensation certificate, paid by the Government to the administrator of the deceased veteran, and which will be distributed to the heirs at law of the veteran?

Questions numbers 1, 2 and 5 may be treated together.

Section 618 of Title 38, U.S.C.A. provides:

"No sum payable under this chapter to a veteran or his dependents, or to his estate, or to any beneficiary named under Part V of this chapter, no adjusted service certificate, and no proceeds of any loan made on such certificate shall be subject to attachment, levy or seizure under any legal or equitable process, or to national or state taxation, and no deductions on account of any indebtedness of the veteran to the United States shall be made from the adjusted service credit or from any amounts due under this chapter."

In the case of Jones et al. v. Price et al, Sup. Ct. of App. of W. V., 146 S.E. 890, the court held that the administrator of a veteran may not divert to his creditors the sum payable to his dependents under that chapter, and the court said:

"Congress has manifestly intended to so surround this fund with protection that creditors cannot take it away from the dependents. It was well said in a recent Iowa decision: 'In other words, during the course of human events, the thought became developed among states and nations that for the good of mankind there are instances when it is best that creditors go unpaid in order that certain individuals in society may have a particular source of income dedicated to personal or family sustenance, maintenance and enjoyment.'" Andrew v. Bank, 219 N.W. 62, 64.

Congress having dedicated this bounty exclusively to the dependents of the decedent the administrator is without any authority whatsoever to divert it to his creditors. See, generally, Crotty v. Eagle's Adm'r., 35 W. Va. 143, 13 S.E. 59."

Of course, if property has been purchased for a World War veteran's use with money received under the World War Adjusting Compensation Act, it would undoubtedly be subject to taxation.

State v. Wright (Ala.) 140 So. 584.

However, we have no such case presented here.

Therefore, in view of the foregoing, it is the opinion of this office that there is no inheritance tax due to the State of Missouri as to the compensation for service-connected disability, and as to the adjusted compensation certificate received from the United States Government.

As to the War risk insurance policy, the proceeds have generally been held not taxable by the states. Re Estate of Harris, 179 Minn. 450, 229 N.W. 781, and Cross v. State of Washington, 278 Pac. 414. War risk insurance was first provided for by the United States Government by an Act of Congress in 1914. Section 454 U.S.C.A. 38, in speaking of war risk insurance says this insurance shall not be assignable, shall not be subject to the claims of creditors, "and shall be exempt from all taxation."

In the case of In Re Harris' Estate, Sup. Ct. of Minn., 229 N.W. 781, the court held that payments of war risk insurance to deceased soldier's administrator or to deceased beneficiary's estate are not subject to state inheritance tax. The court said:

"Counsel for the state, with commendable fairness, have cited leading cases holding that proceeds of war risk insurance paid over by the government to the administrator or estate of a deceased soldier are not subject to a state inheritance tax. Tax Commission v. Rife, 119 Ohio St. 83, 162 N.E. 390, 392; In Re Cross' Estate, 152 Wash. 459, 278 P. 414; In Re Wanzel's Estate, 295 Pa. 419, 145 A. 512; Watkins v. Hall, 107 W. Va. 202, 147 S.E. 876. The case of Succession of Geier, 155 La. 167, 99 So. 26, 32 A.L.R. 353, may be added. In these cases the exemption is generally placed on two grounds: First,

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that the exemption from taxation provided in section 454 of the War Risk Insurance Act, supra, is applicable; second, that the persons entitled to the payments do not take as heirs of the deceased soldier or of the primary beneficiary, but take as beneficiaries under the War Risk Insurance Act and under the contract between the government and the soldier. In the case of Tax Commission v. Rife, supra, the Court said: 'This right to take this property is by virtue of a contract between the United States government and the soldier, and does not arise by reason of the statutes of descent and distribution of this state. \* \* \* The administrator becomes a mere trustee or conduit for the government to make the payments to the persons entitled to the same under the provisions of the federal law. The intestate laws do not operate upon the decedent's property, but are referred to in order to determine who shall take the proceeds of the insurance.' On appeal in the same case, 27 Ohio App. 516, 521, 162 N.E. 398, 400, it is said: 'In our view, the statute of the United States, which provides that this insurance shall be exempt from all taxation, controls.' \* \* \*"

Therefore, it is the opinion of this department that the proceeds of War Risk Insurance are not subject to inheritance tax in the State of Missouri.

Very truly yours,

JOHN W. HOFFMAN, Jr.,  
Assistant Attorney General.

APPROVED:

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Attorney General.

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