IN RE: INHERITANCE TAXATION: FORGIVENESS OF A DEBT SUBJECT TO TAXATION.

June 20, 1933

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St. Louis Union Trust Company
Saint Louis
Missouri

Attention: Mr. F. A. Murphy
Assistant Trust Officer

Gentlemen:

This Department is in receipt of your letter of June 10 in which you request an opinion from this office on the following state of facts:

> "Under Section Two of her last will and testament, decedent directs that any note or notes of her son, Arthur W. Schultz, be cancelled and the note or notes returned to him as his property.
>
> "Mr. A. W. Fink, the appraiser appointed by the St. Louis Probate Court to adjust the Missouri inheritance tax in this estate, has taken the position that forgiveness of the indebtedness of Arthur W. Schultz is subject to Missouri inheritance tax.
>
> "While I agree with Mr. Fink that forgiveness of an indebtedness is taxable, if the obligor is solvent, nevertheless it is my opinion that when the obligor is insolvent, there should be no tax imposed upon the forgiveness of the indebtedness, as the indebtedness has no value. In this case there is no doubt

> but that Mr. Arthur W. Schultz is insolvent, and there is no way the executors could enforce payment of these notes.
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> "* * * * * * * * * * * * * * * * * * *
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> "I would appreciate your opinion as to whether or not, under the circumstances above set forth, the forgiveness by the testatrix of the indebtedness of Arthur W. Schultz is subject to Missouri inheritance tax."

There is no doubt that the Missouri Inheritance Tax Law has its historical basis in the New York Inheritance Tax Law. Therefore, in the absence of Missouri decisions, the decisions of the State of New York undoubtedly are entitled to much weight in construing a certain point under the Missouri Inheritance Tax Law.

In 61 C. J. 1653, the rule is stated as follows, "where decedent is the creditor, the remission or forgiveness of the debt by will is usually regarded as a legacy or bequest and taxable as such."

Gleason and Otis in their work "Inheritance Taxation, (4 Ed.) upheld the principle of law that the forgiveness of a debt is to be treated as a legacy. At page 340 of this work, it is said: "The rule is established in England that if a decedent is a creditor of a legatee, and, in his will provided for the remission or forgiveness of the debt, it is to be treated as a legacy and taxed as such. Attorney General v. Holbrook, 12 Price 407; Morris v. Livre, 11 L. J. Ch. 172; and this is the general rule. Matter of Gould, 156 N. Y. 423, 51 N. E. 287; Tyson's Appeal 10 Pa. St. 220."

The case of Tyson's Appeal, supra, held that where a textatrix, reciting that "A" was indebted to her on a bond, declared that in case he made no demands against her estate for boarding or services rendered her she bequeathed him the debt due by him and directed her executors to cancel the bond, the legacy was subject to the collateral inheritance tax law.

In the case of In Re Tuigg's Estate 15 N. Y. Supp. 548, there was a bequest of the residue of the testator's estate which included a note by the legatee. It was claimed on behalf of the legatee that, as to the note, the legatee was exempt from tax on the ground that the note had no market value inasmuch as the testator, by his will, forgave and estinguished the debt. It was also claimed that the note had no market value inasmuch as it had no legal inception and, if sued upon, no recovery could be had thereon. The facts therefore of this case are, in effect, similar to the facts as presented to us in the case here under discussion for it is contended that the legatee in the case now before us is insolvent and that there should be no inheritance tax levied upon the bequest inasmuch as there is no way the executors could enforce the payment of these notes. However, the court in the Tuigg's case, citing with approval the case of Tyson's Appeal supra held:

> "The note in the case at bar represents a debt due by the legatee to the testator, and the executors could be compelled to include it in their inventory as an asset of the estate. If testator died insolvent, creditors might pursue the maker on this obligation. The legatee must either accept the benefit provided in the will under the condition of assuming with it the burden imposed by law, or he may reject the same. If he elects to reject the legacy provided by the will, the legacy would go as in case of intestacy, forming, as it does, a part of the residuary estate, and following the rule where a portion of the residuary bequest is void. In that event there can be no doubt that the next of kin could sue upon the note. The appraiser properly reported this portion of the residuary estate as subject to the tax."

In the case of In Re Hirsch's Estate, 145 N. Y. Supp. 3004, the testator released and discharged his son from any and all claims and demands which he had against

his son, the court said:

> "In the case at bar, the financial condition of the son, Louis Hirsch, is certainly improved to the extent of $27,868.67 by the provision of his father's will and the latter's estate to that amount diminished. The result in any proper view of it, as it seems to me, was simply a transfer within the contemplation of the Transfer Tax Act (Consol. Laws c. 60, Sections 220-245)."

Therefore, in view of the foregoing, it is the opinion of this Department that the remission or forgiveness of a debt by will is taxable under the Missouri Inheritance Tax Law as a bequest from the testator to the legatee.

Respectfully submitted.

JOHN W. HOFFMAN, JR.
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.