ERITANCE TAX: Advancements, as such, are not subject to the Inheritance Tax Laws of the State of Missouri.

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Hon. Dockery Wilson,
Prosecuting Attorney,
Harrison County,
Bethany, Missouri.

Dear Sir:

This department is in receipt of your request for an opinion as to the following state of facts:

> '"The Probate Judge has asked me to write to you for an opinion in regard to inheritance tax findings. The facts are:
>
> The Executor of the Estate of Charles W. Burgess, deceased, found among the papers in deceased's bank box, an envelope containing receipts amounting to $7200.00. These receipts were for money given to the heirs in 1922 and on the receipts and envelope was written 'This is advancement.' The will of the deceased made no provision about the advancement in any way. Question: Is this amount subject to inheritance tax? Also, should this amount be deducted from the heirs to which the advancements were made at final settlement?'"

I.

"Advancements", as such are not subject to the Inheritance Tax Laws of the State of Missouri.

"The mere fact that a gift inter vivos is to be considered as an advancement to the donee and deducted from any amount he may receive from the donor's estate does not necessarily bring the transfer within the terms of a statute taxing transfers in

> contemplation of death or intended to take effect in possession or enjoyment after the death of the transferror."
>
> 61 C.J. p. 1656.

The Missouri Inheritance Tax Law was taken either from the State of New York or the State of Illinois.

> "Our statute covering this particular subject **** was either borrowed from New York or Illinois."
>
> In Re Kinsella's Estate, 293 Mo. 545.

In construing the Missouri law, therefore, we may have recourse as pursuasive to the construction put upon the law in cases which construe the New York law. In the case of In Re Mead's Estate, 194 N.Y.S. 349, the Court held:

> "Gifts to children by deeds are complete and so not subject to transfer tax, notwithstanding agreements that the conveyances should be considered as advancements out of grantor's estate, to be deducted from any amount thereafter becoming payable to the grantees from grantor's estate, the agreements being merely in diminution of their bequests."

In the case of Kratz's Estate, 72 Pa. Super. 232, the Court held:

> "Where a testator had made irrevocable gifts in his lifetime, which had passed from him and which were not a part of the estate of which he died possessed, such advancements are not subject to the payment of the direct inheritance tax and the amount of them is erroneously included in an appraisment and a tax assessed on them by the appraiser for the purposes of determining the direct inheritance tax in invalid."

Therefore, unless the "advancements" come within Section 570, Laws of Mo. 1931, p. 130 providing for an inheritance tax to be imposed upon the transfer of property made in contemplation of death, there can be no inheritance tax assessed.

> "'To have a taxable transfer under a statute taxing transfers 'in contemplation of death' not only must there be a contemplation of death, but it must be shown that such contemplation was the direct and moving cause of the transfer or gift; and if something other than the contemplation of death is the controlling motive for the transfer, it is not taxable.'"
>
> 61 C.J., p. 1656.

According to the facts as given to us in your letter, these advancements were made in 1922. The date of death of Charles W. Burgess is not given, but it may be safely assumed that it took place in the year 1933, eleven years after the advancements were made to the heirs. In view of this fact, the theory that these advancements were made "in contemplation of death" is untenable.

CONCLUSION

In view of the foregoing, it is the opinion of this department that the advancements made to the heirs of Charles W. Burgess in 1922 are not subject to the Inheritance Tax Law of the State of Missouri.

Respectfully submitted,

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

APPROVED:

ROY McKITTRICK,
Attorney General.

JWH:AH