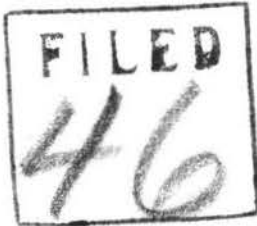


ESTATE TAXES:  
INHERITANCE TAXES:  
ADDITIONAL STATE TAX ACT:

Section 145.070, RSMo 1949, imposes an additional tax on estates when the inheritance, legacy and succession taxes, etc., paid to the state, do not equal the credit authorized by the Federal estate tax act.



July 23, 1958

Honorable William G. Johnson  
Prosecuting Attorney  
Morgan County  
Versailles, Missouri

Dear Mr. Johnson:

We are in receipt of your request for an official opinion on the following question:

"The Probate Judge of this county asked me to obtain a statement from you in clear and understandable english of the meaning of Section 145.070."

Section 145.070, RSMo 1949, reads as follows:

"In the event that the total of the estate, inheritance, legacy and succession taxes imposed upon the several interests and property comprising the estate of the decedent, by law, less exemptions allowed by law, and all other state inheritance and estate taxes, shall not equal the maximum credit now or hereafter allowable to the estate of such decedent against the United States federal estate tax imposed with respect thereto, whenever the federal estate tax is determined, an additional tax shall then be imposed upon the value of the net estate of said decedent as of the date of such determination equal to the difference between the total of the tax imposed under said section 145.060, including all other state inheritance and estate taxes, and the credit for estate, inheritance, legacy and succession taxes allowable to the estate of such decedent against the United States

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federal estate tax."

The above statute causes trouble to most people because it is found in Chapter 145, RSMo 1949, which is entitled - "Inheritance Tax." Actually, Section 145.070, RSMo 1949, is an "estate tax" and not an inheritance tax. See *Brown vs. State*, 19 S.W. 2d 12.

The generic term that covers both methods of taxation, i.e., inheritance tax and estate tax, is "death tax;" although in very popular language it is not unusual to find the term "inheritance tax" applied to the right of the state to tax regardless of the method of taxation that is adopted. *Prentice-Hall Inheritance and Transfer Tax Service*, p. 101.

There is, however, a definite distinction between the terms - inheritance and estate taxes. If the power of the state to tax is exercised by a tax placed on the transmission of property from the dead to the living, the tax is called an estate tax. If the tax is exercised by taxing the receipt of property by the living from the dead, the tax is called an inheritance tax.

In Missouri, Chapter 145, supra, taxes the receipt of property by the heirs. As the Missouri Supreme Court has stated, the Missouri tax imposed by Chapter 145, supra, is on the right to receive the property; not a tax on the right of the deceased to transfer the property after his death. See *Priedeman vs. Jamison*, 356 Mo. 627, 202 S.W. 2d 900(1947); *In re: Bernay's Estate*, 344 Mo. 135, 126 S.W. 2d 209, (1939); *In re: Rosing's Estate*, 337 Mo. 544, 85 S.W. 2d 495(1935).

The Supreme Court of Missouri upheld the constitutionality of Section 145.070, supra, on the ground that it did not violate the due process clause of the Federal Constitution in the case of *Brown vs. State*, supra, by saying:

"\* \* \* If the state has power to regulate or tax the privilege either of transmitting or receiving property within its territorial jurisdiction in any manner or amount it pleases, how can it be said that any measure the state chooses to adopt short of complete confiscation is a violation of the due process clause of the federal constitution? \* \* \* Objection overruled."

Before setting out the meaning of Section 145.070, supra, it might be well to review briefly the history and purpose of the Missouri

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Legislature in enacting the original Missouri estate tax law. In order for one to have an understanding and working knowledge of the Missouri estate tax law it is essential to understand the purpose and legislative background for said enactment. It must also be understood that we are dealing with an estate tax and not an inheritance tax law.

The Congress of the United States passed an act entitled "An Act to reduce and equalize taxation to provide revenue, and for other purposes" which was approved on February 26, 1926 (See Title 26, U.S.C.A. 2001 (IRC, 1954)). Said Act imposed a Federal estate tax on the property of decedents, varying in percentage according to the net value of the estate and under said Federal Revenue Act a credit was allowed against the Federal estate tax due to any amount lawfully assessed and paid to any state as an estate, inheritance, legacy or succession tax. Said credit and deduction credit, however, being limited to 80% of the amount due the Federal Government under said Federal state tax. Subsequently, the State of Missouri, by an act of its General Assembly, approved on April 7, 1927, passed an estate tax which imposed an additional tax on the assets of Missouri estates equal to the difference between the inheritance or transfer taxes then exacted and 80% of said Federal estate tax, said section read:

"In the event that the total of the inheritance taxes imposed upon the several interests and property comprising the estate of the deceased, by law, less exemptions allowed by law, and all other state inheritance taxes, shall not equal eighty per centum of the amount of the tax imposed upon the value of the net estate of said decedent, under the federal estate tax law, whenever the federal estate tax is determined an additional tax shall then be imposed upon the value of the net estate of said decedent as of the date of such determination equal to the difference between the total of the tax imposed under said section 573 as amended and eighty per centum of the tax imposed by said act of congress." (This section is a re-enactment of Section 573, R.S. Mo. 1929, which section first appeared in Laws 1929, at page 103. The last mentioned act repealed the original Missouri estate tax law, found in Laws 1927, at page 100.)"

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Although this particular act was not in substance exactly the same law as we are operating under today, it is, however, the same in principle, and an understanding of its operation and application is essential in order to compare the way the present law functions. In essence, what these two acts mean is that the Federal Government by passing the Federal estate law of 1926 said, we are going to impose a federal tax on estates of a certain net value but we are also going to allow a credit against this tax equal to 80% of the inheritance taxes, etc., paid to the state. The Missouri Legislature, therefore, took the position that since an estate could get credit up to 80% of the tax owed the Federal Government for expenses paid out by the estate in the way of inheritance, legacy, etc., taxes, there would be instances in which the total inheritance taxes, etc., paid to the state would not total up to 80% and, consequently, the Federal Government would be getting taxes which could be the state's and all that would have to be done would be for the Legislature to impose additional tax on the assets of the estate so that they would total up to 80% of the total tax due the Federal Government.

Another way and, perhaps, the best way to explain the principle and meaning of the additional tax law or estate tax in Missouri under the original act would be for us to illustrate by an example:

(1) Assume the total Federal estate tax assessed was \$1000. Now, assuming also that the total inheritance and legacy taxes paid to the State of Missouri totaled \$600. Under the Federal law which imposed the Federal estate tax, the statute authorized a credit for inheritance, legacy, etc., taxes paid to the state, but said credit could not be more than 80% of the estate tax owed the Federal Government. In this example, applying the Federal credit, the estate would get credit for the \$600 paid to the State of Missouri and would pay \$400 to the Federal Government as estate tax.

(2) The Missouri Legislature then passed the additional tax or estate tax. Here is how said act would apply on the above example: Since the estate could have received a credit of 80% of the total Federal estate tax due or, in this case, \$800, and since the taxes paid by the estate to the State of Missouri only totaled \$600 the Missouri act imposed an additional tax upon the value of the net estate equal to the difference between the total of the tax imposed by the state inheritance tax, etc., laws (\$600 in our example) and 80% of the tax imposed by the Federal statute. In other words, the state took the position that they might just as well have the other \$200 instead of allowing the Federal Government to have said amount since the Federal act authorized a credit up to 80% or \$800 on the total amount of tax due the Federal Government, or \$1000 in this case.

Therefore, it can be seen that what the additional tax law in Missouri does is to make certain that every estate takes advantage

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of the Federal credit and also secures additional taxes for Missouri. The estate pays no more taxes. It merely pays the amount to the state instead of the Federal Government. The case of Brown vs. State, supra, is in accord with this position. For in that case the Supreme Court of Missouri declared the purpose of the additional tax or estate tax to be and we quote:

"The apparent purpose is to amend the then existing article entitled 'Inheritance Tax' by providing in two new sections for a minimum tax on the estate of decedents of 80 per cent of the amount of tax imposed under a designated act of Congress, and it is clearly expressed in the above title.  
\* \* \* \* \* (Emphasis ours.)

Under the present law, Section 145.070, supra, the purpose, meaning and principle remain the same as they did under the 1929 Act, supra; however, there is no fixed 80% credit in our present statute. Congress substituted for the 80% fixed credit an "escalator" type credit which authorizes credit at 8/10 of 1% on the amount of estate tax owed the Federal Government which exceeds \$40,000 and stair steps to a final credit of \$1,082,800.00 plus 16%, as provided for in Internal Revenue Code, 1954, Section 2011 entitled, credit for state death taxes, to wit:

"If the taxable estate is:                      ← The maximum tax credit shall be:

Not over \$90,000 . . . . .	8/10ths of 1% of the amount by which the taxable estate exceeds \$40,000.
Over \$90,000 but not over \$140,000 . . .	\$400 plus 1.6% of the excess over \$90,000.
Over \$140,000 but not over \$240,000 . .	\$1,200 plus 2.4% of the excess over \$140,000.
Over \$240,000 but not over \$440,000. . .	\$3600 plus 3.2% of the excess over \$240,000.
Over \$440,000 but not over \$640,000. . .	\$10,000 plus 4% of the excess over \$440,000.
Over \$640,000 but not over \$840,000. . .	\$18,000 plus 4.8% of the excess over \$640,000.
Over \$840,000 but not over \$1,040,000. .	\$27,600 plus 5.6% of the excess over \$840,000.
Over \$1,040,000 but not over \$1,540,000	.\$38,800 plus 6.4% of the excess over \$1,040,000.
Over \$1,540,000 but not over \$2,040,000	.\$70,800 plus 7.2% of the excess over \$1,540,000.
Over \$2,040,000 but not over \$2,540,000	.\$106,800 plus 8% of the excess over \$2,040,000.

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If the taxable estate is:	The maximum tax credit shall be:
Over \$2,540,000 but not over \$3,040,000. . .	\$146,800 plus 8.8% of the excess over \$2,540,000.
Over \$3,040,000 but not over \$3,540,000. . .	\$190,800 plus 9.6% of the excess over \$3,040,000.
Over \$3,540,000 but not over \$4,040,000. . .	\$238,800 plus 10.4% of the excess over \$3,540,000.
Over \$4,040,000 but not over \$5,040,000. . .	\$290,800 plus 11.2% of the excess over \$4,040,000.
Over \$5,040,000 but not over \$6,040,000.. ..	\$402,800 plus 12% of the excess over \$5,040,000.
Over \$6,040,000 but not over \$7,040,000 . .	\$522,800 plus 12.8% of the excess over \$6,040,000.
Over \$7,040,000 but not over \$8,040,000 . . .	\$650,800 plus 13.6% of the excess over \$7,040,000.
Over \$8,040,000 but not over \$9,040,000 . . .	\$786,800 plus 14.4% of the excess over \$8,040,000.
Over \$9,040,000 but not over \$10,040,000. . .	\$930,800 plus 15.2% of the excess over \$9,040,000.
Over \$10,040,000. . . . .	\$1,082,800 plus 16% of the excess over \$10,040,000."

We are of the opinion that the 1929 additional tax law, supra, is the same in meaning and in purpose as the present Missouri additional tax law, i.e., as re-enacted. Once you understand the operation of the former, the meaning of the latter will be clear and understandable. The computation of the additional tax owed the state can be made in three steps, to wit:

- A. Using the Federal estate tax rate, as set out in the Internal Revenue Code, 1954, compute the amount of the basic Federal estate tax owed by the estate.
- B. Total up all the estate, inheritance, legacy and succession taxes imposed upon the several interests and property comprising the estate of the decedent, by law, less exemptions allowed by law, and all other "state" inheritance taxes.
- C. If the total derived at in B, above, does not equal the "escalator" credit authorized by the Internal Revenue Code, supra, then - - AN ADDITIONAL TAX SHALL THEN BE IMPOSED UPON THE VALUE OF THE NET ESTATE OF SAID DECEDENT EQUAL TO THE DIFFERENCE BETWEEN THE

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TOTAL OF THE TAX IMPOSED UNDER SECTION 145.060  
(this section sets out the rate of Missouri's  
Inheritance tax), including all other state  
inheritance and estate taxes and the credit  
allowed to the estate of such decedent against  
the Federal estate tax.

CONCLUSION

It is, therefore, the opinion of this office that Section 145.070, RSMo 1949, imposes an additional tax on the net assets of an estate, notwithstanding the fact that inheritance taxes, etc., have already been imposed under Section 145.060, supra, and payable to the State of Missouri, whenever the total inheritance, legacy and succession taxes payable to the state do not equal the credit authorized by the Federal estate tax act, Internal Revenue Code, supra.

We are of the further opinion that Section 145.070, supra, is an estate tax and not, strictly speaking, an inheritance tax.

The foregoing opinion, which I hereby approve was prepared by my assistant, Mr. J. Burleigh Arnold.

Yours very truly,

John M. Dalton  
Attorney General

JBA:cmw