

INHERITANCE TAX: An inheritance tax may be assessed even though the property be subject to escheat.

June 11, 1936



Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your oral request for an opinion relative to the question of whether or not an inheritance tax should be assessed in cases where property is subject to escheat.

Section 621, R. S. Mo. 1929 provides:

"Within one year after the final settlement of any executor or administrator, assignee, sheriff or receiver, all moneys in his hands unpaid or unclaimed, as provided in section 620, shall, upon the order of the court in which such settlement is made, be paid into the state treasury. And the state treasurer shall issue to him a duplicate receipt therefor, one of which shall be filed with the state auditor, who shall credit him with the amount thereof and charge the state treasurer therewith. All such moneys so received into the state treasury shall be credited into a fund, to be known and designated as 'escheats.' "

Under this section of our law, it is our understanding that the sum of \$2,685.92 was paid the State Treasurer in the estate of Adolf Schutze, no inheritance tax being assessed against such sum.

It is our opinion that an inheritance tax should have been assessed in the first instance by the Probate Court.

Our position is sustained by the case of the Matter of Lind, 132 App. Div. 321; 117 Supp. 49; aff. 196 N. Y. 570; 90 N. E. 1161, wherein the court said:

" *** Upon the death of the decedent his personal property vested in the administrator, and his next of kin were entitled to the property upon proving their relationship to the deceased. No such person has appeared and no such person has been found to be in existence. There has been no transfer 'dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged. Matter of Vanderbilt, 172 N. Y. 69; 64 N. E. 782, had relation to a trust estate in which the ultimate beneficiaries were uncertain, and what is said in that case relates to such an estate. The only uncertainty as to the ownership of this property depends upon the fact as to whether the deceased left next of kin. The presumption is that the deceased left next of kin, but there is no presumption that he left a widow or descendants. It is presumed, therefore, that the property vested in the next of kin of the deceased, and is therefore taxable under section 200 of the Tax Law, and as it does not appear that it is exempt under section 211 of the Tax Law, the tax imposed by subdivision 6 (now subd.7) of section 220 applies, and it is taxable at the rate of 5%."

However, in this instance, no inheritance tax having been assessed, the question arises as to whether or not the State Auditor should issue his warrant for the amount of tax now assessed by the Probate Court

Section 624, R. S. Mo. 1929 provides:

"The court shall examine the said claim, and the allegations and proofs, and if it find that such person is entitled to any money so paid into the state treasury it shall order the state auditor to issue his warrant on the state treasurer for the amount of said claim,

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but without interest or costs; a copy of which order, under seal of the court, shall be a sufficient voucher for issuing such warrant."

In this case, the Probate Court has ordered the State Auditor to issue his warrant on the State Treasurer for the sum of \$152.75 as inheritance tax in this estate plus the sum of \$3.36 as fees to the said court, plus the further sum of \$24.76 as additional costs.

In view of this order of the court, it is our opinion that you may properly issue your warrant for the amount of the tax, plus the fee of the court, but that you should not issue your warrant for \$24.76 as costs, inasmuch as Section 624 specifically prohibits the issuance of a warrant for costs.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General