

INHERITANCE TAX: In computing the inheritance tax a deduction for debts of the deceased may be allowed only to the extent of the amount actually paid the creditor, and not as to the face amount of the debt existing at the date of the death of the deceased.

May 26, 1936

Hon. Glendy B. Arnold
Judge of Probate Court
City of St. Louis
St. Louis, Missouri



Dear Sir:

In re: Estate of Frank P. Hays, deceased.

This Department is in receipt of your request for an opinion as to whether or not, in computing the inheritance tax due the State of Missouri, a deduction of the face amount of the indebtedness of the testator existing at the death of the testator may be deducted, or the amount which through the voluntary action of the creditor is ultimately required to be paid.

A determination of this question necessarily involves the question of whether the Missouri inheritance tax is a tax upon the right to transmit property, or whether it is upon the right to succeed to property. Fortunately, this matter has been settled recently by the Supreme Court of this State in the case of *In re Rosing's Estate* 85 S.W. (2d) 495, l. c. 500, wherein Judge Tipton said:

"Taking the act as a whole, there is no doubt but what our inheritance tax is a tax upon the right of heir or legatee to receive the property. "

In the case herein under discussion it is sought to make deductions of substantially \$19,000.00, when, in fact, by action of the creditors this \$19,000.00 will not have to be paid from the assets of the estate. In other words, the beneficiaries of Mr. Hays will be benefited to the extent of this \$19,000.00, and yet it is contended that there should be no tax placed upon these beneficiaries as to this sum. With

this contention we cannot agree, and for the following reasons:

In the case of State ex rel. Smith v. Probate Court 139 Minn. 210, 166 N. W. 125, the Court said:

"According to the statute the tax is to be computed only upon the clear value of the property, * * * which actually passes to the beneficiaries, and is not to be computed upon the amounts expended in administering the estate or in paying proper charges against it."

And in the case of In re Roebling's Estate 89 N. J. Eq. 163, 104 Atl. 295, the Court, in construing the New Jersey statute, which is similar in nature to our statute, said, in part, as follows:

"The (New Jersey) tax, it will be observed, is not imposed upon the immediate transfer of property occasioned by death, but upon the transfer to any person * * * when the transfer is the subject of a legacy or devise, of distribution or descent. In other words, it is not on the transitory succession of the executor or administrator, but upon the separate successions of the transferee * * * (104 A.,l.c. 297). (Matter in parenthesis added.) "

In the case of Tax Commission ex rel. Price v. Lamprecht 107 Ohio State 535, 140 N. E. 333, the Court had before it the precise question decided in the Rosing case, namely, whether or not the federal estate tax was a proper deduction in computing the Missouri inheritance tax. The Court held the federal estate tax to be a proper deduction, and said:

"It is difficult to see how the Legislature could have intended that the tax

should be computed upon property which does not, in fact, pass and which is not, in fact, received by the beneficiary (140 N. E., l. c. 336).

"The value of the right to receive must be exactly equal to the value of the property which passes, and it is shocking to every sense of justice to compute the rate upon a right which is less valuable than the property which passes to the heir pursuant to that right.

* * * * *

"If, therefore, we assume that the Legislature intended to be just and to tax only the actual amount received by each beneficiary, respectively, and assume that the Legislature did not intend to discriminate between one kind of expense of administration and another and to discriminate between one kind of tax and another * * * then the conclusion must be reached that the Legislature also intended that every kind of debt, charge, expense and claim of a valid nature against a decedent's estate should be deducted, and the succession tax computed only upon the balance " (140 N. E., l. c. 337).

While the holding of the Court in that case and in the Rosing case resulted in a benefit to the beneficiaries, by reason of their not being compelled to pay a tax upon property which they did not receive, (a result that will not obtain in the instant case if we are correct in our conclusion) nevertheless, the reasoning of the Court is applicable to the case herein under consideration: The tax is measured by the value of the property ultimately passing to the beneficiaries, though for the purpose of appraising the estate the date of death is controlling.

The Supreme Court of South Carolina, in 1927, (Beidler v. South Carolina Tax Commission 160 S. E. 264) had a proposition similar in nature to the one here under consideration to determine, that is, conceding the federal estate to be a proper deduction in

assessing the state inheritance tax what was the proper measure of the deduction. The Court held that the amount of the federal estate tax actually paid was the proper measure of deduction, and said:

"The exceptions raising this question are sustained, except that, in making the calculation, the South Carolina tax commission must make the adjustment of the federal tax that must be credited here in South Carolina, upon the basis of what the federal government actually charged and collected; and not necessarily upon the \$204 valuation as contended for by the appellants. As the federal tax must come off, it is just and fair that the basis should be what was paid and not upon any other basis. In making the settlement, therefore, if it appears, as stated by appellants, 'the Federal Government collected the estate tax upon a lesser valuation,' then, in making the settlement, the lesser valuation must be used; as the actual amount the federal government received is the test and not figured at so much per stock value on the basis of the tax commission's figures. The reason is this: The entire amount that the tax commission figured, even on the \$204 basis under the law can be collected; then that fixes the amount. That total amount is fixed by the lawful authorities. But when it comes to making the deduction of the federal taxes, then what was actually paid must be the measure of the credit and deduction. "

In conclusion, we refer this Court to the Rosing case wherein Judge Tipton said, anent our statutes:

"To our mind it is clear that the last sentence of this section applies to all four kinds of transfers that are

mentioned in this section. This sentence says: 'Such tax shall be imposed when any person * * * actually comes into the possession and enjoyment of the property * * *.' It follows, therefore, that our state inheritance tax is a tax on the right to receive property and not a tax on the right to transfer property after death.

* * * * *

"As above stated, section 570, supra, provides that: 'Such tax shall be imposed when any person * * * actually comes into the possession and enjoyment of the property.' Certainly this means that only the net amount that each beneficiary actually receives shall be taxed. As the heir or legatee receives no part of the sum of money paid as the federal estate tax, it follows that it should be deducted in the computation of the Missouri inheritance tax. "

CONCLUSION

In view of the foregoing, it is the opinion of this department that, for the purpose of assessing the inheritance tax due the State of Missouri, deductions for the debts of the deceased may be allowed only to the extent that they are actually paid to the creditors, and that if a creditor voluntarily released the estate from the payment of an indebtedness that the beneficiaries are to that extent further enriched and a tax must be assessed on this amount as if there had been no debt existing at the death of the decedent.

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In other words, to take the hypothetical case furnished by counsel for the estate of Frank P. Hays, deceased, if A. die with assets of \$50,000.00 and owing at the same time a \$50,000.00 debt, the net value of his estate for inheritance tax purposes is nothing. However, if, after the death of A., the creditor voluntarily accepts \$1,000.00 in payment of the \$50,000.00 claim, for the purpose of computing the inheritance tax due the State of Missouri there must be a tax assessed upon the right of the beneficiary of Mr. A. to receive the \$49,000.00.

Respectfully submitted,

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APPROVED:

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JWH:LC