

TAXES:  
INHERITANCE TAX:  
SENATE BILL No. 53:  
House Bill No. 62:

- (1) Senate Bill No. 53 and House Bill No. 62 of the 67th General Assembly held consistent in grant of exemption.
- (2) Qualification in Senate Bill No. 53 construed to relate only to deaths occurring subsequent to effective date of act.



December 31, 1953

Honorable M. E. Morris  
Department of Revenue  
Jefferson City, Missouri

Attention: Mr. C. L. Gillilan, Inheritance Tax Division.

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"I am enclosing a copy of Senate Bill No. 53 amending Section 145.090 Revised Statutes of Missouri 1949, and copy of House Bill No. 62 amending Section 145.100 Revised Statutes of Missouri 1949, both of which pertain to exemptions of bequests or transfers to religious, educational or charitable organizations to be used outside of the State of Missouri, and both are reciprocal.

"You will note, however, that Senate Bill No. 53 appears to be retroactive since it exempts bequests going to states 'which at the time of decedent's death' had a like reciprocal law in effect. House Bill No. 62 contains no such retroactive provision which indicates it does not apply when death occurred prior to the effective date of the amendment, which was August 29, 1953.

"There are at present, some thirty-six states that have similar reciprocity laws in effect and we will appreciate either an official opinion or legal advice as to the proper construction and application of these two amendments."

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Both of the amendatory acts which have been referred to in your letter of inquiry relate to exemptions granted under Missouri inheritance tax laws.

The pertinent portion of Senate Bill No. 53, 67th General Assembly reads as follows:

"145.090. The following shall be exempt from taxes imposed in this chapter:

\* \* \* \* \*

"(2) All transfers, direct and indirect, including transfers from a trustee or trustees to another trustee or trustees, of any property or beneficial interest therein to be used solely for county, municipal, religious, charitable or educational purposes in any other state or territory of the United States, foreign state or nation, which at the time of the death of the decedent, imposed no legacy, succession or death tax of any character in respect to property transferred for similar uses in this state, or which by law exempts transfers made for similar uses in this state from all such tax on condition that this state shall exempt transfers made for such uses in such other state, territory or nation from any such taxes imposed by this state."  
(Emphasis ours.)

Similarly, House Bill No. 62 of the same General Assembly contains the following provisions:

"145.100. 1. When any property, benefit or income shall pass to or for the use of any hospital, religious, educational, Bible, missionary, scientific, benevolent or charitable purpose in this state, or to any trustee, association, or corporation, bishop, minister of any church, or religious denomination in this state to be held and used and actually held and used exclusively for religious, educational, or charitable uses and purposes, whether such transfer be made directly or indirectly, the same shall not be subject to any tax, but this provision shall not apply to any corporation which has a right to make dividends or distribute profits or assets among its members.

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"2. The exemption herein granted shall extend to persons, organizations, associations, and corporations organized under the laws of other states and resident therein, provided the law of the other state grants to persons, organizations, associations, and corporations organized under the law of Missouri and resident therein, a like and equal exemption."

We are further advised by the office of the Governor of Missouri that both of the acts were signed by the Governor on May 15, 1953, and became effective on August 29, 1953. We therefore are confronted by a situation in which two apparently inconsistent acts relating to the same subject matter have been passed by the same General Assembly, approved by the Governor at the same time, and became effective upon the same date. If such inconsistency in fact inheres in the acts then, of course, they nullify each other and neither is of any efficacy. To this effect see State ex rel. Attorney General vs. Heidorn, 74 Mo. 410.

It is the duty, however, both of this office and of the Courts to construe acts of the General Assembly in such manner as to harmonize their apparently inconsistent provisions, if at all possible. To effectuate such harmony it is necessary to follow established rules for the construction of statutes, keeping in mind at all times that the intent of the General Assembly shall be the final determinative factor if in accord with provisions of the organic law.

Adverting to the acts it is noted that Senate Bill No. 53 relates to exemptions granted transfers of property or beneficial interest therein, which are to be used solely for county, municipal, religious, charitable or educational purposes, whereas House Bill No. 62 is limited in its application to property, benefit or income transferred for the purpose of being used and actually held in use exclusively, for religious, educational and charitable uses. The possible conflict between the application of the two acts arises from the inclusion in Senate Bill No. 53 of the qualification that the exemption granted thereof shall extend only to county, municipal, religious, charitable or educational purposes, to be exercised in any other state or territory of the United States, foreign state or nation, which at the time of the death imposed no similar taxes with respect to transfers made for similar purposes in the State of Missouri.

We do not consider that such proviso creates a conflict. It is fundamental that in the construction of statutes they must be considered to apply prospectively only, particularly in the absence

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of a clear and unambiguous expression of legislative intent to the contrary. See *Clark Estate Company vs. Gentry*, 240 S.W. 2d. 124, 362 Mo. 80, Certiorari Denied, 72 Supreme Court 109, 342 U.S. 868.

The exemption could not be construed to be effective with respect to property transferred by decedents dying prior to the effective date of the act, to-wit, August 29th, 1953, as to so construe the act would amount to holding it to be retroactive in nature. This the General Assembly may not do, particularly with respect to the release or establishment of public debts or claims. Your attention is directed to Subsection 5, Section 39, Article III, Constitution of Missouri, 1945, which reads as follows:

"Sec. 39. Limitation on power of Assembly.--  
The general assembly shall not have power:

\* \* \* \* \*

"(5) Release of public debts and claims.--  
To release or extinguish or to authorize the releasing or extinguishing, in whole or in part, without consideration, the indebtedness, liability or obligation of any corporation or individual due this state or any county or municipal corporation; (Sec. 51, Art. IV, Const. of 1875) \* \*." (Emphasis theirs)

This constitutional provision is of importance in view of the fact that under Missouri inheritance tax law liability for the payment of the tax becomes fixed as of the date of the death of the decedent. See Section 145.110, RSMo. 1949, which reads, in part as follows:

"All taxes imposed by this chapter, unless otherwise herein provided for, shall be due and payable at the death of the decedent,  
\* \* \*."

Therefore, the proviso contained in Senate Bill No. 53 must be construed to relate only to transfers resulting from the death of decedents subsequent to the effective date of the act. To construe the act otherwise would render the proviso unconstitutional in the light of the decision reached in *Graham Paper Co. vs. Gehner*, 59 S.W. 2d. 49. In that case the General Assembly purported to change the basis of income taxes to be paid by corporations. The effect of the amendatory act was to release certain corporate tax-

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payers from income tax liability, which resulted from the provisions of the then existing law. The contention was made that since only the state was adversely affected by the extinguishment of the liability no valid objection thereto could be made by the state. The Supreme Court of Missouri agreed that the General Assembly could pass retrospective laws which would impair the rights of the state and could impose new liabilities with respect to transactions already passed on the state itself, or on the governmental subdivisions thereof, but further held that in no event could such action be taken in view of the Constitutional provision cited supra, with respect to obligations due and owing the state which had become fixed prior to the passage of the new law. In commenting upon what was then Section 51, Article IV, of the Constitution of 1875, which is substantially the same as the portion of Section 39, Article III, Constitution of 1945, quoted supra, the Court said:

"\* \* \*The language of this constitutional provision is very broad and comprehensive in protecting the state against legislative acts impairing obligations due to it, in that it prohibits the release or extinguishment, in whole or in part, not only of indebtedness to the state, county, or municipality, but liabilities or obligations of every kind. It will be noticed that this constitutional provision is couched in the language and uses the same terms as are used with reference to retrospective laws. In determining what transactions or considerations are within the purview of retrospective laws, the courts use the same terms as are used in this constitutional provision, to wit, liabilities or obligations, as well as debts. In contending in the Dirckx and Bell Telephone Cases, supra, that income taxes not due or capable of ascertainment till the end of the year could not be the subject of a retrospective law, the same argument was used as is now used to exclude same from the constitutional provision just quoted, to wit, that the income tax for the entire year is a unit and does not come into existence even as an obligation or liability till the end of the year, when for the first time it was capable of ascertainment. That would be true as to being an indebtedness, but, as there pointed out, it is not true as to being an obligation or liability. This argument was rejected as not sound in the Dirckx and Bell Telephone Cases, as it must be here. It was there held that an

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inchoate tax, though not due or yet payable, is such an obligation or liability as to be within the protection of the restriction against retrospective laws, and for the same reason we must hold that such inchoate tax is an obligation or liability within the meaning of the constitutional provision now being considered. In other words, if an unmatured tax has sufficient vitality to be protected in favor of the citizens against retrospective laws, it has sufficient vitality to be protected in favor of the state against being extinguished or released by legislative enactment."

We therefore arrive at the conclusion that there is no inconsistency between Senate Bill No. 53 and House Bill No. 62, each passed by the 67th General Assembly, and becoming effective on the same date.

#### CONCLUSION

In the premises we are of the opinion that no inconsistency exists between the exemption provisions contained in Senate Bill No. 53 and House Bill No. 62, both passed by the 67th General Assembly, and both becoming effective upon the same date, to-wit, August 29th, 1953.

We are further of the opinion that the qualification expressed in Senate Bill No. 53 in the following language "which at the time of the death of the decedent" must be construed to include only deaths occurring subsequent to the effective date of the acts.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON  
Attorney General

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