

INHERITANCE TAX: Procedure.

March 11, 1944

3/20



Mr. Roy B. Thomson
Ryland, Stinson, Mag & Thomson
Attorneys at Law
First National Bank Building
Kansas City 6, Missouri

Dear Sir:

We are in receipt of your letter of February 1, 1944, in which you request an opinion from this department, as follows:

"I write for procedural information regarding Missouri inheritance taxes as follows: Section 583, Revised Statutes of Missouri, 1939, provides for the giving of notice before delivering certain assets to the administrator or executor. I would like to know:

- "1. Is this notice or a waiver of such notice required in cases of a nonresident decedent in view of the provisions of the Act of 1941 (Acts 1941, page 281) exempting intangibles belonging to a nonresident decedent?
- "2. Is it necessary for an executor or an administrator to give such notice or procure a waiver before either (a) selling intangibles belonging to the estate pursuant to the order of the Probate Court, or (b) distributing intangibles to the beneficiaries under order of Probate Court, or (c) is the notice or the waiver affected by the fact that the inheritance tax has or has not been assessed or has or has not been paid?
- "3. I have before me for consideration and action a case where certain intangibles were

held by the guardian of an insane person. After the death of the ward (a) is it necessary to procure a waiver before delivering the assets to the administrator or executor, and (b) must the executor in such case give notice or procure waiver when either selling or distributing the intangibles?

"I should greatly appreciate advice from you regarding the above matters."

Section 583, R. S. Mo. 1939, reads as follows, in so far as pertinent:

" * * * No * * * person * * * having * * * assets belonging to or standing in the name of a decedent who is a resident or non-resident, * * * shall deliver or transfer the same to the executor, administrator, or legal representatives * * * unless notice of the time and place of such intended delivery or transfer be served upon the state treasurer and attorney-general at least ten days prior to said delivery or transfer; nor shall any * * * person * * * deliver * * * assets belonging to * * * decedent * * * without retaining a sufficient portion or amount thereof to pay any tax * * * which may thereafter be assessed on account of the delivery * * * unless the state treasurer and the attorney-general consent thereto in writing. And it shall be lawful for the state treasurer, together with the attorney-general, * * * to examine said securities * * * at the time of such delivery * * *. Failure to serve such notice or failure to allow such examination or failure to retain a sufficient portion * * * to pay such tax * * * shall render said * * * person * * * liable to the payment of the amount of the tax * * *."

1. This section requires notice by anyone in possession of assets belonging to an estate, whether deceased was a resi-

dent or nonresident. And this is so by the plain words of the statute.

2 (a) & (b). There are two waivers to be obtained. The first waiver is a conditional waiver, conditioned upon the making of an inventory by the executor, including all intangibles held and being transferred by the trust company, and furnishing the State Treasurer and the Attorney General with a copy of this inventory. The second waiver is a waiver issued by the State Treasurer upon the sale, for example, of stock certificates, directed to the company issuing the stock, which waiver, in effect, relieves the stock issuing company of any liability for payment of the inheritance tax due on the stock certificates. So it would be necessary to have a waiver of the latter type before the intangibles might be sold by order of the probate court or before they are distributed to the beneficiaries under court order.

2 (c). In the event that the correct amount of inheritance tax has been paid to the State Treasurer, it would still be necessary to obtain a waiver in order that the transfer agent of the corporation would be protected from the penalties provided in Section 583, supra, and if the tax has been paid, then the executor would in all likelihood have such waiver for every intangible in the estate. If the inheritance tax has not been assessed and has not been paid, then the statutes must be complied with and notice and both types of waivers obtained before the estate can properly be closed.

3. The proper procedure in each instance here is to give notice and procure waivers unless it is apparent, in the opinion of the court, that the estate is clearly not subject to the tax. In this event, the court so orders, and Section 583, supra, does not apply. Section 586, R. S. Mo. 1939, provides another case where notice and waiver is unnecessary, that is, in estates consisting of personal property only, in which event the prosecuting attorney may, with the consent of the State Treasurer, agree upon the amount with the parties liable to pay the tax, and if the court approves the agreement, then judgment shall be entered accordingly. In this case no appraiser is appointed.

Mr. Roy B. Thomson

-4-

March 11, 1944

Since these questions are all procedural, we are simply stating the generally accepted procedure and have not attempted to cite cases and authorities to support each statement made herein.

Respectfully submitted

RALPH C. LASHLY
Assistant Attorney General

APPROVED: ,

ROY MOKITTRICK
Attorney General

RCL:HR