

INHERITANCE TAX: Proceeds of pension under the provisions of the
EXEMPTIONS : Federal Retirement Act are exempt from
inheritance tax.

June 10, 1948



Honorable C. H. Gillilan,
Assistant Supervisor
Inheritance Tax Division
Department of Revenue,
Jefferson City, Missouri

Dear Sir:

We have your letter of May 6, 1948, in which you request an opinion of this department. Your letter is as follows:

"I am enclosing self-explanatory letter this day received from Mr. James R. Anderson, Inheritance Tax Appraiser in the above estate.

"You will note the payment to decedent's estate was in effect merely a refund of the amount paid into the retirement fund by the decedent and represents no additional benefits accruing under the Retirement Act. It appears the decedent made a lump sum payment of the amount necessary to qualify himself for full retirement benefits under the provisions of the Retirement Act.

"There has been expressed various opinions as to the practical application of the provisions of Section 571, R.S. 1939 as amended Laws of Missouri, 1941, pages 280-281, relative to various forms of retirement benefits. My own view has been that the purpose of the amendment was to benefit employees, or the families of employees, and that all should stand on an equal footing, as far as tax exemption is concerned, regardless of the method and time of payment of the necessary assessments.

"For our guidance in this matter, we shall appreciate an official opinion relative to the general application of the aforesaid amended section.

"Trusting we may have this opinion at an early date, I remain,".

Section 571, R.S.A.Mo. 1939, contains the following proviso:

"* * *and provided further that nothing herein shall be construed as imposing a tax upon any transfer as defined in this act, on a trust or on any distributee thereof, created as a part of a stock bonus plan, pension plan, disability or death benefit plan, or profit sharing plan for the exclusive benefit of employees to which contributions are made by an employer or employees, or both, for the purpose of distributing, in accordance with such plans, the earnings or principal, or both the earnings and principal, of the trust fund."

The specific question for consideration in your inquiry is whether or not the subjection of the \$2745.37, payment from the Civil Service Retirement Fund to Mr. Cochran's estate, to an inheritance tax would amount to the imposing of a tax upon a distributee of a trust, which trust was created as a part of a pension plan or a disability plan for the exclusive benefit of employees, which plan was contributed to by either the employee or the employer, or by both. In answer to this question, we suggest the fact that the plan set up by the Federal Civil Service Retirement Act, Title 5, Chapter 14, U.S.C.A., and more particularly Title 5, Section 719, is a plan whereby the employee contributes a portion of his salary to the Retirement Fund and the fund is used for paying annuities to the employee from and after his retirement, Title 5, Section 691, U.S.C.A., and for paying annuities in case of disability. Title 5, Section 724, U.S.C.A.

Although the aforesaid Federal Statute does not specifically apply the term "trustee" to the Secretary of the Treasury and the Commissioner of Pensions, the officers charged with the duty of administering this retirement fund, they or the U.S. Government are trustees by operation of law, because they administer this fund for the purpose of paying the annuities. The persons to whom these annuities are paid are distributees of the trust.

Title 5, Section 693-1 brought members of Congress within the provisions of the Retirement Act, above discussed. Mr. Cochran, according to the correspondence before us, availed himself of the benefit of the plan by contributing the sum required to render him eligible for the disability annuity, which sum amounts to the figure of \$2745.37 above set forth. However, Mr. Cochran died before he received any payments under the annuity plan.

Title 5, Section 724, Subdivision C, provides as follows:

"In case an annuitant shall die without having received any annuities purchased by the employee's contributions, as provided in (2) of Section 698 of this title, an amount equal to the total amount of his credit at time of retirement, the amount remaining to his credit and any accrued annuity shall be paid upon the establishment of a valid claim therefor in the following order of precedence:

"1. To the beneficiary or beneficiaries designated in writing by such annuitant and recorded on his individual account;

"2. If there be no such beneficiaries, to the duly appointed executor or administrator of the estate of such annuitant;

"3. If there be no such beneficiary or executor or administrator, payment may be made, after the expiration of thirty days from the date of the death of the annuitant, to such person or persons as may appear in the judgment of the Civil Service Commission to be legally entitled thereto, and such payment shall be a bar to recovery by any other person."

It was undoubtedly under the authority of the last-quoted section that the Retirement Fund paid the above-mentioned sum to Mr. Cochran's estate. We are of the opinion that the executor or administrator of the estate of a deceased person when paid either the difference between what the deceased contributed to the Retirement Fund and the total annuity received by the deceased in his lifetime, or, in case he had received no annuity in his lifetime, the full amount that he had contributed receives that payment by reason of the provision of Title 5, Section 724, supra, to the effect that it shall be paid to the executor or administrator, and that such executor or administrator is therefore a distributee of the Retirement Fund in his representative capacity, within the meaning of the provision of Section 571, R.S.A. Mo. 1939, exempting distributees of a trust like the one set up by the Federal Retirement System from the inheritance tax. We believe this for the reason that the following words of the inheritance tax Act "* * * or any distributee thereof" are unqualified and that the comprehensiveness of the word "distributee" is enlarged by the use of the word "any".

We are of the further opinion that since the executor or administrator acts only in a representative capacity, representing all of the persons having an interest in the estate, the heirs and devisees are also distributees of said trust fund and come within the meaning of the comprehensive term "any distributee" used in the inheritance tax section above quoted, and are exempt from the inheritance tax insofar as their respective distributive shares of said payment from said fund are concerned.

CONCLUSION

It is, therefore, our opinion that although Mr. Cochran never received a payment on the annuity, and although the sum above set forth, paid by the Retirement Fund to his estate since his death, represented the legal equivalent of his contribution to the fund, nevertheless it constituted a portion of a trust fund operated for the purpose of paying annuities to retired and disabled Federal employees, and was paid to his estate according to the specific provision of the statute which constitutes a part of a comprehensive plan for payment of annuities to such employees, and that therefore his executor or administrator, and also his heirs or devisees, are distributees of a trust, which trust was created for the purposes of effectuating a pension plan for the exclusive benefit of Federal employees within the meaning of the inheritance tax exemption provision above quoted from Sec. 571, R.S.A. Mo. 1939, and that, therefore, the sum of \$2745.37 paid by the Civil Service Retirement Fund to Mr. Cochran's estate is not subject to the inheritance tax.

Respectfully submitted,

SAMUEL M. WATSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney-General