

INHERITANCE TAX: A conveyance of real estate without an adequate
CONVEYANCES: and full consideration by which the grantor or
transferor retains or secures a life estate with
remainder in fee simple to the children of the
grantor is taxable upon his death as property
subject to the Missouri inheritance tax.

December 7, 1950



Mr. James D. Clemens
Prosecuting Attorney
Bowling Green, Missouri

Dear Sir:

This will acknowledge receipt of your request for an
official opinion of this department which request is as follows:

"I seek your opinion as to whether an
Inheritance Tax is due the State of Missouri
under the following circumstances. Some
18 years ago the decedent without consideration,
conveyed his land to a straw party, who recon-
veyed to the decedent for his natural life,
with remainder in fee simple to the four
children of the decedent. The decedent's
estate is now in the process of administration
and consists only of personal property."

Section 571, R. S. Mo. 1939, was amended twice by the 61st
General Assembly of 1941. We copy herewith said Section 571 as
amended by Laws Mo. 1931, page 130; Laws 1941, page 281:

"A tax shall be and is hereby imposed upon
the transfer of any property, real, personal
or mixed, or any interest therein or income
therefrom, in trust or otherwise, to persons
institutions, associations, or corporation, not
hereinafter exempted, in the following cases:
When the transfer is by will or by the intestate
laws of this state from any person dying possessed
of the property while a resident of the state.
When the transfer is by will, or intestate law
of property within the state or within the juris-
diction of the state and decedent was a non-
resident of the state at the time of his death.

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When the transfer is made by a resident or by a non-resident when such non-resident's property is within this state or within its jurisdiction, by deed, grant, bargain, sale or gift made in contemplation of the death of grantor, vendor or donor, or intending to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift made within two years prior to the death of grantor, vendor or donor, of a material part of his estate or in the nature of a final disposition or distribution thereof without an adequate valuable consideration shall be construed to have been made in contemplation of death within the meaning of this section. When the transfer is made by a resident or by a non-resident when such non-resident's property is within this state or within its jurisdiction, in trust or otherwise and the transferor has retained for his life or any period not ending before his death, (1) the possession or enjoyment of or the income from the property, or (2) the right to designate the persons who shall possess or enjoy the property or income therefrom, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Such tax shall be imposed when any person, association, institution or corporation actually comes into the possession and enjoyment of the property, interest therein or income therefrom, whether the transfer thereof is made before or after the passage of this law: Provided, that property which is actually vested in such persons or corporations before this law takes effect shall not be subject to the tax, and provided further that nothing herein contained shall be construed as imposing a tax upon any transfer as defined in this Act, of intangibles, however used or held, whether in trust or otherwise, by a person, or by reason of the death of a person, who was not a resident of this state at the time of his death." (underscoring ours.)

We have requested additional information from you in order to ascertain whether or not the deeds were executed and delivered before or after the effective date of the amendment of this section by Laws Mo. 1939, page 130, which added the sentence underscored above beginning with the words, "when the transfer" and ending with the words "or money's worth."

Mr. James D. Clemens

Your second letter dated December 2, 1950, reads as follows:

"In response to your letter of November 29 requesting additional information in connection with the question of Inheritance tax, I have the following information to submit:

"The deed from the decedent to the straw party was dated November 29, 1931, and was recorded December 2, 1931. The deed from the straw party to the decedent was executed on December 1, 1931 and was recorded on December 2, 1931. There is no indication as to the actual time of delivery other than it may be assumed delivery was some time between the dates of execution and the dates of recording."

Laws Missouri, 1931, page 130, that amended this section quoted above, was approved May 1, 1931, and became effective September 14, 1931. Therefore, the amendment of Section 571, which we have underscored, was in effect when the deeds were executed and delivered by the parties.

The property is taxable by virtue of said amendment to said section 571.

The Supreme Court of Missouri in the case of Friedman v. Jamison (1947) 202 S.W.2d 900, 1.c. 903, has recently held that:

"* * *The inheritance tax of Missouri is a tax on the privilege of receiving or taking property rather than on the transfer or transmission of property at death. The incidence of the tax falls upon the recipient of the property. In re McKinney's Estate, 351 Mo. 718, 173 S.W.2d. 898; In re Rosing's Estate, supra."

CONCLUSION

It is the conclusion of this department that a conveyance of real estate, without an adequate and full consideration, by which the grantor or transferor retains or secures a life estate with remainder in fee simple to the children of the grantor is taxable upon his death as property subject to the Missouri Inheritance Tax.

Respectfully submitted,

APPROVED:

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