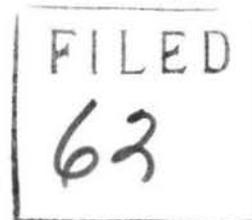


TAXATION (INHERITANCE): The bequests to Father Edward Roche, Father Gregory Wooler and Sister Reginald Wollenshlager provided in Article III, (3), (4) and (5), respectively, of the Last Will and Testament of Bess E. Wollenshlager, deceased, are not exempt from Missouri Inheritance Tax by virtue of Section 145.100, RSMo 1969. They constitute taxable transfers under Section 145.020, RSMo 1969.

April 9, 1971

OPINION NO. 62

Honorable James E. Schaffner
Director of Revenue
Department of Revenue
Jefferson Building
Jefferson City, Missouri 65101



Dear Mr. Schaffner:

This official opinion is issued pursuant to the request contained in your letter concerning the taxability of bequests to members of certain religious orders under the provisions of the Last Will and Testament of Bess E. Wollenshlager, deceased.

The facts, as outlined in your letter, and the question raised are as follows:

"Bequests in a decedent's will pass directly to individuals belonging to a religious order. Said bequests are not designated by will to pass to or for the use of the religious order as required by Section 145.100. The attorney for the estate contends beneficiaries of the religious orders are required to take a vow of poverty and cannot be the recipients of such bequests, resulting in a gift by the beneficiaries unto the religious order.

"Are said bequests tax exempt under Section 145.100 or would the transfers be deemed a transfer within the meaning of Section 145.040, taxable at the same rate and subject to the same duties and liabilities as any other form of transfer provided in this chapter?"

Honorable James E. Schaffner

For purposes of this opinion we are assuming that reference to Section 145.040 is in error and that such reference should be Section 145.020.

An examination of decedent's Last Will and Testament discloses direct specific bequests to certain religious orders and charities as well as to certain individuals. Article III, in pertinent part, provides as follows:

"I give, devise and bequeath to each of the following the amount noted:

- (1) The sum of One Thousand Dollars (\$1,000.00) to the Maryknoll Fathers (American Mission Society), Maryknoll, New York;
- (2) The sum of Two Thousand Dollars (\$2,000.00) to the Little Sisters of the Poor, 3400 South Grand Avenue, St. Louis, Missouri;
- (3) The sum of One Thousand Dollars (\$1,000.00) to Father Edward Roche, Vincentian Foreign Mission Society, 1849 Cass Avenue, St. Louis, Missouri;
- (4) The sum of Five Thousand Dollars (\$5,000.00) to Father Gregory Wooler, O.F.M., Three Rivers, California, my brother-in-law;
- (5) The sum of One Hundred Dollars (\$100.00) to Sister Reginald Wollenshlager, O.F.S., my sister-in-law;"

The question relates to the taxability of the bequests made by Article III (3), (4) and (5), above.

Section 145.020, RSMo 1969, provides as follows:

"A tax 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 corporations, not herein exempted, in the following cases:

- (1) When the transfer, by will or the intestate laws is from any person who is a resident of this state at the time of his death."

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The decedent, Bess E. Wollenshlager, was a resident of the State of Missouri at the time of her death. Her will was admitted for probate in the Probate Court of St. Louis County, Missouri.

Section 145.100, RSMo 1969, provides as follows:

"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."

The contention has been made that the bequests provided by Article III, (3), (4) and (5), of decedent's will are not taxable because these individuals are required to take a vow of poverty and cannot be the recipients of the bequests, resulting in a gift by the beneficiaries to the religious orders.

Assuming this is true, if the beneficiaries are prevented by law from accepting the bequests, it would cause such legacies to lapse and it is assumed they would then become a part of decedent's residuary estate and be disposed of accordingly. Under these circumstances the charity would not take the bequests and they would be taxable to the residuary beneficiaries. If, however, the bequests are considered as being given by the individual legatees to the religious orders, then it must be concluded that these individuals had to take the bequests, if only momentarily, in order to give them away. This taking by them is the taxable event.

Aside from this, the state is not chargeable with knowledge of or duty to supervise the private contracts or obligations between religious orders and their members. Also, the language used in decedent's will is clear and unambiguous in directing the gifts to the individuals rather than the religious orders, as was done in Article III (1) and (2). In fact, the will indicates that Father Gregory Wooler and Sister Reginald Wollenshlager were the brother-in-law and sister-in-law of the decedent, thus indicating a natural object of her bounty. If these persons were to take in trust for the religious orders, of which they are members, the will would have so provided.

Our view is that the Director of Revenue cannot assume that it was testator's intent to make the bequests to the charities rather

Honorable James E. Schaffner

than the individuals. This is particularly true considering the plain and unequivocal language used in the will. Accordingly, a tax is imposed upon the bequests by Section 145.020, RSMo 1969, and the exemption contained in Section 145.100 does not apply under the circumstances here involved.

CONCLUSION

It is the opinion of this office that the bequests to Father Edward Roche, Father Gregory Wooler and Sister Reginald Wollenshlager provided in Article III, (3), (4) and (5) respectively, of the Last Will and Testament of Bess E. Wollenshlager, deceased, are not exempt from Missouri Inheritance Tax by virtue of Section 145.100, RSMo 1969. They constitute taxable transfers under Section 145.020, RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John E. Park.

Very truly yours,



JOHN C. DANFORTH
Attorney General