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INHERITANCE TAX: when by reason of death of one co-owner of an estate by the entirety in either real or personal property, the survivor acquires the whole estate therein, the property is not subject to assessment of inheritance tax.

When by reason of the death of one co-owner of property, real or personal, held by two or more persons as joint tenants, acquires the interest of the deceased by reason of surviving, such property is not subject to assessment of inheritance tax.

January 21, 1948

Honorable O. A. Kamp
Judge of the Probate Court
Montgomery City, Missouri

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Dear Sir:

We have your letter of November 7, 1947, in which you request an opinion of this department. Your letter is as follows:

"I would like to have your opinion in answer to the following questions:

"1. Should property, real estate, stocks and bonds, held jointly by husband and wife, as an estate by the entirety, be assessed against the survivor for Missouri Inheritance Tax?

"2. Should property, real estate, stocks and bonds, held jointly by two persons as joint tenants with right of survivorship and not as tenants in common, be appraised and assessed against the survivor for Missouri Inheritance Tax?

"I will thank you for an opinion from your office on these questions."

In case of an estate by the entirety in either real or personal property, the husband and wife constitute a legal entity, which entity owns the property involved as one person, and in case either of them dies, the survivor acquires the whole title, not by devise or inheritance under the intestate law, but by reason of the fact that even before the death of the co-tenant, the person, who afterwards turned out to be the survivor, owned the whole property subject only to the right, title and interest of the co-tenant, and that the extinguishment of that right, title and interest by the death of the co-tenant left the survivor as the owner of the whole property not subject to any other right, title or interest, or, in other words, left the survivor the sole owner.

We believe that this proposition is substantiated by the analysis of an estate by the entirety in the following quotation from *In Re Maguire's Estate*, 296 N.Y. Supp. 528, 1.c. 531:

"In an estate by the entirety the husband and wife are each seized of the entire estate, per tout et non per my. Each owns, not an undivided part, but the whole estate. The survivor, upon the death of the other, does not take a new acquisition, but holds under the original grant or devise, the estate being merely freed from participation by the other. There is no succession in or transfer of title." * * *"

A further exposition of the character of an estate by the entirety is set forth in the following quotation from the opinion of the Supreme Court of Missouri in *Wimbush v. Danford*, 292 Mo. 588, 1.c. 606:

"The character of estate known as an estate by the entirety has long been firmly entrenched in the law of this State. * * * * With the adoption of the common-law doctrine, there was necessarily adopted the attributes of the estate, viz: That neither the husband or wife was seized of moieties, but of entireties, each being the owner of the entire estate; that if either died, the estate continued in the survivor; and that upon the death of both, the heirs of the last surviving would take to the exclusion of the heirs of the first deceased. (Tiedeman on Real Property (3 Ed.), sec. 181.) In *Wilson v. Frost*, 186 Mo. 1.c. 319, VALLIANT, J., in speaking of this estate said: 'In an estate of the entirety, the husband and the wife during their joint lives each owns, not a part, or a separate or a separable interest, but the whole and, therefore, the death of one leaves the other still holding the whole title as before, with no one to share it.' * * * *"

In case of a joint tenancy involving two or more owners with a right of survivorship, the surviving owner, or owners, after the death of one of the owners, does not acquire under devise or under the intestate laws, but rather by virtue of the provisions of the original instrument which created the joint tenancy.

Section 571, Mo. R.S.A., limits the assessment of the inheritance tax to property transferred by will or under the intestate laws, and to property transferred by deed, grant, bargain, sale or gift made by the grantor, vendor or donor in contemplation of death, or a grant intended to become effective only after the death of the grantor, and provides that "every transfer by deed, grant, bargain, sale or gift made within two years prior to the death of the grantor, vendor or donor, of a material part of his estate * * * shall be construed to have been made in contemplation of death * * *."

CONCLUSION

In view, therefore, of the specific provisions of the inheritance tax law above referred to and the above outlined characteristics of estates by the entirety and of joint tenancies, the enhancement of the estate of the survivor in property held either by the entirety or under a joint tenancy flowing from the termination of the estate of a co-tenant therein by reason of said co-tenant's death is not subject to an inheritance tax assessment, unless the facts are that the transaction bringing about the creation of the estate by the entirety or the joint tenancy involved the transfer by deed, grant, bargain, sale or gift of a material part of the estate of the grantor or donor without an adequate valuable consideration, which said deed, grant, bargain, sale or gift was accomplished within two years prior to the death of the grantor or donor, or unless, even if accomplished more than two years prior to the death of the grantor or donor so creating said estate by the entirety or joint tenancy, it is nevertheless apparent from the state of facts surrounding the transaction that the creator of said estate created it in contemplation of death and intended it as a method of distribution of his property after his death, under either of which circumstances, the right of the State of Missouri to assess and collect an inheritance tax against the property vested in the surviving tenant might be established.

Respectfully submitted,

APPROVED:

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