

Inheritance Tax, Upon Increase of Property Between the Date of Death and Date of Distribution. Estates of Deceased Person, Subject to Inheritance Tax Upon Increase.

Estates of deceased persons are subject to the inheritance tax upon the increase of the estate between the date of death and the date of the decree of distribution upon the clear market value, on the basis provided by Section 7724 of the Revised Codes.

April 25th, 1911.

Mr. Julian A. Knight,
County Attorney,
Virginia City, Montana.

Dear Sir:

I am in receipt of your letter of April 19th, requesting my opinion as to whether or not the estate of Henry Elling, who died in Madison county, November 14th, 1911, and which has not as yet been finally distributed, is subject to an inheritance tax upon the increase of the property of the estate arising between the date of the death and the date of distribution; and also enquiring whether the fact that the estate descends to direct heirs would effect the result.

In reply I will say that Section 7724 of the Revised Codes, after designating what property is subject to the tax and the amount which shall be deducted from the distributive shares of the individual therein mentioned, contains the following proviso:

"That said tax shall be levied and collected upon the increase of all property arising between the date of death and the date of the decree of distribution."

This clause of Section 7724 was directly before the supreme court of this state in the case of *in-re Tuohy's Estate*, 35 Mont, p. 431, and in that case the court held, that while, speaking generally, the tax is due and payable as of the date of the death of the deceased, this clause contemplates that there will be necessary delay in the final distribution of the estate, and in view of this fact, and the further fact that there

may be increase in the assets to be distributed, that an additional tax shall be paid upon the increase.

The court in that case held that the increase, as provided in the clause referred to applies to the entire section, and it makes no difference, so far as the application of the tax is concerned, who the distributees may be, the increase of the estate between the date of death and the date of the decree of distribution is to be taxed upon its clear market value upon the basis provided by Sec. 7724.

I have not been able to find any other statute identical with ours, and, therefore, am not at this time able to cite you to additional authorities. There are many cases which hold under the particular wording of the statute construed, that the tax is to be determined by the value of the property at the time of the death of he deceased, but that is not the construction placed upon our statute by the supreme court of this state, and if any meaning whatever is to be given to the clause in question, it must be held that the increase is subject to tax. I am convinced, therefore, that you are correct in your position, and that the estate is subject to be taxed upon the increase.

Very truly yours,

ALBERT J. GALEN,

Attorney General.