

Inheritance Tax — Exemption Allowed Nephews and Nieces.

Chapter 14 of the Laws of the Extraordinary Session of 1921 construed to allow exemption of \$500 to each of the persons mentioned in Subdivision 2 of Section 2, and that in the case of a deceased brother or sister, leaving more than one descendant to whom property is distributed, each of such descendants is entitled to the exemption of \$500.

State Board of Equalization,
Helena, Montana.

Gentlemen:

You have requested my opinion as to whether the exemption provided for by Subdivision 3 of Section 4 of Chapter 14 of the Extraordinary Session Laws of 1921 applies to each of the descendants of a deceased brother or sister of the deceased, or whether the provisions simply intend to allow but one exemption for the estate descending to a deceased brother or sister, regardless of the number of descendants of said brother or sister.

Subdivision 2 of Section 2 of Chapter 14 of the Extraordinary Session Laws of 1921 provides as follows:

“(2) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or widow of a son or the husband of a daughter of the decedent, at the rate of two per cent (2%) of the clear value of such interest in such property.”

Subdivision 3 of Section 4 of this Chapter provides as follows:

“(3) Property of the clear value of Five Hundred Dollars (\$500.00), transferred to each of the persons described in the second subdivision of Section 2 shall be exempt.”

These provisions are identical with the provisions of the Wisconsin statute and also of the California statute, with the exception that in California the exemption is made \$2,000. The theory of the exemption is to avoid the burdening of small estates and to permit a necessary minimum to each heir or beneficiary as a subsistence fund.

The Supreme Court of California in the case of *In re Miller's Estate*, 195 Pac. 413, in discussing their statute, which, in the respects above referred to is identical with our statute, said:

"The California tax is a succession tax, a tax on the beneficial interest of each beneficiary or heir. If there be more than one beneficiary or heir there is a separate tax on the interest of each, computed on its net clear value, and charge-against it."

In the case of *In re Clark's Estate*, 195 Pac. 370, the Supreme Court of Oregon held that the inheritance tax under the Oregon laws was imposed on the estate passing to each legatee or beneficiary.

Our Supreme Court in the case of *State ex rel. Gilmore v. District Court*, 45 Mont. 335, held that under Section 7724, Revised Codes of 1907, "the basis for computation of the tax was the clear value of the whole estate, and not that of each individual, legacy or distributive share." But by the amendment of 1921, the Legislature evidently intended to change the rule and to fix the amount of the inheritance tax according to the amount actually distributed to each heir or beneficiary, less the exemptions provided for in the statute.

Under Subdivision 3 of Section 4, the exemption is allowed "to each of the persons described in the second subdivision of Section 2."

It is my opinion, therefore, that the Legislature intended to allow the exemption of \$500 to each of the persons mentioned in Subdivision 2 of Section 2 of Chapter 14 of the Extraordinary Laws of 1921, and that, in the case of a deceased brother or sister leaving more than one descendant to whom property is distributed, each of such descendants is entitled to the exemption of \$500.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.