

Inheritance Tax — Credit — Children — Deductions — Widow.

Inheritance taxes due from a child on property coming from the widow but which she obtained from the husband and on which she paid an inheritance tax, are entitled to be credited the amount of the inheritance tax paid by the widow on such property.

April 13, 1928.

State Board of Equalization,
Helena, Montana.

Gentlemen:

You have called my attention to subdivision 2 of section 2, chapter 65, laws of 1923, which reads as follows:

“A child of the decedent shall be entitled to credit for so much of the tax paid by the widow as applied to any property which shall thereafter be transferred by or from such widow to any such child; provided the widow does not survive said decedent to exceed ten years.”

You desire to know whether the credit referred to in the above quoted statute should be applied to the tax due from the child, or whether it should be applied to the exemption allowed to the child. The identical clause was before the supreme court of Wisconsin in *re Clark's Will*, 196 N. W. 839. In that case the particular question you have asked was not considered by the court, but from the language used by the court in that case it is apparent that the court was of the opinion that the credit should be applied to the tax rather than to the exemption. This, I believe, is apparent from the following language used by the court in that case:

“Subsequent to the husband's death, the Legislature doubled the rate, but, sensing the fact that the more burdensome rate would deter a testator from subjecting his estate to a double inheritance tax before reaching his children, and for the purpose of encouraging a generous treatment of the widow, provided that all inheritance taxes paid by the widow should be credited on the taxes assessed against the children, thereby relieving the estate from double taxation in case it passed through the widow before ultimately reaching the children.”

It is therefore my opinion that the credit provided for in subdivision 2 of section 4, chapter 65, laws of 1923, was intended by the legislature to be deducted from the tax otherwise due from the child, rather than to be added to the exemption provided for to the child, and that it was not intended that the credit should be deducted from the value of the estate passing to the child.

Very truly yours,

L. A. FOOT,
Attorney General.