Tax, Inheritance, Basis of Levy. Inheritance Tax, Levied on Amount Received.

The inheritance tax is based on the value of the property received by each heir, etc., and not upon the total value of the estate of the deceased.

Helena, Montana, Aug. 1, 1907.

Hon. T. E. Collins,
State Examiner,
Helena, Montana.

Dear Sir:—

Your letter of July 12th., requesting an opinion of this office upon the following question, received:

> "Does the seven thousand, five hundred dollar exemption mentioned in Section 1 of House Bill No. 128, Laws of 1897, page 83, apply to the entire personal estate which may be distributed among several heirs, or to the separate portion thereof which each heir receives; in other words, if an estate of ten thousand dollars, personal property, is to be divided among two or more direct heirs, would there be a tax of one per cent, on ten thousand dollars, or would it be exempted because the amount going to each heir was less than seven thousand, five hundred dollars?"

The part of section 1. of said law which is necessary to be construed in answering the above question, reads as follows:

> "After the passage of this act all property which shall pass by will or by intestate laws of this State, from any person who may die seized or vested of the same * * * and by reason whereof any person or corporation shall become beneficially entitled, in possession or expectancy, to any such property, or to the income thereof, other than to or for the use of his or her father, mother * * * shall be and is subject to the tax of five dollars on every hundred dollars of the market value of such proprety * * * . When the beneficial interests to any personal property or income therefrom shall pass to or for the use of any father, mother, etc. * * * the rate of tax shall be one dollar on every hundred dollars of the clear market value of such property * * *; provided, that an estate which may be valued at a less sum than Seventy-five Hundred Dillars shall not be subject to any tax or duty."

Chapter 483 of the Session Laws of New York of 1885 is almost identical with the law quoted above; in fact, in relation to the question now under consideration, the language in both laws is the same. Section 1 of said Chapter 483 reads in part as follows:

> "After the passage of this Act all property which shall pass by will or by intestate law, of this State from any person who may die siezed or possessed of the same, etc. by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectancy to any property or the income thereof, other than to or for the use of father, mother, etc. * * * shall be and is subject to a tax of five dollars on every hundred dollars of the clear market value of such property * * * provided, that an estate which may be valued at a less sum than Five Hundred Dollars shall not be subject to said duty or tax."

The above section of the New York law was construed by the Supreme Court of that State in the following cases:

In the Matter of Cager, 111 N. Y. 344.

In the Matter of Howe, 112 N. Y. 100.

In the latter case the court said:

> "The remaining inquiry is as to its meaning as respects the $500. limitation. We think that applies to the portion of property passing to the legatee or divisee, and not to the whole estate left by the testatrix. The tax is not imposed upon the estate of which she was seized or possessed, but only upon so much of it as passes to certain persons; not all persons or any person; and although the executor is required to pay the tax, he is to deduct it from the particular legacy, and 'cannot "deliver or be compelled to deliver any specific legacy, or property subject to tax to any person until he shall have collected the tax thereon.' There are many other provisions of the act requiring the same construction, all tending to show that in the matter of taxation it is simply the "estate" or share of the beneficiary acquired through the will or the state of distributions, which is to be valued and the duty estimated according to its value."

The above decisions were rendered in 1888 and 1889. The law of this State was enacted in 1897, and substantially adopted the New York law, and under the well established rule of construction it is presumed that our legislature intended to adopt the construction placed upon such law by the Supreme Court of New York.

In 1892 the State of New York amended the above law (Laws of 1892 page 399) by inserting the following:

> "The words 'estate' and 'property', as used in this act, shall be taken to mean the property or interest therein of the testator, intestate, grantor, bargainer, or vendor, passing or transferred to those not specifically exempted from the provisions of this act, and not as to the property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees or vendees."

After this amendment, the Supreme Court of New York held that by such amendment the law as formerly construed by that court was changed, and that the value of the entire estate must be the basis for determining the tax and not the share going to each heir, legatee, etc.

See: In the Matter of Hoffman, 143 N. Y. 327.

This latter case, however, does not question the correctness of the former decisions of the same court in construing the old laws from which the Montana law was adopted.

The Supreme Courts of Michigan and Wisconsin have construed the inheritance tax laws of their respective states:

See Stellwagen vs. Durfee (Mich.) 89 N. W. 728.

Black vs. State of Wisconsin, 89 N. W. 522.

The states of Michigan and Wisconsin both adopted the New York law as amended in 1892, and the amendment of the New York law of 1892, quoted above, was adopted verbatim in the laws of both of these states. In the Michigan case a majority of the court in construing such law seriously doubted the constitutionality of the section providing that the tax should be based upon the total value of the estate, but held that inasmuch as they had upheld the constitutionality of the law in a prior decision in which this particular question, however, had not been raised or discussed, that they would adopt the construction placed upon the law by the Supreme Court of New York and sustain it. Judge Grant, however rendered a strong dissenting opinion in which he held that such section made the entire law unconstitutional.

In the Wisconsin case a unanimous court held that the section borrowed from the State of New York which provides that a tax should be based upon the value of the entire estate instead upon the share received by each heir, legatee, etc. made the entire act unconstitutional.

The Supreme Court of Pennsylvania in Howell's Estate, 147 Pa. 164, held that the tax must be based upon the entire estate instead of on the share received by each heir, legatee, etc. But it will be noted that their statutes instead of saying "all proprety which shall pass by will" etc. says "all estates of every kind passing from any person either by will, etc. other than to or for the use of father, mother, etc., shall be and are hereby made subject to a tax of five dollars on every one hundred dollars of the clear value of such estate or estates. In that case the word "Estates" in the first part of the Section had an important bearing in the determination of the case. And by reason of such use of the word "Estates" the Pennsylvania court distinguished the earlier cases from New York.

In the case of Knowlton vs. Moore, 178, U. S. 41, the Supreme Court construed the Act of Congress of June 13, 1898. Section 29 of this Act reads in part as follows:

> "That any person or persons having in charge or trust as administrators, executors or trustees, any legacies or distributive shares arising from the personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of $10,000 in actual value, passing, after the passage of

this act, from any person possessed of such property, either by will or by intestate laws of any State or Territory, or any personal property or interest therein, transferrtd by deed, grant bargain, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax, to be paid to the United States as follows, that is to say: Where the whole amount of said personal property shall exceed in value of $10,000, and shall not exceed in value the sum of $25,000, the tax shall be—"

Justice White in construing this law said:

"It is plain, however, that the statute must mean one of three things:

1. The tax which it imposes is on the passing of the whole amount of the personal estate, with a progressive rate depending upon the sum of the whole personal estate; or,

2. The tax which it levies is placed on the passing of legacies or distributive shares of personal property at a progressive rate, the amount of such rate being determined not by the separate sum of each legacy or distributive share, but by the volume of the whole personal estate. This is the mode in which the tax was computed by the assessor, and which was sustained by the court below; or,

3. The tax is on the passing of legacies or distributive shares of personalty, with a progressive rate on each, separately determined by the sum of each of such legacies or distributive shares." * * *.

By elimination, the process of reasoning which we have resorted to in order to demonstrate the unsoundness of the two first contentions as to the meaning of the statute renders it unnecessary to say anything in elaboration of the significance of the statute as embodied in the third proposition, which is, that the tax is on the legacies and distributive shares, the rate being primarily determined by the classifications and being progressively increased according to the amount of the legacies or shares. Its correctness is at once apparent when the other views are disposed of. As the 'whole amount of such personal property as aforesaid' relates to the sum of each legacy or distributive share considered separately, it follows that all legacies not exceeding ten thousand dollars are not taxed."

In People vs. Koenig (Col) 85 Pac. 1129, the Supreme Court of Colorado construed an inheritance tax law substantially the same as that of this State, and said:

"From the foregoing summary of the section, it is apparent that thereby the tax or duty imposed is upon the receipt of some beneficial interest in property which passes by will or under the intestate laws of the State. Each heir, devisee, or legatee must

pay in proportion to the amount which he actually receives. While all the heirs, devisees, and legatees ,etc., are liable for such taxes, certainly each beneficiary can be held only for the tax on what he receives, and not on the whole estate, unless he receives the same. The term 'such estate' to which the exemption applies, presupposes that the estate or property has been described or mentioned in some previous part of the section or statute. The word 'property', but not 'estate' is earlier employed several times in the same section. Naturally, 'such estate' in the proviso relates to the next antecedent similar expression. Observing this usual rule of construction, the term 'such estate', we think refers to 'such property received by each person', because that is the first preceeding similar term found in the same sentence, and in the same grammatical connection. As the tax is laid upon the receipt of 'such property by each person' naturally the exemption should, and we hold does, apply to the separate distributive shares and legacies, and not to the aggregate value of the property of the decendent. 'Property' and 'estate' are often used synonymously, and are so used in this section."

In our opinion the earlier New York cases and the case above cited from Colorado, and the United States decision of Knowlton vs. Moore, are directly in point in construing the law of this State, and that the word "Estate", as used in the exemption clause of Section 1 of the Montana law, has the same meaning as the word "Property" in the first line of said section, and simply means that when the property to any heir, legatee, etc.,who is entitled to the $7,500 exemption may be valued at a less sum than Seventy-five Hundred Dollars that the same shall not be subject to any tax or duty, regardless of the fact that the aggregate value of the estate of the deceased person is more than Seventy-five Hundred Dollars. Under our constitution, any other construction of the law would raise serious constitutional objection.

See: State vs. Black, supra.

Yours very truly,

ALBERT J. GALEN,

Attorney General.