1261.

INHERITANCE TAX LAW—PAYMENT OF SAID TAX ON APRIL 30, 1920, IS MADE FOUR FULL MONTHS PRIOR TO EXPIRATION OF YEAR AFTER ACCRUAL OF TAX ON AUGUST 31, 1919—DISCOUNT SHOULD BE 4 PER CENT.

Payment of inheritance tax on April 30, 1920, *is made four full months prior to the expiration of the year after the accrual of the tax on August* 31, 1919, *so that the discount should be four per cent.*

COLUMBUS, OHIO, May 20, 1920.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledging the receipt of your letter of recent date requesting the opinion of this department, as follows:

> "The last sentence of section 5338 as contained in the inheritance tax act reads as follows:
>
> 'If such taxes are paid before the expiration of one year after the accrual thereof, a discount of one per centum per month for each full month that payment has been made prior to the expiration of the year, shall be allowed on the amount of such taxes.'
>
> A. died August 31, 1919. Inheritance tax is assessed against his estate and is paid April 30, 1920. To what percentage of discount are the successors to said estate entitled, the court having found that the date of accrual coincided with the date of death?"

you are advised that the opinion of this department is that the successors to the estate in the case stated are entitled to a discount of four per cent.

The first questoin to be answered is as to when "the expiration of the year" will take place. It is believed that the following principles of the common law apply here:

(1) In the computation of time, whether from an act or from a date, the day on which the act is committed or the date from which the computation is to be made is excluded. Some jurisdictions still adhere to an old distinction between computing from an occurrence and computing from a date. It is believed, however, that Ohio is in accord with the majority of the states of the country.

> Seaman vs. Eager, 16 O. S. 209;
> Note, 47 L. R. A., 93.
>
> Compare: Section 10216 General Code.

(2) The fact that February 29th occurs during the year in question simply serves to make that particular year three hundred and sixty-six days in length instead of three hundred and sixty-five. On this point the ancient statute of 21 Henry III is deemed to be a part of the common law in this country. (Helphenstine vs. Bank, 65 Ind. 582). That is to say, a "year" consists of three hundred and sixty-five days, excepting when the twenty-ninth of February occurs during the period, when it consists of three hundred and sixty-six days.

(3) Parts of days are disregarded, so that the entire three hundred and sixty-

sixth day, computed as above, is given to the person who must act within the period of one year for his action. It follows that the year would expire in the case stated, on the principles above outlined, at the end of August 31, 1920.

The next question to be answered is as to whether four full months intervene between April 30, 1920, and the end of August 31, 1920. This question narrows down ultimately to the question whether or not the day of August 31, 1920, is to be considered or counted as a part of the first full month counting backward, for the months to be counted are calendar months—not lunar months or conventional months of thirty days.

> See Bouvier's Law Dictionary;
> Oehler vs. Walsh, 7 C. C. (n. s.) 572.

If August 31, 1920, is to be considered as one of the thirty-one days attributable to the calendar month of August, then four full months, counted backward, will carry us to the beginning of the first day of May and leave a payment made on the thirtieth day of April outside such period of four full months; whereas, if we are to apply the principle previously employed in fixing the end of the year conversely and exclude August 31, 1920, as the first day, then April 30th will fall within the four months period.

Still another way of putting the question is to ask whether the expiration of the year falls *on* August 31, 1920, or comes *at the end* of that day.

Choice between these two methods of computation is to be made, it is believed, by seeking for the true reason for the rule that excludes the first day in counting forward. When a computation is from a date it is more or less obvious that the first day to be counted is the day after that date; when the computation is from an event then by the majority rule it is arrived at by the principle of disregarding parts of a day, and treating the event as equivalent to the date on this principle. So, if we were counting backward from an event happening on a date, or from a designated date, such as August 31, 1920, we would be required, it is believed, to exclude the day on which the event occurred or the date named and begin to count with the next preceding day. But we are not counting from an event nor from a date, but from "the expiration of the year." The expiration of a year, as stated, does not fall on a day and is not marked by the occurrence of an event occurring on a day, but actually as well as in contemplation of law is marked out by the end of the day. A payment made at any time during business hours on August 31, 1920, will be made within the year, i. e., "prior to the expiration of the year." Therefore, the whole of August 31, 1920, is a day which is "prior to the expiration of the year." Hence it follows that a payment to be made *one* month prior to the expiration of the year need be made no earlier than the thirty-first day of July, because between the day on which that payment is made and the end of August 31, 1920, thirty-one full days will have elapsed.

By this method of reasoning we are brought to the conclusion that the successors in the case described by the commission are entitled to four per cent discount.

Respectfully,
JOHN G. PRICE,
Attorney-General.