

1027.

COLLATERAL INHERITANCE TAX LAW—WHERE TESTATRIX DIED IN 1915—SALE OF REAL ESTATE DID NOT TAKE PLACE UNTIL AFTER REPEAL OF SAID LAW—COLLATERAL INHERITANCE STATUTES APPLICABLE—TAX DETERMINED IN THIS PARTICULAR CASE.

A testatrix who died in 1915 disposed of a fund of \$4,000 arising from the sale of a particular tract of real estate directed to be made, in equal shares to a nephew and a niece:

HELD:

(1) *The collateral inheritance tax law in force in 1915 applies, though the sale of the property did not take place until after the repeal of that law by the inheritance tax law of 1919.*

(2) *The property having been sold for \$4,000 and there being no debts chargeable against the proceeds of the sale, it may be assumed that an appraisalment of the property as of the date of the death of the testatrix would have established a value of \$2,000 for the interest of each successor. On this assumption the tax payable by each is \$75.00, subject to penalty.*

COLUMBUS, OHIO, February 26, 1920.

HON. WALTER W. BECK, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—I acknowledge the receipt of your letter of recent date enclosing copy of the will of Catherine McMahon, with respect to which you had previously submitted the following questions:

“1. What, if any, inheritance should be paid by the niece and nephew?

2. Does the law in force now or the law in force at the time of the death of Catherine McMahon (March 24, 1915) control?”

The will of Catherine McMahon, which need not be quoted in full, devises to her nephew and niece equal shares in a fund of \$4,000.00 of the proceeds to be derived from the sale of certain designated real estate. This sale is directed to be made by the executor, and no specific direction is given for its postponement to any definite date.

These facts furnish a ready answer to your second question. The law in effect at the time of Catherine McMahon's death controls (see Sec. 4 of the inheritance tax act of 1919 which contains a saving clause amply broad to produce this effect—108 O. L., Part I, p. 561, 577).

This conclusion refers us for an answer to your first question to section 5331 G. C., as amended 103 O. L. 463. This section need not be quoted. Suffice it to say that under it the conclusion had been uniformly reached that the exemption therein provided for of \$500.00 was available to each beneficiary or successor.

As a general rule the property or interest of each successor is to be valued as of the date of the death of the testator. In this case you say that the land has been sold for exactly \$4,000.00, and I assume from your statement that there are no debts to be charged against this sum, so that the nephew and niece will each receive \$2,000.00. I must also assume that an appraisalment made as of the death of the testatrix in 1915 would fix the value of the property at \$4,000.00, so that the value of the interest of the nephew and that of the niece would be \$2,000.00 each, ascertained in this manner.

On these assumptions it is clear that the taxable interest of each would amount to \$1,500.00, on which a tax at the rate of five per cent. fixed by the law in force prior to 1919 and at the death of the testatrix would be \$75.00 each.

In this connection it is to be observed that the tax was payable under the old law at the death of the testatrix, regardless of the postponement of the sale, it being incumbent upon the interested parties to have an appraisal made immediately or within one year and to settle the tax. The postponement of the sale does not change the obligation to pay the tax. Consequently, the nephew and niece are severally liable, in addition to the principal sum stated, for the eight per cent. interest—penalty provided by section 5335 G. C. as in force in 1915.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1028.

COUNTY HOSPITAL—BOARD OF TRUSTEES, HOW FIRST AND SUBSEQUENTLY APPOINTED—WHO COMPRISES SUCH BOARD—NO COMPENSATION.

Under the amendments to the county hospital law (108 O. L., Part I, 225), the first board of trustees of the hospital is to be appointed by the governor within ten days after receipt by him of the certification of the canvassing board as to the result of the election. This board of trustees serves until the hospital is completed, when its successors are to be appointed by the county commissioners.

Such board is to consist of four members, two of whom are to be of the dominant political party in the county and two of whom must belong to the party receiving the next highest number of votes in the county for governor at the next preceding election.

Such members are to serve without compensation.

COLUMBUS, OHIO, February 26, 1920.

HON. J. ARTER WEAVER, *Probate Judge, Bryan, Ohio.*

DEAR SIR:—I have your letter of February 7th submitting certain questions relative to the law providing for the establishment of a county hospital. Your questions are as follows:

“1. Suppose the election on the question of establishing such a hospital is held and carries in April, 1920, has the present board of county commissioners power to appoint six persons as members of this board of trustees to serve until the election and qualification of six persons elected according to section 3131 in November, 1920? Or will purchasing of the site and erection of buildings have to be deferred until after regular election of trustees in November, 1920?

2. Are these members of the board of trustees to be non-partisan? Or three of opposite political faith? Or three of whom shall be women and three of whom shall be men?

3. Do the members of this board draw any compensation?”

Full answer to your questions is found in the amendments to the law relative to county hospitals, appearing in 108 O. L., Part I, p. 255. The quotations which you have made are from the General Code as it existed prior to these amendments.

In respect to your first question section 3131 G. C. now provides that:

“If a majority of the electors * * * are in favor of the issuance