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INHERITANCE TAX LAW—FEES OF PROBATE JUDGES UNDER SECTION 5348-10a G. C. (109 O. L. 531) DETERMINED—DATE FROM WHICH FEES MAY BE CHARGED—KIND OF PROCEEDINGS—NEW PROCEEDINGS FROM SEPTEMBER 6, 1921.

1. *Probate judges, under section 5348-10a G. C. (109 O. L. 531) as enacted in House Bill 286, are entitled to charge and collect for services performed after September 6, 1921, under the inheritance tax law a fee of five dollars in each inheritance tax proceeding in which taxes are charged and collected, and a fee of three dollars in each such proceeding in which no tax is found. Whether or not letters of administration have been issued in a given case is entirely immaterial as determining the right of the probate judge to fees, which depends solely upon the rendition of services under the inheritance tax law.*

2. *Probate judges are entitled to the fees specified in said section on all estates inheritance tax proceedings in which are filed after September 6, 1921, when the new law takes effect. They are not entitled to such fees in inheritance tax proceedings filed before that date. The time when letters of administration have been applied for in a given case is entirely immaterial as determining whether the new law applies to it or not.*

COLUMBUS, OHIO, August 20, 1921.

HON. WALTER S. RUFF, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—You request the opinion of this department relative to the interpretation of section 5348-10a of the General Code enacted by House Bill 286 (109 O. L. 531) passed by the eighty-fourth general assembly. Your questions are as follows:

“First. Is it your opinion that the probate judges are entitled to at least three dollars on every estate upon which letters of administration are issued, whether said estate is subject to tax or not? In other words, I take it that the law means that on an estate which pays tax the probate judge receives five dollars, but is he entitled to three dollars on every other estate?”

Second. Is the probate judge entitled to the fee on estates filed prior to the taking effect of the law, to-wit, September 6, 1921?”

The answer to your first question may be put as follows:

The probate judge is entitled to a fee of five dollars in each inheritance tax proceeding in his court in which a tax is assessed and collected.

He is entitled to a fee of three dollars in each inheritance tax proceeding in his court in which no tax is found, i. e.; in which an order of exemption is entered.

Strictly speaking, the fact of the issuance of letters of administration has nothing to do with the question. That is to say, letters of administration might be issued in a case in which no inheritance tax proceedings were had, though it would at least be the moral duty of the probate court to initiate inheritance tax proceedings in all such cases. Yet if the estate is so small that the probate judge knows that no tax will be found because of the exemptions, and if the parties do not desire an order of exemption in order to clear up title, etc., there might be no inheritance tax proceeding, and in such case the fee of three dollars would not be earned.

Your second question is to be answered as follows:

The date when letters of administration were issued is immaterial in connection with the question as to whether the fee is earned or not, for the same reason involved in arriving at the conclusion expressed in answer to your first question. That is to say, letters of administration may have been applied for prior to September 6, but no inheritance tax proceeding may be had in the same estate until after September 6. In such case there could be no doubt that the fee in the inheritance tax proceeding would be collectible under the new law.

However, in case the inheritance tax proceeding was filed prior to September 6 a different question is presented. It is the opinion of this department that in such cases no fees under the new supplementary section are collectible by the probate judge. The reasons for that conclusion may be expressed as follows:

The probate judge in such a case might have performed all the services incumbent upon him under the law, with the exception of some final formality such as the issuance of the certificate to the county auditor. It could not have been the intention of the legislature that the entire fee should be drawn for the performance of the slight service that was performed after the new law went into effect; neither can it have been the intention of the general assembly that the fee should be charged and collected for services performed before the new law went into effect. Inasmuch as it is impracticable to draw any line short of the filing of the inheritance tax proceedings, it is concluded that in order to be the predicate of fees under the new section the whole proceeding must be had after the section goes into effect. This is consistent with the language of the section itself, applied in the light of the elementary proposition that all statutes are to be given a wholly prospective meaning unless the contrary intention clearly appears. In the first place, the section bases the fees upon "services performed * * * under the provisions of this chapter". That is to say, the one fee covers all services which may be performed in a given proceeding under the inheritance tax law; it is a lump fee covering all such services. If, then, in deference to the principle above stated we understand the word "hereafter" before the word "performed", we get the result that all the service for which the fee is to be charged and collected must have been performed after the new law went into effect; so that if any part of it was performed before the new law went into effect it is not governed by that law.

Your questions are therefore to be answered as follows:

(1) Probate judges are entitled to charge and collect for services performed after September 6, 1921, under the inheritance tax law a fee of five dollars in each inheritance tax proceeding in which taxes are charged and collected, and a fee of three dollars in each such proceeding in which no tax is found. Whether or not letters of administration have been issued in a given case is entirely immaterial as determining the right of the probate judge to fees, which depends solely upon the rendition of services under the inheritance tax law.

(2) Probate judges are entitled to the fees specified in the supplemental section on all estates inheritance tax proceedings in which are filed after September 6, 1921, when the new law takes effect. They are not entitled to such fees in inheritance tax proceedings filed before that date. The time when letters of administration have been applied for in a given case is entirely immaterial as determining whether the new law applies to it or not.

Respectfully,

JOHN G. PRICE,

Attorney-General.