

OPINION NO. 68-115**Syllabus:**

1. Pursuant to Section 5731.53, Revised Code, pertaining to the distribution of inheritance taxes, the political subdivisions are entitled, upon settlement, to fifty percent of the gross amount of the taxes levied and paid without any deduction for the compensation of the agent of the Tax Commissioner.

2. Pursuant to Section 5731.48, Revised Code, effective July 1, 1968, pertaining to the distribution of estate taxes, the political subdivisions are entitled, upon settlement, to fifty percent of the gross amount of the taxes levied and paid without any deduction for the compensation of the agent of the Tax Commissioner.

To: Roger Cloud, Auditor of State, Columbus, Ohio
By: William B. Saxbe, Attorney General, July 18, 1968

I have before me your request for my opinion wherein you state that a review of the inheritance tax settlement sheets submitted to your office by the several counties reveals that the compensation of the agents for the Tax Commissioner are, in the case of some of the counties, being deducted from the gross amount of the inheritance taxes levied and collected and that of the remaining portion, fifty percent is then returned to the political subdivision in which the tax originated, and wherein you pose the following question:

"In view of the different methods being employed in the several counties, your opinion is

respectfully requested as to whether a municipality or township at the February 1968 settlement was entitled to receive fifty percent of the gross amount of taxes levied and paid under Chapter 5731. of the Revised Code, or fifty percent of the gross amount of taxes levied and paid under Chapter 5731. of the Revised Code, remaining after the deduction of the compensation of the agent of the tax commissioner. A further question is whether your answer to the above question would be the same for the settlement of such taxes after June 30, 1968."

Inasmuch as your question involves the inheritance tax settlement for February, 1968, and also future inheritance tax and estate tax settlements for subsequent periods, I will consider first the February, 1968, settlement.

Prior to the enactment of the Ohio Estate Tax Law, Amended Substitute Senate Bill No. 326 (132 v S 326), Section 5731.43, Revised Code, provided in pertinent part:

"To enforce section 5731.42 of the Revised Code, the tax commissioner may appoint agents * * * Such agents shall, as compensation, receive annually * * * which shall be paid in equal monthly installments from the state's share of the undivided inheritance tax in the county treasury * * *"

Pursuant to Section 3 of Amended Substitute Senate Bill No. 326, *supra*, Section 5731.43, *supra*, was repealed effective November 30, 1967, and Section 5731.41, Revised Code, was enacted effective December 1, 1967. Said Section 5731.41, Revised Code, now reads in pertinent part:

"To enforce section 5731.39 of the Revised Code, the tax commissioner may appoint agents * * * Such agents shall, as compensation, receive annually * * * which shall be paid in equal monthly installments from the undivided inheritance or estate tax in the county treasury * * *"

The deletion of the phrase "from the state's share of" from newly enacted Section 5731.41, *supra*, as will be demonstrated, does not alter the distribution of the inheritance tax in the February, 1968, settlement.

Section 7 of Article XII of the Ohio Constitution authorizes the passage of laws for the taxation of inheritances and Section 9 of Article XII of the Ohio Constitution states:

"Not less than fifty per centum of the income and inheritance taxes that may be collected by the state shall be returned to the county, school district, city, village, or township in which said income or inheritance tax originates, or to any of the same, as may be provided by law."
(Emphasis added)

Pursuant to the authority of Section 7, supra, and subject to the limitation of Section 9, supra, the legislature enacted Section 5731.53, Revised Code, which will remain effective for all inheritance taxes levied upon successions to property resulting from a death which occurs on or before June 30, 1968 (see Section 3 of Amended Substitute Senate Bill No. 326, supra). Section 5731.53, supra, reads in pertinent part:

"Fifty per cent of the gross amount of taxes levied and paid under sections 5731.01 to 5731.56, inclusive, of the Revised Code, shall be for the use of the municipal corporation or township in which the tax originates, and shall be credited as follows:

" * * * * *"

"The remainder of such taxes, after deducting the fees and costs charged against the proceeds thereof under sections 5731.01 to 5731.56, inclusive, of the Revised Code, shall be for the use of the state, and shall be paid into the state treasury to the credit of the general revenue fund."

(Emphasis added)

In Opinion No. 2819, Opinions of the Attorney General for 1958, page 591, I had occasion to consider the question of charging the compensation of the state examiners of the Bureau of Inspection and Supervision of Public Offices to the county's share of the undivided inheritance tax fund in light of Section 5731.53, supra, and I there observed, on page 595:

" * * * The question then arises, how can the compensation and expenses of the examiner be paid without charging the fund distributable to the municipalities and townships with a share of such cost, and deducting it from the fifty per cent of the tax to which they are entitled under the provision of the statute last above quoted? But Section 5731.53, supra, plainly requires payment of 'fifty per cent of the gross amount of taxes levied and paid.' 'Gross amount' according to Webster, means 'the entire earnings, receipts, or the like, without any deduction.'"

"Our Supreme Court, in the case of Light Company v. Evatt, 140 Ohio St., 85, had occasion to consider the meaning of the words 'gross receipts,' in a statute relating to an excise tax on receipts of public utilities. It was held as shown by the second branch of the syllabus:

"12. The term 'gross receipts' as employed in Section 5475, General Code, embraces all receipts of a public utility regardless of the form of ownership and without exclusion or deduction of payments by those owning an interest in such utility for service furnished them."

The syllabus of Opinion No. 2819, supra, states:

"The compensation and expenses of state examiners of the bureau of inspection and supervision of public offices, in connection with the inspection of the proceeds of the inheritance tax levied pursuant to Section 5731.-01 et seq., Revised Code, are to be paid by the state, and may not be charged to the portion of the proceeds of such tax distributable to municipal corporations and townships under the provisions of Section 5731.53, Revised Code."

There is no conflict between Section 5731.41, supra, as it now reads and Section 5731.53, supra; the former statute specifies the amount of the agent's compensation and that said compensation be paid out of inheritance tax revenues rather than from other sources such as the Tax Commissioner's appropriation, the county auditor's appropriation or the county probate court appropriation while the latter statute, Section 5731.53, supra, specifies and controls the issue of the distribution of the taxes. Hence, in regard to the February, 1968, settlements, the subdivisions are entitled, pursuant to Section 5731.53, supra, to fifty percent of the gross amount of the inheritance taxes levied without any deduction for the compensation of the agent of the Tax Commissioner.

In regard to inheritance and estate tax settlements subsequent to February, 1968, it must be observed that inheritance tax collections will continue, probably for several years hence, to be made in respect to successions to estates of persons whose deaths occurred prior to July 1, 1968; that there is no statutory authority for maintaining two separate county death tax funds; and that newly enacted Section 5731.48, Revised Code, effective July 1, 1968, which is the distribution provision for the estate taxes, again reads:

"Fifty percent of the gross amount of taxes levied and paid under Chapter 5731. of the Revised Code, shall be for the use of the municipal corporation or township in which the tax originates * * *"

(Emphasis added)

Therefore, considering the interpretation that Section 5731.41, supra, relates to the revenue or source against which the agent's compensation is to be charged while Section 5731.53, supra, and newly enacted Section 5731.48, supra, relate to the distributions of the taxes levied, considering that both taxes will be in the process of collection for the next several years, and finally considering the desirability of a uniform method of accounting for the agents' compensation when said agents are performing duties respecting both taxes, I must therefore conclude that the subdivisions are entitled, upon settlements made after February, 1968, pursuant to Section 5731.53, supra (inheritance tax), and newly enacted Section 5731.48, supra (estate taxes), to fifty percent of the gross amount of the taxes levied without any deduction for the compensation of the agent of the Tax Commissioner.

Therefore, it is my opinion and you are hereby advised that:

1. Pursuant to Section 5731.53, Revised Code, pertaining

to the distribution of inheritance taxes, the political subdivisions are entitled, upon settlement, to fifty percent of the gross amount of the taxes levied and paid without any deduction for the compensation of the agent of the Tax Commissioner.

2. Pursuant to Section 5731.48, Revised Code, effective July 1, 1968, pertaining to the distribution of estate taxes, the political subdivisions are entitled, upon settlement, to fifty percent of the gross amount of the taxes levied and paid without any deduction for the compensation of the agent of the Tax Commissioner.