

1721.

INHERITANCE TAX—FILING OF EXCEPTIONS—60 DAY LIMITATION.

SYLLABUS:

Under the provisions of Section 5346, General Code, exceptions may be filed not only to the values of the successions as stated in the appraisal and found by the court, but also to the manner of determination of the inheritance tax, the rule applied in said determination, failure to make proper deductions or mistakes in calculation of the taxes; provided that said exceptions are filed within sixty days from the entry of the order determining the tax.

COLUMBUS, OHIO, February 17, 1928.

HON. JOSEPH T. TRACY, Auditor of State, Columbus, Ohio.

DEAR SIR:—Acknowledgment is hereby made of your recent communication, which reads:

“In checking Inheritance Tax Reports returned by Probate Judges to the State Tax Commission and certified to this office, we find quite a few clerical errors.

Upon taking up the matter with Judge Cassidy of the State Tax Commission, he referred us to the provisions of Section 5346, G. C., which provides: ‘The Tax Commission of Ohio, or any person dissatisfied with the appraisal and determination of taxes, may file exceptions thereto in writing with the probate court within sixty days from the entry of the order, stating the grounds upon which such exceptions are taken.’

Very few of these reports reach us within sixty days from the entry of the same by the Probate Judge, and we respectfully request your opinion upon the following questions:

1. Does Section 5346 apply only to determination of values, and may clerical errors (such as we have referred to) be corrected at any time discovered, or at least, prior to the distribution of the estate affected?
2. If such errors may be corrected what is the proper procedure in effecting the correction?”

Section 5345, General Code, reads in part as follows:

“From the report of appraisal and other evidence relating to any such estate before the probate court, such court shall forthwith upon the filing of such report, by order entered upon the journal thereof, find and determine, as of course, the actual market value of all estates, the amount of taxes to which the successions thereto are liable, the successors and legal representatives liable therefor; and the townships or municipal corporations in which the same originated. Provided, however, that in case no application for appraisal is made the probate court may make and enter such findings and determinations without such appraisal.

Thereupon the judge of such court shall immediately give such notice of such order to all persons known to be interested therein, and shall immediately forward a copy thereof to the tax commission of Ohio, to-

gether with copies of all orders entered by him in relation to or affecting in any way the taxes on such estate, including orders of exemption.
* * *

Under the provisions of this Section the probate court shall find and determine, as of course, the actual market value of all estates and the amount of taxes to which the succession or successions thereto are liable, and this finding, order and determination is the judgment of the probate court. Notice, however, of said judgment shall be immediately given to all persons known to be interested, and a copy of said judgment shall be forwarded to the Tax Commission of Ohio.

It is then provided in Section 5346, General Code, that:

"The tax commission of Ohio, or any person dissatisfied with the appraisal and determination of taxes, may file exceptions thereto in writing with the probate court within sixty days from the entry of the order, stating the grounds upon which such exceptions are taken. The probate court shall thereupon by order fix a time not less than ten days thereafter for the hearing of such exceptions, and shall give such notice thereof as it may deem necessary; provided, that a copy of such notice and of such exceptions shall be forthwith mailed to the tax commission and the county auditor. Upon the hearing of such exceptions, said court may make such order as to it may seem just and proper in the premises. No costs shall be allowed by the probate court on such exceptions."

The time in which exceptions may be filed by the Tax Commission of Ohio, or any person dissatisfied with the appraisal and determination of said taxes, is sixty days from the entry of said order. It then becomes the duty of the probate court to fix the time, not less than ten days after the filing of said exceptions, for the hearing of the same, and upon the hearing of said exceptions said court may make such order as to it may seem just and proper in the premises.

Section 5347, General Code, provides as follows:

"At the expiration of such period of sixty days if no exceptions be filed, or at any time within such period, on the application of all parties, including the tax commission of Ohio, the probate judge shall make and certify to the county auditor a copy of the order provided for in Section 5345 of the General Code. If such exceptions are filed within such period the probate judge shall, within five days after the entry of the final order, make and certify such copy of the original finding and determination, together with any modifications thereof ordered upon the hearing of such exceptions.

The county auditor shall thereupon, on a form to be prescribed for him by the auditor of state, make a charge based upon such order and certify a duplicate thereof to the county treasurer, who shall collect the taxes so charged."

Under the provisions of this Section, upon the application of all parties interested, including the Tax Commission of Ohio, said final order may be made within less than sixty days. A copy of the final order is then certified to the county auditor, and the county auditor then makes a charge based upon such

order and certifies a duplicate thereof to the county treasurer, whose duty it is to collect the tax.

Section 5348, General Code, provides that an appeal may be taken from the final order of the probate judge in determining said tax in the manner provided by law for appeals from orders of the probate court in other cases. This appeal must be taken within twenty days from the rendition of the final order.

Section 5348-1, General Code, provides as follows:

“Upon the payment to the county treasurer of any tax due under this subdivision of this chapter, such treasurer shall issue a receipt therefor in triplicate. One copy thereof he shall deliver to the person paying such taxes; and the original and one copy thereof he shall immediately send to the auditor of state who shall certify the original and immediately transmit it to the judge of the court fixing the tax. An executor, administrator or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such taxes, nor shall the estate under his control be distributed, unless such certified receipt shall have been filed with the court. Any person shall, upon the payment of ten cents to the county treasurer issuing such receipt, be entitled to a duplicate thereof, to be signed and certified in the same manner as the original.”

Under the provisions of this Section, upon payment to the county treasurer of the inheritance tax he shall send the original receipt and one copy thereof to the Auditor of State. It is then the duty of the Auditor of State to certify the original and immediately transmit it to the judge of the court fixing the tax.

Under the provisions of Section 5348-7, each probate judge shall keep a docket in which shall be entered the name of every decedent upon whose estate an application to him has been made for an issue of letters of administration, or letters testamentary, or ancillary letters, the estimated value of his real and personal property and the taxes assessed thereon, and the township or municipal corporation in which the same originated. It is also provided in said Section that the Auditor of State shall prescribe forms for the reports to be made by each probate judge and county auditor, which shall correspond with the entries to be made in the docket.

Section 5348-8 provides as follows:

“Each probate judge shall make a report monthly to the auditor of state, upon a form prescribed by such auditor. Such report shall contain all the matters required to be entered on the docket provided for in the foregoing Section and shall be filed at such date in each month as may be required by the auditor of state. The reports made in the months of February and August of each year shall be filed by each probate judge at the same time that the county auditor of his county makes his semi-annual settlement.”

Under the provisions of this Section each probate judge shall report monthly to the Auditor of State all the matters required to be entered on the docket provided for in Section 5348-7. This report filed by the probate judge with the Auditor of State advises said Auditor of the final order and judgment rendered in each case and the amount of taxes paid thereon. The Auditor of State may

then check the items in said report with the receipt forwarded to him by the county treasurer upon the payment of the tax.

It is noted from your communication that in checking said inheritance tax reports you at times find clerical errors, and you inquire in your first question as to whether Section 5346, General Code, applies only to the determination of values or whether clerical errors may be corrected at any time they are discovered prior to the distribution of the estate.

Under the provisions of Section 5346 exceptions may be filed to the appraisal and determination of taxes. It is therefore evident that the exceptions may be made not only to the values indicated in said appraisal, but also to the determination of the amount of taxes. Exceptions might be made to the manner in which such taxes were determined or to the rule applied in said determination, to a failure to make proper deductions or to mistakes in calculation of the taxes. It is noted, however, that said exceptions must be filed within sixty days from the entry of the order determining the tax. As the Auditor of State receives this report of the determination of said tax from the probate court, it seems evident that any changes or corrections to be made in said report should be made by the probate judge transmitting the same, and the Auditor of State should return said report to said probate judge for correction. Said probate court may correct its judgment on its own motion within term. This is probably the only procedure that may be taken by the Auditor of State. As the Tax Commission of Ohio represents the state, and the said Commission receives a certified copy of the final order of said court and is required to examine and approve the same, it is clear that said Commission is authorized to file exceptions as provided in Section 5346. The order of determination of said tax certified by the probate court to the Auditor of State is the order and judgment of a court of record and is final unless modified on error or appeal. When the Auditor of State has checked the report and judgment of the probate court as certified by said court with the receipts for the payment of the tax as submitted by the county treasurer, said Auditor of State has performed his full duty therein unless said final judgment is set aside.

As indicated in your communication, very few of the reports from the probate courts are certified to you within sixty days from the entry of the same by the probate judge, and it is evident that Section 5346, General Code, may not be applied in such cases.

You inquire in your second question as to what procedure you should take in such matters, but I have already stated in answer to your first question that upon the discovery of clerical errors in said report you should refer the same to the probate judge so certifying said report to you.

Specifically answering your first question, it is my opinion that under the provisions of Section 5346, General Code, exceptions may be filed not only to the values of the successions as stated in the appraisal and found by the court, but also to the manner of determination of the inheritance tax, the rule applied in said determination, failure to make proper deductions or mistakes in calculation of the taxes; provided that said exceptions are filed within sixty days from the entry of the order determining the tax.

Respectfully,
EDWARD C. TURNER,
Attorney General.