



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL  
ATTORNEY GENERAL**

**February 12, 1949.**

**Hon. Robert S. Calvert  
Comptroller of Public Accounts  
Austin, Texas**

**Opinion No. V-769.**

**Re: Existence and re-  
lease of inheritance  
tax lien under sub-  
mitted facts.**

**Dear Sir:**

You have requested the opinion of the Attorney General as to questions raised by Mr. Jack W. Frost, Independent Executor of the Estate of Fred W. Frost, deceased. The facts forming the basis of the Executor's questions are stated in his letter which you have attached to your request together with a copy of a Warranty Deed from the Estate of L. J. Hart, deceased, to Fred W. Frost; said Warranty Deed is dated February 10, 1939 and signed by Katherine Hart Edson, Independent Executrix of the Estate of L. J. Hart.

We quote from Mr. Jack W. Frost's letter:

"Prior to his death, L. J. Hart owned a part of Lots Nos. 4 and 5 in Block No. 1, new City Block 401, within the corporate limits of the City of San Antonio. . . .

"Mr. Hart died on July 8, 1938, testate;

...  
"His will gives all his property of whatever kind and character to his daughter Katherine Hart Edson, and appoints her Independent Executrix.

". . .

"The inventory in the Estate of L. J. Hart was filed on July 3, 1939. . . . Among

others, it lists the property in question at a value of \$7,000.00; and the total value of all property is listed as \$623,241.35. The list of claims filed, a part of the inventory, lists two notes to Fred W. Frost, one for \$21,205.54 and one for \$4,170.90.

"Subsequently, . . . the County Judge . . . entered his order which was approved by the State Comptroller, fixing the inheritance tax on this Estate. This order . . . shows an appraised market value of \$32,999.20, a statutory exemption of \$25,000.00 and a net taxable value of \$7,999.20. The tax fixed is \$79.99. . . . It will be assumed that it has not been paid.

"Under date of February 10, 1939, Katherine Hart Edson conveyed certain properties in the City of San Antonio to Fred W. Frost, among which is an undivided one-half interest in a part of Lots 4 and 5 in said new City Block 401, particularly described in said Deed. The Deed recites 'Ten Dollars and other valuable consideration' paid by Fred W. Frost and the cancellation and delivery to said Estate by Fred W. Frost of a note for \$16,000.00, executed by L. J. Hart. . . . My files indicate that the interest on this note was delinquent and that the former note to which reference is made in the inventory was probably made for delinquent interest. The conveyance was obviously made in cancellation of one of the items of indebtedness as listed in the inventory and list of claims.

". . .

"I have made the Inheritance Tax Returns in the Estate of Fred W. Frost and have paid the full amount of the inheritance tax due, . . . The undivided one-half interest in the lots mentioned above was listed in the inventory and in the Inheritance Tax Return.

"I have sold this undivided one-half interest to Mr. Terrell Bartlett, . . . and his attorney has made a requirement that the apparent inheritance tax lien against the Estate of L. J. Hart, deceased, be released."

Mr. Frost then states that he is of the opinion "that the Executor of the L. J. Hart Estate has the right to transfer and convey this property in settlement of debts of the Estate and that, therefore, any apparent lien should be released by the Comptroller. If this were not so, no Estate, regardless of size, which had more debts than cash on hand, could ever be sold."

Article 7133, V. C. S., provides for a lien to secure the payment of inheritance taxes and reads as follows:

"A lien shall exist on all property subject to taxation under this law to secure the payment of all taxes, penalties and costs provided for in this chapter. All persons acquiring any portion of said property shall be charged with notice of the existence of all such unpaid taxes, penalties and costs, and of the lien securing their payment, which may be enforced in any suit brought for the collection of said taxes, penalties and costs."

Article 7131, V. C. S., prescribes the method of fixing the tax, provides that notice of the determination of the amount of the tax shall be given to the executor, administrator or trustee, and to the person to whom or for whose use the property passes, and further provides that "said tax shall be a lien upon such property from the death of the decedent until paid."

Article 7134, V. C. S., provides for foreclosure of said lien.

Inheritance taxes being "privilege taxes" levied upon the right of succession to property of a decedent, State v. Hogg, 123 T. 568, 72 W. (2d) 593,

a fortiori some beneficial interest of the decedent must be succeeded to before any tax can accrue. Nevertheless, the lien provided by Article 7133 is not specifically limited to the property which is eventually received from the decedent but exists by the terms of Article 7133 on all property subject to taxation under this law. (Emphasis added.)

The Supreme Court of Washington has held that the state's lien for payment of inheritance taxes was not lost on realty sold by an executor to pay the expenses of administration and claims against the estate. In Re Kennedy's Estate, 61 Pac. (2d) 998. The Washington statute is similar in many respects to our statute, providing in part as follows:

"All property . . . which shall pass by will . . . shall be subject to a tax as provided . . . after payment of all debts due by the decedent at the time of his death . . . The inheritance tax shall be and remain a lien on such estate from the death of the decedent until paid."

The Washington statute had been construed (as has our statute, State v. Hogg, supra) as being a tax upon the right of succession rather than an estate tax, In Re Corbin's Estate, 107 Wash. 424, 181 Pac. 910; and it was contended that since the tax was only upon property passing to beneficiaries, the lien of the tax was likewise limited. The court was of the opinion that this conclusion was precluded by the reasoning in In Re Sherwood's Estate, 122 Wash. 648, 211 P. 734, which held that the federal estate tax was not a deductible expense because the statute did not specifically make it so. This result, said the court, was based on the power of the Legislature to declare, for purposes of the tax, what shall be deemed to have been received by those succeeding to the property, and to require the successor to pay a tax on that part which was never received but was devoted to other uses. The court said:

"Now if the Legislature may require, as a condition to the succession, that the beneficiaries pay a tax on that por-

tion of the estate which does not pass but is consumed by chargeable expense, it may, upon the same consideration, provide that, notwithstanding the allowance of certain deductible expenses in the computation of the tax, the amount of the tax when ascertained shall be a lien on the whole of the estate."

The court then added that there was no question in view of the plain language of the statute above quoted that the Legislature had declared the lien to exist upon the whole of the estate.

In Walker v. Mann, 143 S.W. (2d) 152, error refused, the Court of Civil Appeals for the Third Supreme Judicial District of Texas held that the amount paid as Federal Estate taxes was not an authorized deduction in determining the amount of inheritance taxes due under our statute. Thus in this state we have a similar predicate and the reasoning of the Supreme Court of Washington is applicable here. The Legislature having required as a condition to succession that the tax may have to be paid on a portion of property never received, the question is whether, upon the same consideration, it has seen fit to secure the receipt of this amount by a lien upon such property. We are of the opinion that it has done so.

Article 7133 provides that the lien shall exist "on all property subject to taxation under this law. . . ." The property subject to taxation "under the law" is, by the terms of Article 7117, V. C. S., "All property within the jurisdiction of this State . . . and any interest therein, including property passing under a general power of appointment exercised by the decedent by will, including the proceeds of life insurance to the extent, etc., . . . which shall pass absolutely or in trust by will, or by the laws of descent and distribution . . . or by deed, grant, sale or gift made or intended to take effect in possession and enjoyment after the death of the grantor or donor . . ."

Whenever property is transferred by any of these enumerated methods the tax is imposed even though

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the property is otherwise disposed of as where a contested will is probated by virtue of compromise agreement, Crane v. Mann, 162 S.W. (2d) 117, error refused, and even where the devise was made pursuant to a contract with the decedent, Sheppard v. Desmond, 169 S.W. (2d) 788.

The property here involved passed by the will of L. J. Hart to his daughter, was subject to tax under the plain terms of Article 7117, and therefore the lien attached thereto. Article 7131 declares that this lien shall exist "from the death of the decedent until paid." This being the mandate of the statute, only payment can extinguish the lien, and you are without authority to issue the release sought.

SUMMARY

The State's lien to secure payment of inheritance taxes attached to the property passing by will at the death of the testator and persisted despite conveyance by executor to satisfy claims against the estate. Only payment can extinguish the lien, and the Comptroller has no authority to release the same. Articles 7117, 7131, 7133, 7134, V. C. S. In Re Kennedy's Estate, 61 P. (Ed) 998.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

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MC:mwb:bh

APPROVED

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