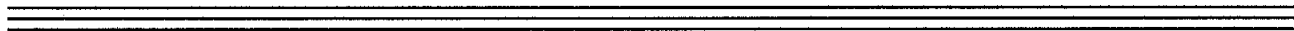

Rules of Department of Revenue Division 10—Director of Revenue Chapter 8—Inheritance and Estate Tax

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Title 12—DEPARTMENT OF REVENUE

Division 10—Director of Revenue Chapter 8—Inheritance and Estate Tax

12 CSR 10-8.010 Definitions

PURPOSE: This rule is intended as a general guideline in defining terms used in 12 CSR 10-8.010—12 CSR 10-8.150.

(1) The terms defined in section 145.010, RSMo (1969) will have the same meaning when used in these rules.

(2) The term director, unless otherwise specifically provided in this rule, shall mean the director of revenue or his/her duly authorized agent or designee.

(3) The term report shall mean the report of appraiser, inheritance tax short form assessment or estate tax appraisal, required by chapter 145, RSMo (1969).

(4) The term report of appraiser shall mean the form prescribed and furnished by the director for use by the appraiser when reporting the taxable assets of an estate, the deductions allowed by the probate court, exemptions allowed under section 145.090, RSMo and amount of tax assessment under section 145.150.3, RSMo (1969).

(5) The term inheritance tax short form assessment shall mean the form prescribed and furnished by the director used for reporting assessment of tax in small estates, consisting of personal property only, under section 145.150.5, RSMo (1969).

(6) The term estate tax appraisal shall mean the form prescribed and furnished by the director used for reporting estate tax under sections 145.070 and 145.080, RSMo (1969).

(7) The term consent to transfer or deliver assets shall mean the form prescribed and furnished by the director used to give ten (10)-day notice to the director of intention to transfer assets of an estate, as required under section 145.210, RSMo (Supp. 1975).

(8) The term conditional consent to transfer or deliver assets shall mean the form prescribed and furnished by the director used to give the director notice of intention to remove the contents of a safe deposit box, as required by section 145.210, RSMo (Supp. 1975).

(9) The family allowance is exempt from all claims. Under section 474.260, RSMo (1969), the surviving spouse is entitled to a reasonable allowance in money out of the estate for his/her maintenance during the period of one

(1) year, after the death of the spouse. If there is no spouse, the allowance shall be made to the unmarried minor children. The allowance is in addition to the exempt property and homestead allowance.

(10) Exempt property in no case is liable for the payment of claims against the estate. Under section 474.250, RSMo (1969) the surviving spouse or unmarried minor children of a decedent are entitled absolutely to the following property of the estate without regard to its value: the family Bible and other books, all wearing apparel of the family, all household electrical appliances, all household musical and other amusement instruments, all household and kitchen furniture, appliances, utensils and implements. This property belongs to the surviving spouse, if any, otherwise to the unmarried minor children in equal shares.

(11) Under section 474.290, RSMo (1969), a homestead allowance is granted after the estate inventory required by section 473.233, RSMo (1969) is filed. The court, on application of the surviving spouse or of the guardian or person having custody of the persons of the unmarried minor children of a decedent, shall make an allowance to the surviving spouse or unmarried minor children of an amount not exceeding fifty percent (50%) of the value of the estate, exclusive of exempt property and family allowance, but in no case to exceed seven thousand five hundred dollars (\$7500). If an unmarried minor child of the decedent receives a homestead allowance in excess of five thousand dollars (\$5000), his/her exemption is the amount of the homestead allowance rather than five thousand dollars (\$5000).

Auth: sections 136.030 and 136.120, RSMo (1986). Inheritance tax rule 61-010 was last filed on Dec. 31, 1975, effective Jan. 10, 1976.

12 CSR 10-8.020 Property Subject to Tax

PURPOSE: This rule shall serve as an interpretive guideline under section 145.020, RSMo (1969) in determining property subject to tax.

NOTE: This regulation is applicable to decedents dying on or before December 31, 1980.

(1) Omission of a particular asset from this rule does not exempt that property from inheritance tax.

(2) Real property located within this state is subject to inheritance tax under section 145.020, RSMo (1969) (Op. Atty. Gen., July 12, 1934).

(3) Tangible personal property is subject to tax only in the state in which it is located under section 145.020, RSMo (1969) (Op. Atty. Gen., July 12, 1934).

(4) Intangible personal property belonging to a resident decedent is subject to tax wherever situated. Intangible personal property includes stocks, bonds, notes, goodwill, accounts receivable, leasehold interests, claims, debts, partnership interests, patents and other choses in action whether held in trust or otherwise.

(5) The interest in partnership property is an intangible taxable in the state of the decedent's domicile even though part of the property is real estate located in another state (Op. Atty. Gen., March 22, 1937).

(6) Assets payable on death to a named beneficiary (that is United States Government Bonds, etc.), are subject to inheritance tax under the provisions of section 145.020, RSMo (1969).

(7) Insurance proceeds payable to decedent's estate are subject to inheritance tax.

(8) Proceeds of a single premium life insurance and annuity contract wherein the right to have the premium returned at any time is retained by the insured, are subject to inheritance tax.

(9) Proceeds of an annuity contract payable to a named beneficiary upon the death of the annuitant are subject to inheritance tax as a transfer made to take effect in possession or enjoyment at or after death of the transferor. This contract is taxable even where no funds were payable to decedent during his/her lifetime and when decedent could not obtain a refund of premiums, but did have the right to change the beneficiary at any time.

(10) The proceeds of a matured endowment policy left with the company as an investment are taxable (Op. Atty. Gen. No. 40, June 5, 1958, and No. 66, January 6, 1936).

(11) A gift is taxable if the gift has not been completed by delivery prior to death of decedent. Delivery is essential to complete a gift. The term "transfer to take effect in possession or enjoyment at or after death," is defined as those transfers in which the transferor has retained for his/her life or any period not ending before his/her death, the possession or enjoyment of or the income from the property or the right to designate the

persons who shall possess or enjoy the property or the income therefrom. Thus, if a person transfers property in trust for a child but reserves the right to the income for life, the transfer to the child does not become effective in enjoyment until the death of the donor. The law accordingly regards such a transfer as a testamentary disposition and the donor has parted with nothing but the legal title during his/her lifetime (Op. Atty. Gen., December 7, 1950).

(12) Bequests to cemeteries wherein provisions are made for the beautification and care of specific plot(s), for the benefit of an individual, are subject to inheritance tax (Op. Atty. Gen No. 57, January 6, 1955).

(13) Damages received under the wrongful death statutes are not subject to inheritance tax, as they are not received from the decedent in the form of a taxable transfer (Op. Atty. Gen., March 17, 1950).

Auth: sections 136.030 and 136.120, RSMo (1969). Inheritance tax rule 61-020 was last filed on Dec. 31, 1975, effective Jan. 10, 1976.

12 CSR 10-8.030 Federal Death Tax Credit

PURPOSE: This rule is intended as an interpretive guideline as to those matters considered by the Department of Revenue in determining the liability of the estate to pay Missouri estate tax regardless of whether or not the time has expired for the estate to claim the death tax credit refund from the federal government.

NOTE: This regulation is applicable to decedents dying on or before December 31, 1980.

(1) Missouri estate tax imposed by section 145.070, RSMo (1969) does not depend upon the actual acceptance of the death tax credit. The fact that the estate did not claim the death tax credit does not relieve the estate from the duty and liability to pay the Missouri estate tax even though the time has expired for the estate to claim the death tax credit and claim a refund from the federal government.

Auth: sections 136.030 and 136.120, RSMo (1969). Inheritance tax rule 61-070 was last filed on Dec. 31, 1975, effective Jan. 10, 1976.

12 CSR 10-8.040 Homestead Allowance

PURPOSE: This rule shall serve as an interpretive guideline under sections 145.090(3) and 145.090(5), RSMo (1969) in determining the homestead allowance for the surviving spouse and unmarried minor children of a decedent.

NOTE: This regulation is applicable to decedents dying on or before December 31, 1980.

(1) Homestead is not an allowable deduction in computing clear net market value nor is it an exemption for the surviving spouse because it is included in the twenty thousand dollar (\$20,000) exemption according to section 145.090(3), RSMo (1969); however, if an unmarried minor child of the decedent receives a homestead allowance in an amount in excess of five thousand dollars (\$5000), his/her exemption is the amount of the homestead allowance rather than the five thousand dollars (\$5000) allowed by section 145.090(5), RSMo (1986).

Auth: sections 136.030 and 136.120, RSMo (1969). Inheritance tax rule 61-090 was last filed on Dec. 31, 1975, effective Jan. 10, 1976.

12 CSR 10-8.050 Interest

PURPOSE: This rule is intended as an interpretive guideline in determining taxes and interest, when due, under section 145.110, RSMo (1986).

NOTE: This regulation is applicable to decedents dying on or before December 31, 1980.

(1) Interest is charged if tax is not paid within nine (9) months from the death of the decedent or within any extension allowed by the court. Interest is charged from the date of death.

Auth: sections 136.030 and 136.120, RSMo (1969). Inheritance tax rule 61-110 was last filed on Dec. 31, 1975, effective Jan. 10, 1976.

12 CSR 10-8.060 Payment of Tax—Receipt—Refund

PURPOSE: This rule is intended as an interpretive guideline in determining when money is to be paid to the director of revenue—issuance of a receipt therefore, and taxes paid erroneously to be refunded, under sections 145.140 and 145.250, RSMo (1986).

NOTE: This regulation is applicable to decedents dying on or before December 31, 1980.

(1) It is not necessary that the taxpayer receives a statement before submitting check for amount of tax due the state of Missouri, ninety-seven and one-half percent (97 1/2%), as assessed by the appraiser's report. Inheritance tax payment must be made by cashier's check, certified check or fiduciary account check, payable to the director of revenue, and mailed to the inheritance tax bureau P.O. Box 27, Jefferson City, MO 65105.

(2) When the report is in error, moneys received will be deposited and a receipt issued as a partial payment. Upon receipt of an amended report and proper remittance, a receipt for full payment will be issued. The original receipt in all cases is mailed to the probate court and a copy to payor.

(3) If an overpayment occurs, proceedings for a refund will be commenced immediately on the basis of reassessment on the amended report or by court order under section 145.250, RSMo (1986).

(4) Partial payment in an amount to satisfy the federal taxing authority is allowable and a receipt and certificate of payment will be issued showing the partial payment upon request.

(5) A statement of tax due the state of Missouri is sent to the executor or administrator, unless the name and address of the attorney for the estate is given on the report or other instructions accompany the report. Name and complete address of the estate officers should be indicated on the report for correspondence and billing purposes.

(6) The director of revenue, in his/her discretion, may refuse to issue receipt for state inheritance tax payments until the estate tax appraisal has been received, examined and approved.



Auth: sections 136.030 and 136.120, RSMo (1969). Inheritance tax rule 61-140 was last filed on Dec. 31, 1975, effective Jan. 10, 1976.

12 CSR 10-8.070 Probate Court to Determine Tax—Procedure

PURPOSE: This rule is intended as a guideline as to the matter of allowable claims and deductions against the estate under section 473.360, RSMo (1969) and exceptions thereto under sections 473.367 and 473.370, RSMo (1969), and includes certain procedural methods of tax computations.

NOTE: This regulation is applicable to decedents dying on or before December 31, 1980.

(1) Claims against the estate of a deceased person must be filed in the probate court within six (6) months after the first published notice of letters testamentary or of administration (section 473.360, RSMo (1969), except as provided by sections 473.367 and 473.370, RSMo (1969)).

(2) The family allowance is properly reported as a deduction and not an exemption. The same is true of exempt property if it has been included in the inventory and subsequently distributed to the surviving spouse.

(3) Absent direction by testator to place the burden of federal estate taxes on property which did not generate the federal estate tax, the deduction for inheritance tax purposes of federal estate tax is limited to the proportional part of the federal estate tax which represents a tax on probate assets. Example: The gross Missouri estate divided by the gross federal estate equals the percentage ratio. The percentage ratio times the amount of federal estate tax paid equals the allowable deduction for inheritance tax purposes.

(4) Trustee's commission on the transfer of an interest from the life tenant to the remainderman which is to be paid out of the corpus may be allowed as a deduction to the remainder interest. The commissions are not a deduction for the life tenant, unless the corpus is taxed all to the life tenant with power of appointment on the theory that such a tenant in effect has the fee. The deduction should not be shown on the deduction schedule unless it is added back to the clear net market value of the estate when determining the life estate.

(5) If the bequest in a will creates a joint tenancy in the devisees, the exemption of the two (2) beneficiaries is totaled and the tax is computed at the average of the combined rates of the beneficiaries. (Op. Atty. Gen. No. 40, January 6, 1971.)

(A) Example. A bequest of fifteen thousand dollars (\$15,000) to a son and his wife is computed as follows:

Total value of interest	\$15,000.00
Less combined exemption of son and daughter-in-law	\$ 5500.00
Value of interest subject to tax	\$ 9500.00
Times mean rate (1% + 3% = 4% ÷ 2 = 2%)	\$.02
Tax due	\$ 190.00

(B) Example. Bequest to devisees as joint tenants where there is also a specific bequest to one devisee. If the will creates a joint bequest to son and wife in the amount of twenty thousand dollars (\$20,000), and further devises a specific bequest in the amount of fifty thousand dollars (\$50,000) to the son, computations would be as follows:

Total value of interest in joint bequest	\$20,000.00
Less combined exemptions of son & daughter-in-law	\$ 5500.00
Value of interest subject to tax	\$14,500.00
Times mean rate (1% + 3% = 4% ÷ 2 = 2%)	\$.02
Tax due	\$ 290.00

Computation of tax on specific bequest of fifty thousand dollars (\$50,000) to the son where devisee has an unused remainder in a percentage bracket after calculating interest of bequest to devisees as joint tenants.

One-half of \$20,000 = \$10,000 - \$5000 = \$5000 (son's share in 1% bracket)

Value of interest subject to tax = \$50,000 (exemption consumed in previous bequest)

\$20,000 - \$5000 = \$15,000 × 1% =	\$ 150
\$20,000 × 2% =	\$ 400
\$15,000 × 3% =	\$ 450
Tax on specific bequest	\$1000
Tax on joint bequest	\$ 290
Total tax due	\$1290

(6) If the will contains language to the effect that inheritance taxes are not to be charged against or deducted from the share of the devisees, but they are to receive their bequests clear of tax, this constitutes the bequest of an additional sum to all specific devisees sufficient to pay the tax on their bequests. It does not affect anyone who participates in the residuary. (Op. Atty. Gen. No. 3, October 24, 1938.)

(A) Example. Specific bequest of eighteen thousand dollars (\$18,000) to a son—tax on tax computation:

Total value of interest	\$18,000.00
Minus legal exemption	\$ 5000.00
Value of interest subject to tax	\$13,000.00
Times rate of tax	\$.01
Amount of tax	\$ 130.00
Tax on \$130 × 1% =	\$ 1.30
Tax on \$1.30 × 1% =	\$.01
Tax on tax	\$ 131.31
Value of interest	\$18,000.00
Plus tax on tax	\$ 131.31
Total bequest	\$18,131.31
Less exemption	\$ 5000.00
Value of interest subject to tax	\$13,131.31
Times rate of tax	\$.01
Total tax due	\$ 131.31

(7) Computing tax on tax when tax falls in the next highest bracket.

Total value of interest	\$77,500.00
Less legal exemption	\$ 500.00
Value of interest subject to tax	\$77,000.00
\$20,000 × 3% =	\$77,600.00
\$20,000 × 6% =	\$ 1200.00
\$37,000 × 9% =	\$ 3330.00
Amount of tax	\$ 5130.00

Tax on tax computation:

Amount remaining in 9% bracket	
\$3000.00 × 9% =	\$270.00
\$ 270.00 × 9% =	\$ 24.30
\$ 24.30 × 9% =	\$ 2.19
\$ 2.19 × 9% =	\$.20
\$.20 × 9% =	\$.02
	\$296.71

Amount remaining in 12% bracket

\$2130.00 × 12% =	\$ 255.60
\$ 255.60 × 12% =	\$ 30.67
\$ 30.67 × 12% =	\$ 3.68
\$ 3.68 × 12% =	\$.44
\$.44 × 12% =	\$.05
	\$ 296.71
	\$5130.00
Tax on Tax	\$5717.15

Total value of interest	\$77,500.00
Plus tax on tax	\$ 5717.15
Total bequest	\$83,217.15
Less exemption	\$ 500.00
Value of interest subject to tax	\$82,717.15
\$20,000.00 × 3%=	\$ 600.00
\$20,000.00 × 6%=	\$ 1200.00
\$40,000.00 × 9%=	\$ 3600.00
\$ 2717.15 × 12%=	\$ 326.06
Total tax due	\$ 5726.06