



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Travis Co

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. O-2850

Re: What is the proper treatment for inheritance tax purposes of certain bank account held in the name of the deceased and her surviving daughter.

You have requested the opinion of this department in respect to the proper application of the Texas inheritance tax law to the joint bank account of a decedent and her surviving daughter. According to the information you furnished, all of the money paid into the bank account was the property of the mother. You further advise that the mother and daughter sent the following letter of instructions to the bank concerning the account in question:

"You are hereby notified that all deposits CHECKING and/or SAVINGS, now standing or to be hereafter made in the name or names of either or both of the undersigned, may be paid by you to either or both of us, or to the survivor of us in conformity with your banking rules. . .

"You are, therefore, authorized to make payment either directly or upon order of any such deposits covered hereby to either of us, or upon the death of either of us, to the survivor thereof. . ."

Article 7117 of the Revised Civil Statutes of Texas provides in part as follows:

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"All property within the jurisdiction of this state, real or personal, corporate or incorporate, and any interest therein, including . . ., or gifts made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall, upon passing to or for the use of any person, corporation, or association, be subject to a tax for the benefit of the State's General Revenue Fund, in accordance with the following classification. . ."

In order to determine the interest of the mother and daughter in the bank account prior to the death of the mother, the intention of parties is the foremost consideration. We are unable to find where any joint tenancy is created, despite the fact that the survivor becomes entitled to all of the money in the bank. Under the facts in this case, either the mother or the daughter could have drawn checks equal in amount to the full amount remaining in the bank account and thereby use all of the money to her own individual benefit and destroy whatever interest the other may have had in the money. All of the money was placed in the bank account by the mother. Without attempting to give any name to the interest of the parties, it is our opinion that in truth and in fact the mother was merely placing sums in the bank account in the name of herself or her daughter, upon which either she and her daughter could draw checks when either of them desired to do so. We believe that the daughter received no vested interest in the money at the time the mother deposited the same, but rather each time the daughter drew a check against the account there was a gift from the mother to the daughter at that time of the amount of the check. We believe further that it was the intention of the mother that upon her death the remaining money in the bank account should go to the daughter for her own use and benefit and possession without the necessity of probate proceedings in reference to such money.

It is our opinion, therefore, that any amount which the daughter drew by check upon said account prior to the death of the mother was a gift which took effect in enjoyment and possession as of the time that such check was

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drawn and the same is therefore not subject to the Texas inheritance tax. It is our opinion, however, that the amount remaining in the bank account at the time of the death of the mother now passes to the daughter in possession and enjoyment as a gift from the mother intending to take effect after the mother's death. Therefore, such an amount is taxable under the Texas inheritance tax law as quoted supra.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Billy Goldberg
 Billy Goldberg
 Assistant

HC:js

APPROVED DEC 18, 1940

George H. Sheppard

ATTORNEY GENERAL OF TEXAS

