



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

This Opinion
Affirms Opinion

0-5997

January 29, 1958

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

Opinion No. WW-350

Re: Whether value of property
previously subjected to
death taxes in another
State on death of prior
decedent may be deducted
in computing inheritance
taxes

Dear Mr. Calvert:

Your letter requesting our opinion on the above
captioned question reads, in part, as follows:

"Robert Glenn Rapp died testate on October 10, 1948, a resident of Oklahoma owning 22059 shares of Denver Producing and Refining Company stock valued at approximately \$2,766,968.00. Under the last will and testament of Robert Glenn Rapp, the testator devised this stock to his surviving wife, Florence Bunn Rapp, who later remarried a man by the name of Anson L. Clark. Mrs. Florence Bunn Clark is now deceased, having died on August 1, 1952.

"Between the date of death of Robert Glenn Rapp and Mrs. Florence Bunn Clark, the Denver Producing and Refining Company was liquidated and the assets of the company were distributed to the stockholders of said company. Among the assets of the company distributed to Mrs. Clark were various mineral interests and surface rights in Texas valued at \$3,140,782.00

"An inheritance tax report was made to the Oklahoma Tax Commission for the estate of Robert Glenn Rapp and the 22059 shares of Denver Producing and Refining Company stock were included as a part of the decedent's estate and a tax paid thereon.

"Anson L. Clark, the executor of the estate of Florence Bunn Clark, has filed with this department a Texas Inheritance Tax Report which

includes the assets distributed to Mrs. Clark in the liquidation of the Denver Producing and Refining Company, also claiming as a deduction for property previously taxed a sum of approximately \$2,743,176.00 as being taxed within five years by the State of Oklahoma.

"Please advise whether or not this claim of \$2,743,176.00 as property previously taxed within five years is an allowable deduction."

Article 7125, Vernon's Civil Statutes, provides, in part, as follows:

"The only deductions permissible under this Law are the debts due by the estate, . . . all Federal, State, County and Municipal taxes due at the time of the death of the decedent, . . . and an amount equal to the value of any property forming a part of the gross estate situated in the United States received from any person who dies within five (5) years prior to the death of the decedent, this reduction, however, would be only in the amount of the value of the property upon which an inheritance tax was actually paid and shall not include any legal exemptions claimed by and allowed the heirs or legatees of the estate of the prior decedent. . . ."

Prior to the 1939 amendment of Article 7125, the pertinent provisions of the statute read as follows:

"The only deductions permissible under this law are the debts due by the estate, . . . all Federal, State and County and Municipal Taxes due at the time of the death of decedent and an amount equal to the value of any property forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent; this deduction, however, shall only be allowed where an inheritance tax imposed under this or any prior act of the Legislature was paid by the estate of the prior decedent and only in the amount of the value placed by the Comptroller on such property in determining the value of the gross estate of such prior decedent. . . ."

Hon. Robert S. Calvert, page 3 (WW-350)

Attorney General's Opinion O-5997, in passing upon the identical question here involved, after quoting the 1929 and 1939 amendments of Article 7125 stated:

"The conclusion is inescapable, from this amendment deliberately omitting the clause, 'Where an inheritance tax imposed under this or any prior act of the Legislature was paid', that the Legislature intended thereby to exempt an estate of a prior decedent received within five years, and upon which an inheritance tax was paid, even where the tax was paid to some other state."

Opinion O-5997 was later affirmed by Opinion R-1425 and for the reasons stated in Opinion O-5997 we re-affirm same.

S U M M A R Y

The deduction allowed under Article 7125, V.C.S., for property comprising a part of a decedent's estate which was received from a prior decedent less than five years before decedent's death and upon which inheritance taxes were actually paid may be claimed even though the tax was paid to some other State.

Yours very truly,

WVG:gs

WILL WILSON
Attorney General of Texas

APPROVED:

OPINION COMMITTEE
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REVIEWED FOR THE ATTORNEY GENERAL

BY

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