

OPINION
65-347

July 24, 1965 (OPINION)

Mr. Lloyd Omdahl

Tax Commissioner

RE: Taxation - Estate Tax - Distribution to Municipalities

This is in reply to your request for the opinion of this office in regard to the proper construction to be placed on the provisions of House Bill No. 701, chapter 412 of the 1965 Session Laws, currently section 57-37-24 of the 1965 Supplement to the North Dakota Century Code.

Your first question is stated as follows:

"Does the distribution of part of the estate tax to a city or village under chapter 412 (HB 701) apply only with respect to estates of decedents who dies on or after July 1, 1965, the effective date of chapter 412, or does it apply to estate taxes actually collected on or after July 1, 1965 regardless of the date of death of the decedent for whose estate the tax is paid?"

The problem seems to concern whether the new distribution is to be made of any collections of any taxes after the effective date of the Act or whether the new distribution applies only to taxes on estates of decedents who dies after July 1, 1965. The new method of distribution would appear to be almost a complete provision in itself, as was the old method of distribution. Where a tax had vested and right to a distributive share of same had vested in a municipal corporation or political subdivision of the state prior to the effective date of the new Act, we do not believe its coming into operation would divest the rights of the municipal corporation or political subdivision. On the other hand, in those instances where the decedent dies subsequent to the effective date of the Act, it is our opinion that the tax then applying must be distributed according to the terms of the new Act. It is thus our opinion that the provisions of chapter 412 of the 1965 Session Laws apply only with respect to estates of decedents who dies on or after July 1, 1965.

Your second question is stated as follows:

"If property of an estate is located in a city or village and all of it passes to a surviving spouse or charitable organization and if the estate is entitled to an exemption for all of that particular property because of its passing to the spouse or charitable organization but the estate pays a tax because of other property not situated in that city or village, does the city or village share in the estate tax?"

Under the terms of the statute it would appear that the right of the

city or village to share in the tax is predicated upon the location of "any part" of decedent's property and no exception to that portion of the state is made with regard to property going to a beneficiary entitled to an estate tax exemption. It is therefore our opinion that in the circumstances outlined by your second question the city or village does share in the estate tax, even though all of the property located in the city or village may go to a spouse or charitable organization where all of such property would not be taxed.

Your third question is stated as follows:

"Which specific levies are included in the phrase 'except school levies' that is at the end of the following sentence in the amendment.:

'If any part of decedent's property was located within the limits of a city or village the share of tax based on such property shall be divided between city or village and the county in proportion to their respective total mill levies, except school levies.'

The proportion, i.e., of "their respective total mill levies, except school levies" is new language introduced into the bill by amendment (See page #421, House Journal).

We thus cannot rely on practice, decisions, or administration for guidelines in construing same. Considering it therefore literally, we must note that school districts or political subdivisions other than counties, cities and villages are not mentioned in the Act, or in this new language. We therefore must conclude that "school levies" means "school levies" of the political subdivisions named. We agree with your point of view that villages and cities make no levies that could be considered "school levies." It is further our opinion that the library levy made under chapter 40-38 of the North Dakota Century Code, both for objectively or subjectively speaking, is not a school levy.

It is further our opinion that those "school levies" made by counties listed in your third question, part one, subparts "a." through "g." are the "school levies" referred to in the Act. Those levies are:

- a. County agricultural and training levy, section 15-42-08, NDCC;
- b. County agricultural and training school building fund levy, section 15-42-09.1, NDCC;
- c. Aid for junior college or off-campus educational center levy, section 15-18-05, NDCC, as amended;
- d. Aid to evening schools levy, section 15-46-04, NDCC, as amended;
- e. Special education fund levy, section 15-59.1-02, NDCC, as amended, whether made as an excess levy or as a general fund levy;

- f. County vocational education school district levy, section 15-20-10.1, N.D.C.C., as amended; and
- g. County equalization fund levy, section 57-15-24, N.D.C.C., as amended."

Your fourth question concerns this same new language, to wit: "be divided between city or village and the county in proportion to their respective total mill levies, except school levies." You ask whether the total mill levies as used in that phrase should be the levy for the year preceding the calendar year in which the decedent died.

Considering the context of the statutory provisions as a whole, we must answer your last question in the affirmative. The time of death of the decedent appears to be the decisive factor, and on grounds of practicality, would appear that the calendar year basis would be the logical basis for establishing a uniform practice in regard to same.

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