

OPINION
51-172

July 19, 1951 (OPINION)

TAXATION

RE: Estates

In yours of the 17th inst. you ask our opinion as to the effect of chapter 325 Laws of 1951, which amended section 57-3711 (2), as to whether the amendment affects estates of decedents who died prior to the effective date of the amendment.

You refer to the opinion of this office appearing on pages 176 and 177 of the Report of the Attorney General for July 1st, 1948 to June 30th, 1950. We adhere to that opinion. However, that opinion related to what was in effect a penalty for nonpayment of the estate tax rather than to a determination of the amount of the tax.

Chapter 325 Laws of 1951 relates to the determination of the amount of the tax. 59 C.J. at pages 1171 to 1173 holds that retroactive legislation affecting vested rights is not favored, and that a statute insofar as it affects vested rights will be construed as prospective only; that an intention to limit or affect existing rights will not be presumed. A statute will not be given a retroactive construction by which it will impose liabilities not existing at the time of its passage.

These are general principles which we think apply here.

An estate tax is a tax upon the estate of a decedent existing at the time of the death of the decedent. The law in force at that time, in our opinion, insofar as it determines the amount of the estate which is subject to tax is the measure of the taxable estate. Any amendment which affects the amount of the taxable estate can have no retroactive effect. Therefore this amendment will not affect the tax upon the estate of one who died prior to its passage.

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Attorney General