

compromise such maintenance claims which may have accrued under the provisions of *any previous law*.

Provision is made in Acts of 1955, Ch. 339, Sec. 13, as follows:

“SEC. 13. The provisions of this act shall in no way affect any pending litigation or rights or privileges that may have accrued, or may hereafter accrue before the effective date of this act, under the laws of the State of Indiana.”

It appears that the Legislature recognized the source of irritation, worry and uncertainty under the “postponement” in the 1951 Act and “deferment” in the 1953 Act and sought to remedy this in Acts of 1955, Ch. 339.

In conclusion, it appears that it was the intent of the 1955 Legislature that “agreement to accept payment at a lesser rate” means a compromise or adjustment of liability and that all differences, under such maintenance agreements, will be waived, cancelled and eliminated. Of course, the past accumulated deferred charges must be cancelled by action of the Attorney General and the Governor.

OFFICIAL OPINION NO. 24

June 23, 1955

Mr. George L. Denny, Administrator
Inheritance Tax Division
111 South Meridian Street
Indianapolis, Indiana

Dear Mr. Denny:

This is in answer to your request for an Official Opinion on the questions propounded by you as follows:

“I. Is the County Treasurer required to accept payment of inheritance taxes tendered within one year from the date of accrual (the date of death of decedent) and to allow the five per cent discount within the year after accrual where no court order has been entered prior to such tender.

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“II. Is such Treasurer required to accept payment of such tax without interest after the expiration of eighteen months from date of accrual where tender has been made within such eighteen months but no court order has previously been entered.”

The answers to these questions must be found not only by reference to the Indiana Inheritance Tax Law, being Acts of 1931, Ch. 75, as amended, as found in Burns' Indiana Statutes (1953 Repl.), Sections 7-2401 to 7-2442, but also by reference to the statutory powers and duties of executors and administrators managing decedents' estates, as found in the new Probate Code, being Acts of 1953, Ch. 112, as found in Burns' Indiana Statutes (1953 Repl.), Section 6-101 *et seq.*

The transfers to which the Indiana Inheritance Tax Law applies are those designated in Acts of 1931, Ch. 75, Sec. 1, as found in Burns' Indiana Statutes (1953 Repl.), Section 7-2401. Speaking of the nature of the transfers to which our Inheritance Tax Law is generally applicable, the Appellate Court of Indiana in the case of *Indiana Dept. of State Revenue v. Kitchin* (1949), 119 Ind. App. 422, 86 N. E. (2d) 96, stated at page 425 the following:

“Our tax is upon the transfer of property by will, by intestate laws or in contemplation of death. The tax is based upon the value of the property *so transferred.*”
(Court's emphasis)

In other words, whether the transfer be by operation of the testator's will, by operation of intestate laws, or by operation of some transfer made in contemplation of death or intended to take effect in possession or enjoyment at or after death, it is the fact of death which creates the transfer upon which the tax is imposed. Acts of 1931, Ch. 75, Sec. 31, as found in Burns' Indiana Statutes (1953 Repl.), Section 7-2431, provides as follows:

“All taxes, imposed by this act, shall be *due and payable* at the time of the transfer, except as herein provided.” (Our emphasis)

From the above statutory provision arises the general principle that inheritance taxes under the Indiana law, being im-

posed upon transfers effected by death, are also due and payable as of that time. This is true, notwithstanding the fact that the administration, distribution and settlement of the decedent's estate makes payment on the date of death impractical. However, the Inheritance Tax Law is consistent on this proposition.

Acts of 1931, Ch. 75, Sec. 13, as found in Burns' Indiana Statutes (1953 Repl.), Section 7-2413, provides as follows:

"The tax in every resident decedent's estate shall be paid to the treasurer of the county in which the court is situated; and said treasurer shall issue receipt in duplicate. One copy thereof he shall immediately forward to the state board of tax commissioners, who shall charge the treasurer so receiving the tax with the amount thereof, and seal and countersign said receipt and return to said person paying such tax. No executor, administrator, or trustee, shall be entitled to a final accounting of an estate, nor be discharged from liability for the amount of such tax, unless a receipt so sealed and countersigned by the state board of tax commissioners shall be attached to his final report.

"If such tax is paid in estates of resident or non-resident decedents within one [1] year from the accrual thereof, a discount of five [5] per cent shall be allowed and deducted therefrom. If such tax is not paid within eighteen [18] months from the accrual thereof, interest shall be charged and collected thereon at the rate of ten [10] per cent per annum from the time the tax accrued, unless by reason of necessary litigation or other unavoidable cause of delay, such tax cannot be determined, in which event the court in estates of resident decedents, and the state board of tax commissioners in estates of non-resident decedents, may reduce the interest to six [6] per cent per annum, which shall be charged upon such tax, from accrual thereof until the cause of such delay is removed after which ten [10] per cent per annum shall be charged."

(Note: The administration of the Indiana Inheritance Tax Law has been transferred from the State Board of Tax Com-

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missioners to the Indiana Department of State Revenue by authority of Acts of 1947, Ch. 10, Sec. 4, as found in Burns' Indiana Statutes (1951 Repl.), Section 64-2904.)

It is to be noted from the above-quoted section that, whenever interest is due, it runs from the date of accrual which can only mean the date of the death. It may be argued because of the use of the word "determined" in the second paragraph of the above-quoted section, that such language has reference only to the determination of the tax by the Court as provided in Acts of 1931, Ch. 75, Sec. 10, as found in Burns' Indiana Statutes (1953 Repl.), Section 7-2410. However, such an argument loses its force when it is noted that the provisions of Burns' Indiana Statutes (1953 Repl.), Section 7-2413, concerning discount and interest, are applicable not only to resident decedents' estates in which the tax is ultimately determined by Court but are also applicable to non-resident decedents' estates, in which the determination of the tax is under the exclusive jurisdiction of the Indiana Department of State Revenue pursuant to the provisions of Acts of 1931, Ch. 75, Sec. 20, as found in Burns' Indiana Statutes (1953 Repl.), Section 7-2420 and Acts of 1947, Ch. 10, Sec. 4, as found in Burns' Indiana Statutes (1951 Repl.), Section 64-2904. Therefore, because Burns' Indiana Statutes (1953 Repl.), Section 7-2413 is applicable to both resident and non-resident decedents' estates, it cannot be argued that the word "determined" as used therein means only a determination by the Court.

It is to be noted further that Acts of 1931, Ch. 75, Sec. 13, as found in Burns' Indiana Statutes (1953 Repl.), Section 7-2413, specifically encourages the speedy payment of the taxes imposed by the Indiana Inheritance Tax Law by providing a discount of 5% if the tax be paid within one year from the accrual thereof or, in other words, within one year from the date of the decedent's death.

The prime function of an executor or administrator of a decedent's estate is to preserve the assets of the estate and to manage them in such a manner as to protect the interests of the distributees and creditors. For this purpose said fiduciary has the duty not only to prevent the commission of waste, but also has the authority upon Court approval to make investments as provided in Acts of 1953, Ch. 112, Sec. 1314, as found

in Burns' Indiana Statutes (1953 Repl.), Section 7-714. Acts of 1953, Ch. 112, Sec. 1301, as found in Burns' Indiana Statutes (1953 Repl.), Section 7-701, governs the general powers of the executor or administrator including his duty to pay taxes and it is a general proposition that such personal representative should manage the estate in such a manner as to conserve its assets for the best interest of the distributees and creditors, which would logically include the power to take advantage of tax savings whenever possible, and when authorized.

Since the Inheritance Tax Law encourages the payment of taxes at an early date, it does not seem rational for a public official to act in such a manner as to delay collection of the tax, which would also be inconsistent with the preservation of the estate by the personal representative and would reduce the amount available for distribution to distributees and creditors if interest were added because of the failure of a public official to accept the tender of such taxes, especially when the same are due and payable as of the date of the death of the decedent.

Even though the Court has not made its ultimate determination of the amount of tax due, the state's interest would not be jeopardized if the County Treasurer accepts the payment for the following reasons:

The receipt which the County Treasurer must issue pursuant to the provisions of Acts of 1931, Ch. 75, Sec. 13, as found in Burns' Indiana Statutes (1953 Repl.), Section 7-2413, *is merely a receipt and does not release the personal representative from liability for any additional tax which may be due and owing by him as such. This section specifically provides that the personal representative shall not be discharged from his liability for the tax until such time as the receipt issued by the County Treasurer and forwarded to the Indiana Department of State Revenue shall have been sealed and countersigned by that department.* In cases in which a tender of payment of taxes is made, your department should not countersign such receipt, at least until after the order of Court is made showing no tax due in addition to that which has already been paid. Further, if your department has not countersigned such receipt it is not necessarily bound by the Court order, but may file a petition for re-determination within 90 days from the determination of the tax by the Court as provided in Acts of 1931,

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Ch. 75, Sec. 11, as found in Burns' Indiana Statutes (1953 Repl.), Section 7-2411.

Further, if the tax as paid by the personal representative is in excess of that ultimately found to be due, the Inheritance Tax Law, Acts of 1931, Ch. 75, Sec. 17 and Sec. 24, as amended, as found in Burns' Indiana Statutes (1953 Repl.), Section 7-2417 and Section 7-2424, provide the procedure by which a refund may be granted of such excessive payment.

In view of the above and foregoing, it is my opinion that your questions should be answered as follows:

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1. The County Treasurer is required to accept payment of inheritance taxes tendered within one year from the date of accrual (the date of death of decedent), and is required to allow the 5% discount when such tender is made within one year after accrual even though no Court order has been entered prior to such tender.

2. The treasurer is required to accept the payment of such tax without interest after the expiration of 18 months from the date of accrual when proper proof is submitted that tender of payment has been made within 18 months of the date of death, even though no Court order has been previously entered.

In conclusion, it should be noted that an executor or administrator of a decedent's estate acts as an arm or agent of the Court having jurisdiction of the estate. In *re Batt's Estate* (1942), 220 Ind. 193, 197, 41 N. E. (2d) 365, 139 A. L. R. 1391. Should the right of the County Treasurer to accept the tender of payment of taxes in advance of the Court determination be further questioned, it would be entirely proper for the Court to enter an appropriate order, not having the force and effect of a tax determination, but merely authorizing the payment and acceptance of the taxes believed to be due, even though the amount thereof has not been determined by the Court.

It should further be emphasized that this opinion does not affect the operation of the Acts of 1931, Ch. 75, Sec. 13, as found in Burns' Indiana Statutes (1953 Repl.), Section 7-2413, in situations in which the tax is not timely paid. Pursuant to

that section, the 5% discount is not authorized with respect to any payment first tendered later than one [1] year after the date of decedent's death, and any payment of tax first tendered later than eighteen [18] months after the date of decedent's death is subject to the interest charges therein prescribed.

OFFICIAL OPINION NO. 25

June 27, 1955

Honorable Harold W. Handley
Lieutenant-Governor
State of Indiana
331 State House
Indianapolis 4, Indiana

Dear Sir:

This is in reply to your request for an Official Opinion on the following questions:

(1) Whether Ch. 203 of the Acts of 1935, as amended, Burns' Indiana Statutes (1952 Repl.), Section 42-901 *et seq.* is enforceable, and

(2) Whether livestock "Traders," not having an established place of business but who operate directly from their trucks are "buyers" as used and defined in said Act.

First of all, I think the Acts of 1935, Ch. 203, as amended, and as found in Burns' Indiana Statutes (1952 Repl.), Section 42-901 *et seq.*, is in full force and effect and is enforceable in all ways as to matters within its scope.

In regard to your second question, the Acts of 1935, Ch. 203, Sec. 2, as amended, as found in Burns' Indiana Statutes (1952 Repl.), Section 42-911, defines a "buyer" as follows:

"The word 'buyer' whenever used in this act, shall be construed to mean any person, or his employees, agents and/or representatives, who operates or maintains a concentration point as herein defined."