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OFFICIAL OPINION NO. 46

June 15, 1953.

Mr. George L. Denny, Administrator,  
Inheritance Tax Division,  
141 S. Meridian Street,  
Indianapolis, Indiana.

Dear Mr. Denny:

Your letter of March 20, 1953, requests an official opinion defining the meaning of "a like and equal exemption" as that term is used in Section 3 of the Indiana Inheritance Tax Law as amended by Acts 1947, Chapter 311, Section 1, same being Burns' Indiana Statutes Annotated (1951 Supp.) Section 6-2403. The particular proviso thereof to which your request relates was enacted for the first time in this state in 1947, and is as follows:

"\* \* \* and provided further that the exemptions in all cases under subdivisions (b), (c) and (d) shall extend to persons, organizations, associations and corporations organized under the law of other states, and resident therein, provided the law of such other state grants to persons, organizations, associations and corporations organized under the law of the State of Indiana, and resident therein, a like and equal exemption. \* \* \*"

Subdivisions (b), (c) and (d) referred to in the above proviso are as follows:

"(b) all transfers to any public institutions for exclusive public purposes;

"(c) all transfers to any trustee or trustees in trust for the sole benefit of any charitable, educational, or religious organization, fund, or foundation; and

"(d) all transfers to any corporation, institution, society, association or trust, wherever incorporated or organized, formed for charitable, educational, or religious purposes: \* \* \*."

For purposes of brevity, I shall hereinafter refer to transfers to charitable organizations with the understanding that

what is said with respect to them shall be equally applicable to all transfers enumerated in subdivisions (b), (c) and (d).

Since the type of legislation herein involved is of fairly recent origin and case law upon this subject is not as abundant as desirable, it may be helpful to review briefly the history of this legislation as an aid in determining legislative intent. For some time prior to 1947 it had been a statutory requirement that all bequests to non-resident charitable organizations must be used within the State of Indiana in order for exemption to apply. This requirement was based upon the theory that charitable organizations perform a service to the state relieving the state of burdens which otherwise of necessity would have been borne by taxation. As stated in *Lloyd Library & Museum v. Chipman, Sheriff* (1929), 232 Ky. 191, 22 S. W. (2d) 597, at page 598:

“\* \* \* Exemptions to charitable and educational institutions are bottomed on the fact that they render service to the state, and thus relieve the state and its people of a burden which they otherwise would have to assume. In its final analysis, an exemption is equivalent to an appropriation. \* \* \*”

On this basis it has been declared to be a constitutional classification to require the charitable donee to use the bequest within the State granting the exemption. In the case of *Board of Education, etc. v. Illinois* (1906), 203 U. S. 553, 27 S. Ct. 171, 51 Law. Ed. 314, at page 563, the United States Supreme Court said:

“And it cannot be said that if a State exempts property bequeathed for charitable or educational purposes from taxation it is unreasonable or arbitrary to require the charity to be exercised or the education to be bestowed within her borders and for her people, whether exercised through persons or corporations.”

Such was the status of this section of the law prior to 1947. In recent years there has been a growing tendency in inheritance tax legislation of the various states to relax the above requirement by basing the right to exemption upon the *alter-native* requirement of reciprocity.

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In 1947 when the proviso of the statute here under review was enacted, there were eleven (11) states whose inheritance tax laws contained so-called reciprocity provisions dealing with exemptions in the case of bequests to charitable organizations, namely, California, Colorado, Connecticut, Illinois, Kentucky, Maine, Massachusetts, Minnesota, North Carolina, Oregon and Wyoming. Under Section 3 of the Indiana Inheritance Tax Law as it existed before the 1947 amendment, bequests from residents of those states to Indiana charitable organizations were subjected to succession taxes in such states, thereby depriving our charitable organizations of the full use of the bequest. To keep abreast of other states and to further the activities of Indiana charitable organizations, the 1947 amendment was passed so that our charities would have the opportunity to receive tax free bequests from residents of states whose laws contained the so-called reciprocity provisions.

For a time following the enactment of Chapter 311 of the Acts of 1947, Burns' Indiana Statutes Annotated (1951 Supp.) *supra*, the Inheritance Tax Division contended that the proviso heretofore quoted was a cumulative one, exacting an added burden or condition prerequisite to the right of exemption, such a contention requiring both that the bequest be used in Indiana and that the non-resident charitable organization be organized under the law of a sister state which granted a like and equal exemption to Indiana charitable organizations. Such contention would have penalized non-resident charities if they were not organized under the laws of a state granting reciprocity, even though the bequest were used in Indiana. In other words, such an interpretation would have destroyed any inducement to use the bequest in Indiana, and thus would have defeated the very purpose for exempting charitable bequests. Denying this contention, the language contained in the proviso added by the 1947 amendment was recently construed to be an independent proviso, or as the Appellate Court, in the case of *Ind. Dept. of State Revenue, Inheritance Tax Div. v. Shock's Estate* (1952), 122 Ind. App. 713, 720, 106 N. E. (2d) 814, said:

“\* \* \* is clearly *not* cumulative, negative or restrictive, but is a positive proviso of enlargement, the effect of which is to ‘*extend the exemption \* \* \* in all cases*’ where exemption is granted under our law to either

domestic or foreign corporations by reason of the fact that the Colorado statute extends 'a like and equal exemption'." (Court's emphasis.)

Therefore, if the bequest to a non-resident charitable organization is not to be used in Indiana, the right to exemption depends solely upon whether or not that donee is organized under the laws of a sister state which provides a like and equal exemption to Indiana charitable organizations.

*First*—Having established that exemption for this cause is dependent solely upon the basis of reciprocity, it should be noted that the proviso requires that reciprocity be granted by "the law of such other state." This would preclude the applicability of the proviso with respect to territories and foreign countries even though their laws might contain a like and equal exemption. Based upon the proposition that reciprocity exemption statutes are, among other things, for the purpose of solving the vexing problem of multiple taxation among the several states of the Union, it has been held that reciprocity such as enacted by the above statute does not extend reciprocity to foreign countries.

In re Estate of Margaret W. Miller, deceased v. State of Wisconsin (1942), 239 Wisconsin 551, 2 N. W. (2d) 256, 139 A. L. R. 1056.

In contrast with the statewide reciprocity extended by this proviso is the language contained in Section 27 of the Indiana Inheritance Tax Law, Burns' Indiana Statutes Annotated (1951 Supp.) Section 6-2427 by which reciprocity of a different nature is extended by the terms of that section to states, territories and countries.

*Second*—In order that the law of the sister state provide a like and equal exemption sufficient to make this provision operative, the sister state must have an *independent, comprehensive* inheritance, transfer, succession, estate or death tax law.

Irvin A. Clement v. A. H. Stone *et al.* (1943), 195 Miss. 774, 15 So. (2d) 517, 152 A. L. R. 742.

In the foregoing case, which is one concerning liability for income tax, the Mississippi Supreme Court at first held that

its reciprocity provision was applicable to exempt income of a Tennessee resident derived from operations in Mississippi. However, the Mississippi Supreme Court reversed itself on the proposition and for the reason that the State of Tennessee had no general income tax law at all. It stated at pages 746 and 747:

“But, we do hold that for a citizen of a state other than the State of Mississippi to be exempt from income tax on all income received from within the State of Mississippi, the state of which he is a citizen must have a *general* income tax law at least *similar* in principle to our own, as to the character and source of income taxed, in order for such non-resident to be entitled to the exemption on the ground of reciprocity, or to avoid double taxation \* \* \*. But the State of Tennessee extends to our citizens no such ‘exemption’ as is claimed by the appellant here within the meaning of either of the foregoing definitions. There can be no exemption from taxation in favor of those of a particular class until there is a law enacted which is applicable to others. Exemption means ‘immunity from a general burden, tax or charge.’ Black’s Law Dictionary, Second Edition, 463; Long v. Converse, 91 U. S. 105, 113, 23 L. Ed. 233. Moreover, no exemption from taxation will be created by implication. 26 R. C. L. 302.

“In other words, we are of the opinion that Section 37, Chapter 120, Laws of 1934, should be interpreted to mean that our legislature proposed to our sister states that if they would exempt our citizens from an income tax that their own citizens are required to pay, then Mississippi would exempt their citizens from the payment of the income tax that our citizens are required to pay under the said Chapter 120, Laws of 1934.

“Since the State of Tennessee has offered no such reciprocity, and has no general income tax law, either on gross or net incomes, containing a reciprocity provision, the exemption claimed by the appellant herein should be denied.” (Our emphasis.)

This proposition of law has also been recognized by the Attorney General of the State of Florida in 1951 Fla. O. A. G.,

Official Opinion No. 051-35. The State of Florida, as shown by said Official Opinion, is illustrative of the above proposition in that Section 11, Article IX of the Florida Constitution prohibits a general tax upon inheritances and allows an estate tax only "to the extent of absorbing the amount of any deduction or credit which may be permitted by the laws of the United States." In other words, by the express terms of the Florida Constitution, its estate tax is not independent, comprehensive, nor general, but exists only so long as and by virtue of the Federal Estate Tax. On this reasoning the Attorney General of Florida has stated that, without a similar tax, a like and equal exemption does not exist and reciprocity is absent as between Indiana and Florida.

*Third*—It is further my opinion that the term "a like and equal exemption" does not necessarily mean an identical exemption. It is not reasonable to assume that the legislature intended this language to apply only to states having inheritance tax laws precisely the same as that of Indiana. In the case of *Indiana Department of State Revenue, Inheritance Tax Div. v. Shock's Estate, supra*, at page 713 our Appellate Court did not view this question in such a narrow manner. It said:

"\* \* \* The stipulation also contained a copy of the Colorado Inheritance Tax Law, which is very *similar* and must be considered as providing reciprocal exemptions to the Indiana Inheritance Tax Law." (Our emphasis.)

This is in accord with the proposition that reciprocal statutes, unlike retaliatory statutes, are to be liberally construed, *Metropolitan Life Ins. Co. v. Boys, etc.* (1920), 296 Ill. 166, 129 N. E. 724.

An interpretation of the term "like exemption" is found in the case of *Bliss et al. v. Bliss et al.* (1915), 221 Mass. 201, 109 N. E. 148, at page 152, where the Massachusetts Supreme Court had the following to say on this question:

"\* \* \* Our statute should be interpreted in the light of the evil at which it was aimed and the purpose intended to be accomplished. The words 'like exemption' in our statute are satisfied by the terms of the New York statute. Said Chief Justice Shaw in Hough-

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ton v. Field, 2 Cush. 141, 145: "Like" does not necessarily mean the same in all particulars, but rather the contrary.' 'Like' in this connection does not imply identity but only similarity. It does not import coextensiveness in every detail, but only a resemblance in its salient features. See, also, Hopkins v. Benson, 21 Me. 399; United States v. Wallace, 116 U. S. 398, 400, 6 Sup. Ct. 408, 29 L. Ed. 675. 'Exemption' as applied to taxation signifies an immunity or freedom from that pecuniary burden. The New York statute covers the same general subject of taxation on successions as does our act. It is of 'like character.' It defines the classes of property to which it applies. It omits the particular kind of property here involved. That is as much an exemption in a broad sense as would be a comprehensive general phrase with certain denominated exceptions. The resulting freedom from taxation would be accomplished in one way as well as in the other. Although the New York law and our own are not exactly commensurate and coterminous in every respect as to property of a nonresident not made subject to the succession tax, yet as New York would not impose a succession tax on property exactly like that here in question and in New York in the same sense as this is in Massachusetts, if it belonged to a deceased resident of Massachusetts, we are of the opinion that the descriptive words of our statute 'like exemption' are satisfied. To the same effect is the well-reasoned opinion in Kansas v. Davis, 88 Kan. 849, 129 Pac. 1197, Ann. Cas. 1914 B, 688."

To the same effect, see *In re Robbins' Estate* (1951), 258 Wis. 206, 47 N. W. (2d) 889.

As pointed out in the case of *Bliss v. Bliss*, *supra*, it is not necessary that the exemption be couched in terms as such, so long as the general taxing act omits the taxation of our Indiana charitable organizations. As stated in 26 R. C. L. 296:

"\* \* \* In the broad sense whenever a tax is laid on property which does not apply to all property within the jurisdiction of the taxing authorities, the property not taxed may be said to be exempted. \* \* \* In its narrower sense an exemption from taxation is the grant

of immunity to particular persons or corporations or to persons or corporations of a particular class from a tax upon property or an excise which persons or corporations generally within the same taxing district are obliged to pay. \* \* \*

Thus a like and equal exemption to Indiana charitable corporations may exist whether by terms as such, or by omission to tax our charitable organizations.

*Fourth*—Your request mentions the fact that inheritance tax laws of some sister states exact certain tests upon the particular organizations in order for them to qualify for exemption in their own state. For example, you state that New York denies the exemption to any organization which “indulges in any substantial part of its activities in propaganda or otherwise trying to influence legislation.” Since we are dealing in this case with a matter of comity, I do not believe that it is either proper or practical for the State of Indiana to attempt to classify non-resident organizations as charitable or otherwise. As a matter of comity it seems to me that if a non-resident organization is classed as charitable in its own state, such charitable character should be so recognized in all other states.

As heretofore indicated in Ind. Dept. of State Revenue, Inheritance Tax Div. v. Shock's Estate (1952), 122 Ind. App. 713, 720, 106 N. E. (2d) 814, the right to exemption upon the basis of reciprocity is an *alternative* method. Therefore, in the absence of reciprocity, a bequest to non-resident charitable organizations must be used within the State of Indiana in order for exemption to apply.