

September 25, 1948

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ARIZONA ATTORNEY GENERAL

Mrs. Jerry Swift
Inheritance Tax Collector
State House
Phoenix, Arizona

Dear Mrs. Swift:

We have your letter of April 16, 1948, wherein you state that you have been presented with a claim for refund of an estate tax in the sum of \$610.65, which amount, it is claimed, was in excess of actual tax due to the State. You request the opinion of this office as to the manner in which the refund may be made.

Section 40-111, A.C.A. 1939, provides that the estate tax is payable within one year after date of death, and a penalty of eight per cent interest is assessed if the tax is not paid within the one year period. It is a matter of common knowledge that it is often impossible to ascertain the actual amount of estate tax due within a period of one year following the death of the decedent. Particularly is this true in view of the policy of the United States Bureau of Internal Revenue with respect to final adjustments of estate taxes and income taxes on estates due to the Federal Government. We believe that this situation must have been in the contemplation of the legislature when it was provided by Section 40-116, A.C.A. 1939 that the person owing an estate tax may estimate the amount and pay the same at any time and thereby be relieved of interest or penalty.

It would seem apparent from the foregoing that a system for refunds of excess payments should be an integral part of our Estate Tax Law. Section 40-117, A.C.A. 1939, provides, in part, as follows:

"40-117. Determination of tax. (a)
As soon as practicable after the return is filed the commissioner shall examine it; if it then appears that the correct amount of tax is greater or less than that shown in the return, the tax shall be recomputed. If the amount paid exceeds that which should have been paid on the basis of the return so computed, the excess so paid shall be credited or refunded to the taxpayer."

Section 40-122, A.C.A. 1939, provides as follows:

Mrs. Jerry Swift
Inheritance Tax Collector

September 25, 1948
Page Two

"40-122. Refunds. - Whenever taxes of any kind are or have been, through clerical error or misinterpretation of the law, collected and paid into the state treasury in excess of the amount legally due the state, the estate tax commissioner shall refund such excess illegally paid to the taxpayer out of any estate tax moneys he may have on hand."

Section 40-136 provides, in part, as follows:

"All taxes levied and collected under this act, less any expense of collection and deduction authorized herein, shall be deposited by the estate tax commissioner in the general fund. All expenditures under this act shall be by warrants drawn upon the state auditor, and upon approval of such expenditures by the state treasurer, as estate tax commissioner."

Section 40-123 provides:

"40-123. Application of taxes. - All taxes levied and collected under this act, less any expense of collection and the deductions authorized herein shall, on the first day of each month, be deposited by the commissioner into the state treasury for the use of the state general fund."

From the foregoing it is our opinion that estate tax moneys should not be credited to the general fund of the State until the first day of each calendar month. We are further of the opinion that a clearing account should be set up on the books of the State Treasurer and State Auditor and all receipts from estate taxes should be carried in this clearing account, until the first day of the following month.

Under the provisions of Section 40-122 claims and refunds of estate taxes should be drawn upon the clearing account upon the approval of the Estate Tax Commissioner and paid on warrant of the State Auditor. On the first day of the calendar

Mrs. Jerry Swift
Inheritance Tax Collector

September 25, 1948
Page Three

month any amount remaining in the clearing account is to be transferred to the general fund in accordance with the provisions of Section 40-123.

We are aware that the method of handling estate tax funds herein outlined is in conflict in some respects with the provisions of the Budget Law of 1943; however, we believe that this is a proper situation for the application of the rule set forth in the case of Shapley v. Frohmler, 64 Ariz. 35, 165 P. 2d 306, to the effect that the general provisions of the Budget Law do not repeal the specific provisions of prior law dealing with special subjects in the absence of a manifest intention of the legislature to bring about such a repeal.

As we have pointed out above, we believe that a method of making refunds of overpayments of estate taxes is an integral part of our estate tax law and that a collection of estate taxes would be seriously impaired if no such provisions were made. The provisions of the estate tax law seem definite, and we can see no obstacle to the procedure herein outlined.

We are forwarding copies of this letter to the State Treasurer and to the State Auditor.

Very truly yours,

EVO De CONCINI
Attorney General

PERRY M. LING
Chief Assistant
Attorney General

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