

Opinion No. 33-601

May 26, 1933

BY: E. K. NEUMANN, Attorney General

TO: State Tax Commission, Santa Fe, New Mexico. Attention: Benjamin D. Luchini.

{*51} I have your letter of May 24, 1933, enclosing copy of letter from Marron & Wood of Albuquerque, in regard to the Estate of David M. Rosenwald which is in process of distribution in the Probate court of Bernalillo County.

It appears from your letter and that of Marron & Wood that the deceased died on December 11, 1918. {*52} Our Succession Tax Law was enacted in 1921. The question is presented as to whether or not the estate of Rosenwald is subject to the payment of a Succession Tax.

Section 141-1102 of the 1929 Code provides that "all estate which **shall** pass by will or inheritance . . . **shall be** liable to . . . tax, etc." It appears from this language that the statute is intended to act only prospectively and that it is not intended to be retroactive. The rule as stated in 61 C J 1597 is that "a non retroactive inheritance tax law does not subject to taxation estates in the process of distribution at the time of its enactment." To same effect are the cases of Gilbertson vs. Ballard 101 NW 108, 125 Ia. 420; In Re Collateral Inheritance Tax, 34 A. S 30, 88 Me. 587; Belser vs. S. C. Tax Comm. -- 112 S E 261, 120 S C 182.

It is a general rule of law that "all statutes are to be construed as prospective in their operation, unless the contrary is distinctly expressed or is to be clearly implied." Gilbertson vs, Ballard, supra. Consequently it is my opinion that our Succession Tax Law is prospective in its operation and that the estate of Rosenwald is not subject to the payment of such tax.

By: QUINCY D. ADAMS,

Asst. Attorney General