1862.

INHERITANCE TAX LAW—SECTION 5348-2 G. C. DOES NOT REPEAL BY IMPLICATION SECTION 710-120 G. C. AUTHORIZING BANKS TO PAY TO SURVIVOR A JOINT ACCOUNT.

Section 5348-2 G. C. (the inheritance tax law) does not repeal by implication section 710-120 G. C., authorizing banks to pay to the survivor a joint account.

COLUMBUS, OHIO, February 21, 1921.

HON. URBAN A. WERNET, *Probate Judge, Canton, Ohio.*

DEAR SIR:—In your letter of recent date you request the opinion of this department, as follows:

"On April 4, 1919, House Bill No. 200 was passed, and on April 11, 1919, approved by Governor Cox and later, on April 12, 1919, was filed with the secretary of state and became effective ninety days thereafter.

Section 120 thereof provided as follows:

'When a deposit has been made or shall hereafter be made in any bank or trust company transacting business in this state in the name of two or more persons, payable to either, or the survivor, such deposit or any part thereof, or any interest or dividend thereon, may be paid to either of said persons whether the other be living or not; and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payments so made.'

On May 5, 1919, Amended Senate Bill No. 175 was passed and on June 5, 1919, approved by Governor Cox and same declared an emergency measure and a law on that date.

Section 5348-2 among other matters provides that:

'No safe deposit company, trust company, corporation, bank or other institution, person or persons, having in possession or in control or custody, in whole or in part, securities, deposits, assets or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interest in, such safe deposit company, trust company, corporation, bank or other institution, shall deliver or transfer the same to any person whatsoever whether in a representative capacity or not, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount therof to pay any taxes or interest which would thereafter be assessed thereon under this subdivision of this chapter, and unless notice of the time and place of such delivery or transfer be served upon the tax commission of Ohio and the county auditor at least ten days prior to such delivery or transfer; but the tax commission of Ohio may consent in writing to such delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons, from the obligation to give such notice or to retain such portion.'

Inasmuch as the last quoted section is in conflict with the provisions of House Bill No. 200 and became a law before Senate Bill No. 175 and would thereby be repealed by implication, I desire the official ruling of your office thereon."

It has not been the view of this department that there is a real conflict between the two sections mentioned by you. A question substantially similar was considered in Opinion No. 684 of the year 1919, addressed to the inspector of building and loan associations, and found in Vol. II of the Opinions of the Attorney-General for that year, page 1271. A copy of that opinion is enclosed herewith.

The opinion referred to holds that there is no conflict between section 5348-2 of the General Code and section 9648 thereof, which deals with joint accounts deposits in building and loan associations, in a manner substantially similar to that in which section 120 of the state banking code (which is section 710-120 of the General Code) deals with such deposits in state banks. It is true that there are some differences in expression as between section 9648 and section 710-120. The most noteworthy is the fact that the one provides that "no recovery shall be had against such corporation for amounts so paid and charged to such account"; while the other provides that "the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payments so made." The difference in the form of expression, however, is not deemed to be material.

The argument of the former opinion may be summed up by the statement that section 5348-2 does not make a joint account payment illegal; on the contrary, section 5332, paragraph 5 of the inheritance tax law expressly recognizes the legality of such payment. What section 5348-2 of the General Code does is to require a form of security for the collection of the inheritance tax in cases where a taxable succession has occurred.

The opinion cited contains some expressions which are probably unnecessary to a determination of the question immediately under consideration. These expressions are perhaps modified to some extent and corrected, in so far as they might be deemed to be misleading, in Opinion No. 1169 for the year 1920, a copy of which is also enclosed herewith.

At all events, the holding of this department has been that a section like section 120 of the banking act merely affords protection to the bank as against claims made by the estate of the decedent; while section 5348-2 on the other hand, does not disturb this protection nor in anywise affect the ultimate discharge of the bank as between private parties, but merely affords a safeguard for the protection of the public revenues. If a bank should ignore section 5348-2 and pay out the entire balance of a joint deposit account under favor of section 120, such payment would not be illegal and the payee would acquire a good title to the money, and the bank be discharged from all liability to any private individual but if it should appear that thereby the inheritance tax had been lost the bank would lay itself open to liability to the state under the terms of section 5348-2.

In short, the two sections are to be construed together, and one does not repeal the other by implication or otherwise. Perhaps in a sense the one section might be said to modify the other, if the latter were given its broadest possible interpretation; yet this modifying effect of the later law would be a far different thing than an implied repeal of the earlier one.

In view of the discussion in the former opinion, it is deemed unnecessary to restate the entire argument which has pursuaded this department to reach the conclusion which it has reached on this question. You are advised, however, that it is the opinion of this department that section 710-120 is not repealed by implication by the enactment of section 5348-2 of the General Code; but that the sole effect, if any, of such enactment upon said section 710-120 is to introduce the possibility of an exception to the broad language of that section in case of possible liability for inheritance tax.

Respectfully,
JOHN G. PRICE,
Attorney-General.