methods of regulatory agencies in reaching their conclusions as well as the legal sufficiency of their procedure is that valuations will be found confiscatory, not on economic considerations, but solely because the court disapproves the commission's method. That the administrative method may become *the* constitutional issue is implicit in the majority opinion in the instant case when it says: "the entire method of the Commission was erroneous and its use *necessarily* involved unjust and inaccurate results." This is arguable to say the least, and it is the real basis of the decision. The review of commission action here assumed is definitely beyond both the strict procedural limits and the issue of confiscation.[25] It goes even further than the valuation cases where commissions have been reversed for failing to consider evidence which the Court held them bound to consider.[26] It is quite contrary in spirit to other recent cases[27] which have given the methods and findings of expert administrative agencies the respect which precedent[28] and sound judicial principles enjoin upon the court. The Court has condemned a conscientious and expert attempt at valuation without definitely impugning the result on any other ground. Again the law seems to have thrown into the economic perplexities of utility regulatory agencies another element of confusion and unpredictability.

C. M. W. '36.

TAXATION—MISSOURI INHERITANCE TAX—DEDUCTION OF FEDERAL TAX.—When an estate is appraised for the purpose of assessing the state inheritance tax should the federal estate tax assessment be deducted from the value of the estate? This question has recently been answered in the affirmative by the Supreme Court of Missouri in the case of *In re Rosing's Estate.*[1] In this case the court sustained the contention of the executor that such a deduction should be made, holding that Missouri's tax was an inheritance tax and not an estate tax.

The term "inheritance tax" is often used by the courts to indicate any kind of a death duty. Strictly speaking, an inheritance tax is a tax on the right of succession, the right of the heirs, devisees, or heirs to take an interest in property upon the death of the owner. Another kind of death duty is an estate tax, a tax on the right of the owner to transfer property at his death either by will or intestacy. The problem raised in the case of *In re Rosing's Estate* may be settled only after it is decided whether the federal and state duties are inheritance or estate taxes.

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[25] Suggested in notes 3 to 9 inclusive.

[26] Referred to in notes 9 and 18.

[27] Los Angeles Gas & Elect. Corp. v. R. R. Comm., supra, note 17; Central Kentucky Gas Co. v. R. R. Comm. (1933) 290 U. S. 264, 54 Sup. Ct. 154, 78 L. Ed. 307; Clark's Ferry Bridge Co. v. Pub. Service Comm. (1934) 291 U. S. 227, 54 Sup. Ct. 427, 78 L. Ed. 767; Dayton Power and Light Co. v. Pub. Utilities Comm. (1934) 292 U. S. 310, 54 Sup. Ct. 647, 78 L. Ed. 1267.

[28] Illinois Cent. R. v. I. C. C. (1906) 206 U. S. 441, 27 Sup. Ct. 700, 51 L. Ed. 1128.

[1] (1935) Mo., 85 S. W. (2d) 495.

The federal tax has been universally regarded as an estate tax.[2] This was admitted by both parties in the case. The only question was as to the nature of the Missouri tax. In deciding that the state tax was on inheritances the court relied strongly on the language of the statute.[3] "Such tax shall be imposed when any person, association, institution or corporation actually comes into the possession and enjoyment of the property, interest therein or income therefrom, whether the transfer thereof is made before or after the passage of this law. . ." The words of the statute, as the court pointed out, seem to indicate that the legislature contemplated a tax on the right to succeed to property rather than on the right to transfer.

The court found precedent in the dicta of three Missouri cases. In *State ex rel McClintock v. Guinotte, Probate Judge*,[4] it was contended that the Missouri tax was one on property, but the court said that it was not a tax on the property itself but on the right to transfer it. The court there probably intended to make no distinction between an inheritance and an estate tax. In a later case the Supreme Court of Missouri held that the legislature may provide both estate and inheritance taxes in the same statute and that the Missouri tax had been only on inheritances until the amendment of 1927.[5] The court further said it was not necessary to decide what kind of tax was provided by the 1927 amendment, since it would be valid whether an estate or inheritance tax. And two years later the court, by dicta, said: "Under the state statute, the tax is levied on the right to receive property upon death."[6] *In re Rosing's Estate* is therefore the first case in which the Missouri Supreme Court has definitely committed itself as to the nature of the Missouri tax.

Failing to establish the contention that the Missouri tax was on transfers and not succession, the state next contended that even if the state tax is one on inheritances, the federal tax should not be deducted in the appraisal. There is a clear split of authority on the question the Supreme Court taking what seems to be the better rule, that the deduction is allowable.[7]

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[2] *In re Rosing's Estate*, supra, note 1.
[3] R. S. Mo. 1929, secs. 570-81.
[4] (1918) 275 Mo. 398, 204 S. W. 806.
[5] Brown v. State (1929) 323 Mo. 138, 19 S. W. (2d) 12.
[6] Bryant v. Green (1931) 328 Mo. 1226, 44 S. W. (2d) 7.
[7] Cases supporting the contention of the state, which contention was overruled by the Missouri Supreme Court, are: Corbin v. Townshend (1918) 92 Conn. 501, 103 Atl. 647; In re Sanford's Estate (1919) 188 Ia. 833, 175 N. W. 506; Succession of Gheens (1921) 148 La. 1017, 88 So. 253; 16 A. L. R. 685; In re Fish's Estate (1922) 219 Mich. 369, 189 N. W. 177; In re Sherman's Estate (1918) 166 N. Y. S. 19, 179 App. Div. 497, affirmed in 222 N. Y. 540, 118 N. E. 1078; In re Taylor's Estate (1924) 239 N. Y. 582, 147 N. E. 204; In re Kirkpatrick's Estate (1922) 275 Pa. 271, 119 Atl. 269; Hazard v. Bliss (1921) 43 R. I. 431, 113 Atl. 469, 23 A. L. R. 826; In re Sherwood's Estate (1922) 122 Wash. 648, 211 Pac. 734; In re Week's Estate (1919) 169 Wis. 316, 172 N. W. 732. Cases supporting the contention of the executor and hence in line with the Missouri Supreme Court are: People v. Posfield (1918) 284 Ill. 450, 120 N. E. 286; People v.

The court's reasoning is sound. If the federal tax is on the estate and is payable out of the estate by the executor or administrator, this part of the estate is not transferred later to the heirs or devisees. If the state tax is on the right to receive property, the appraisal should include only property which has been received by the transferees.[8] In some states the statutes expressly provide whether the federal tax should be deducted,[9] but most states are similar to Missouri in that their statutes are silent as to this matter.

Cases contra to *In re Rosing's Estate* do not agree as to reasoning. *In re Sanford*,[10] held that since the Iowa statute made a number of express deductions, in which the federal tax was not included, the legislature therefore must not have intended to provide for such deduction. Early cases are based on holdings that the federal tax is on inheritances, but these cases all were decided before the passage of the federal tax laws of 1916 and 1917.[11] The Supreme Court of Wisconsin held that since the state tax is not a tax on property but merely on the right of succession, neither the property nor the value thereof necessarily determines the basis for the tax, and since there was no express provision in the statute for deducting the federal tax, the court saw "no warrant for reading into the statute provision for the deduction of any amount which the legislature did not see fit to insert."[12]

J. C. L. '36.

TAXATION—PARTNERSHIPS—SALES.—Petitioner and four others owned all the stock in the Houde Engineering Corp. Sept. 26, all five gave a 30 day option to Krauss & Co. Oct. 11, Krauss & Co. agreed to take it up. But by the agreement of the 26th, it could only be exercised "by the payment of cash before its expiration." Oct. 22, Chisholm and his brother formed a partnership to which they transferred their shares of stock in the Houde Co. Oct. 24, Krauss & Co's assignee took up the option and paid the price agreed upon.

The brothers had formed the partnership so that one brother could be relieved of business matters, the other actively managing their interests—

Northern Trust Co. (1919) 289 Ill. 475, 124 N. E. 662, 7 A. L. R. 709; State v. First Calumet Trust and Savings Bank of East Chicago (1919) 71 Ind. App. 467, 125 N. E. 200; Jones v. Bowman (1925) 118 Kan. 343, 234 Pac. 953; Bingham's Admr. v. Com. (1922) 196 Ky. 318, 244 S. W. 781; State v. Probate Court of Hennepin County (1918) 139 Minn. 210, 166 N. W. 125; Bugbee v. Toebling (1920) 94 N. J. L. 438, 111 Atl. 29; Tax Com. v. Lamprecht (1923) 107 Ohio St. 535, 140 N. E. 333, 31 A. L. R. 985; In re Inman's Estate (1921) 101 Ore. 182, 199 Pac. 615, 16 A. L. R. 675; In re Knight's Estate (1918) 261 Pa. 537, 104 Atl. 765; In re Young's Estate (1935), 33 Wyo. 317, 239 Pac. 286.

[8] See 7 A. L. R. 714.

[9] In re Watkinson's Estate (1925) 191 Cal. 591, 217 Pac. 1073.

[10] (1919) 188 Ia. 833, 175 N. W. 506.

[11] In re Gihon (1902) 169 N. Y. 433, 62 N. E. 561.

[12] In re Week (Wis. 1919) 172 N. W. 733.