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FILE NO. S-1264

REVENUE:

Credit of Inheritance
Proceeding Fee Against
Inheritance Tax Due.

Honorable Donald R. Smith
Treasurer of the State of Illinois
Springfield, Illinois 62706

Dear Mr. Smith:

I have received your letter wherein you present
two questions:

Can the State Treasurer continue to allow
the county treasurers a credit against inheritance
tax remittances for the amount of the inheritance
proceedings fee paid to the circuit clerks despite
the repeal of section 31 of "AN ACT concerning
fees and salaries, and to classify the several
counties of this state with reference thereto"?
Ill. Rev. Stat. 1975, ch. 53, par. 31(A)(11).

Is the circuit clerk entitled to a fee when
it is determined that no tax is due and the county
treasurer has no tax money in his hands?

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P.A. 79-1445, effective September 29, 1976, repealed sections 14 and 14.1 of "AN ACT concerning fees and salaries and to classify the several counties of this state with reference thereto". (Ill. Rev. Stat. 1975, ch. 53, pars. 31 and 31.1.) The relevant provisions thereby repealed were the following:

"§ 14. The fees of the clerk of the circuit court, in counties of the first and second class, shall be paid in advance, except as herein provided, and shall be as follows:

(A) The fee for filing a complaint, petition or other pleading initiating a civil action with the following exceptions shall be: \$30

* * *

(11) Inheritance tax proceeding whether in administration of an estate or as an independent proceeding, \$15

(The \$15 fee shall cover the cost of mailing all required notices in inheritance tax proceedings. Such fee shall be allowed as a credit against inheritance taxes assessed, if any.)"

"§ 14.1. Notwithstanding the provisions of Section 33 of this Act, the fees of the clerk of the circuit court in all third class counties in the instances described in this Section shall be as provided in this Section. Such fees shall be paid in advance and shall be as follows:

* * *

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Fees not covered by this Section shall be set by rule or administrative order of the Supreme Court."

The provisions substituted for the above sections by P.A. 79-1445 are found in sections 27.1 and 27.2 of "AN ACT to revise the law in relation to clerks of courts". (Ill. Rev. Stat. 1976 Supp., ch. 25, par. 27.1 and 27.2.) They are as follows:

"§ 27.1. The fees of the Clerk of the Circuit Court in all counties having a population of 1,000,000 inhabitants or less shall be paid in advance, except as herein provided, and shall be as follows:

* * *

(j) Probate

* * *

(4) Inheritance Tax proceedings \$15

* * *

"

"§ 27.2. The fees of the Clerks of the Circuit Court in all counties having a population in excess of 1,000,000 inhabitants in the instances described in this Section shall be as provided in this Section. Such fees shall be paid in advance and shall be as follows:

* * *

(14) Any fees not covered by this Section shall be set by rule or administrative order of the Circuit Court, with the approval of the Administrative Office of the Illinois Courts.

* * *

"

Initially, it would appear that the legislature intended to discontinue the practice of allowing the \$15 fee as a credit

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against inheritance taxes due. However, section 3 of "AN ACT to tax gifts, legacies, inheritances, transfers, appointments and interests in certain cases, and to provide for the collection of the same, and repealing certain acts therein named" (Ill. Rev. Stat. 1975, ch. 120, par. 377), provides for a credit of the fee against deposits of inheritance tax proceeds under the following procedure:

"

* * *

The portion of each such deposit in excess of \$750 shall be promptly remitted to the State Treasurer by the County Treasurer, and the amount whereby any such deposit shall exceed the tax as finally determined shall be promptly refunded to the depositor thereof by the State Treasurer. Upon the final determination of the tax the County Treasurer shall pay out of the amount of the deposit so retained by him the fees, costs and expenses allowed in accordance with Sections 11 and 12 of this Act, and shall promptly remit the balance to the State Treasurer.

* * *

"

Section 12 (Ill. Rev. Stat. 1976 Supp., ch. 120, par. 386) referred to in the above provision provides in pertinent part:

"§ 12. The fees of the clerk of the Circuit Court in inheritance tax matters in the respective counties of this State, as classified in the Act concerning fees and salaries, shall be as follows:

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In counties of the first and second class, for services in all proceedings in each estate before the Circuit judge the clerk of the Circuit Court shall receive a fee of \$15. In all such proceedings in counties of the third class, the clerk of the Circuit Court shall receive a fee of \$10. Such fees shall be paid by the county treasurer, on the certificate of the Circuit judge, out of any money in his hands, on account of the tax. In counties of the third class, the Attorney General shall designate an Assistant or Assistants Attorney General, whose special duty it shall be to attend to all matters pertaining to the enforcement of this Act in respect to the appraisement, assessment and collection of the inheritance tax in such counties. * * *

There may seem to be a conflict between section 27.1 of "AN ACT to revise the law in relation to clerks of courts" (Ill. Rev. Stat. 1976 Supp., ch. 25, par. 27.1) and section 12 of "AN ACT to tax gifts, legacies, inheritances, transfers, appointments and interests in certain cases, and provide for the collection of the same, and repealing certain acts therein named". (Ill. Rev. Stat. 1976 Supp., ch. 120, par. 386.) The former provision, in general language, states merely that the inheritance fee of \$15 is to be paid in advance. The latter, in more specific terms, details the procedure by which the fees are to be taken from the deposits

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in the possession of the county treasurer. It is possible, however, to construe these provisions so as to avoid inconsistency.

It has been the long-standing policy of Illinois courts to harmonize insofar as possible general and specific statutes which refer to the same subject matter. Scofield v. Board of Ed. of Community Consol. School Dist. No. 181 (1952), 411 Ill. 11; People v. Gordon (1975), 32 Ill. App. 3d 378; People v. Gardner (1973), 15 Ill. App. 3d 255. The Illinois Supreme Court stated this policy in Ashton v. Cook County (1943), 384 Ill. 287, 298, as follows:

"

* * *

The rule is that where there is to be found in a statute a particular enactment, it is to be held operative as against the provisions on the subject either in the same act or in the general laws relating thereto. Robbins v. Lincoln Park Commissioners, 332 Ill. 571; Handtoffski v. Chicago Consolidated Traction Co. 274 Ill. 282; City of Chicago v. M. & M. Hotel Co. 248 Ill. 264.

But we do not regard these statutes as being in such conflict that a rule of construction must be adopted which accepts one and rejects the other. All statutes relating to the same subject must be compared and so construed with reference to each other that effect may be given to all the provisions of each, if it can be done by any fair and reasonable construction. It is presumed that

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the several statutes relating to one subject are governed by one spirit and policy and that the legislature intended the several statutes to be operative and harmonious. (Ketcham v. Board of Education, 324 Ill. 314.) * * *

There is no conflict in interpreting the statutes so that advance payment of the fee by the estate is required, and that the fee will be credited against any tax due to the State. Under this interpretation the treasurer will, through the credit, be paying the fee out of the portion of the taxes held by him for this purpose, as required by law.

It is therefore my opinion that the State Treasurer may credit the county treasurer for the \$15 fee, which has been paid in advance by the estate, against the amount of inheritance tax due. Specifically, the fee is credited against the amount which is to be retained by the county treasurer. Since the credit is specifically authorized it seems to be clear that the legislature intended that the remittance of the tax due less the "fees, costs and expenses allowed in accordance with sections 11 and 12 of this Act" be considered a payment of the tax in full.

In answer to your second question, it is my opinion that the circuit clerk is entitled to the fee even though no

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tax is due. In all cases, the statute requires payment of the fee in advance, even before it is determined whether there is any tax due. The estate must pay the fee, since there are, at that point in the proceedings, no funds in the hands of the county treasurer from which the fee could be paid. If there are taxes due, the \$15 fee is to be credited against that portion of the deposit retained by the county treasurer. It follows that if no taxes are due, there is no amount against which the \$15 fee can be credited.

Very truly yours,

A T T O R N E Y G E N E R A L