

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 86-03-11-59 / NON-PRECEDENTIAL
ID: P-85-087
DATE: MARCH 11, 1986
DISPOSITION: DENIED
TAX TYPE: ESTATE
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

STATEMENT OF FACTS

The General Counsel's Office and the Protestant's attorney entered into a Stipulation of Facts which reflect that the DECEDENT, at the time of his death on April 18, 1981 was the owner and the insured of a certain life insurance policy with the LIFE INSURANCE COMPANY Policy No. XXX-XXXX, in the amount of Two Hundred Thousand Dollars (\$200,000.00). The named beneficiary of the insured was SISTER, being the sister of the decedent. Following the death of the decedent on April 18, 1981, LIFE INSURANCE COMPANY did distribute the entire proceeds due under the insurance policy No. XXX-XXXX to the named beneficiary, SISTER. Subsequent to the death of the decedent, on or about November 6, 1981, the named beneficiary, SISTER, did execute a Declaration of Trust for the use and benefit of DECEDENT'S DAUGHTER and DECEDENT'S SON in the amount of Fifty Thousand Dollars (\$50,000.00) in each respective trust, said monies representing one-half of the proceeds paid under the insurance policy to SISTER as the named beneficiary. The Declaration of Trust recites that as per an oral agreement between the decedent and his sister, SISTER, who is the named beneficiary of the insurance policy, that SISTER would see that three-fourths of the proceeds of the insurance policy would be used for the benefit of the decedent's mother and his two children.

On or about August 17, 1984, the personal representative of the Estate of DECEDENT did file an Oklahoma Estate Tax Return reflecting the proceeds from the life insurance policy, but listed the distribution as per Schedule J of the Oklahoma Estate Tax Return as showing distribution of Fifty Thousand Dollars (\$50,000.00) to the named beneficiary, SISTER, who would be deemed a collateral heir and taxed at a collateral heir rate, and the remaining One Hundred Fifty Thousand Dollars (\$150,000.00) of said policy being shown as distributed to DAUGHTER of the decedent, SON of the decedent, and MOTHER of the decedent, each sharing in the remaining One Hundred Fifty Thousand Dollars (\$150,000.00) proceeds of the policy equally and, as lineal heirs, taxed at a lineal heir rate.

The Estate and Unclaimed Property Division after an audit of the return filed by the decedent's personal representative disallowed the allocation of the proceeds of the insurance policy being taxed at lineal heir rates and thereafter issued an Order Assessing Tax on January 22, 1985 reflecting that the entire Two Hundred Thousand Dollars (\$200,000.00) of insurance proceeds distributed to the named beneficiary be taxed at collateral heir rates, therein creating additional estate tax plus interest due thereon of Fifteen Thousand Three Hundred Forty-seven Dollars and Seventy-six Cents (\$15,347.76). On or about February 12, 1985 the personal

representative of the Estate of DECEDENT, by and through her attorney, protested the Estate Tax and Unclaimed Property Division's Order Assessing Tax specifically objecting to the Two Hundred Thousand Dollars (\$200,000.00) proceeds of the insurance policy taxed at collateral heir rates, and contending that the return filed by the Protestant which reflected that Fifty Thousand Dollars (\$50,000.00) of the proceeds was distributed to the decedent's sister, a collateral heir, and taxed as such, and the remaining One Hundred Fifty Thousand Dollars (\$150,000.00) of the proceeds distributed to the daughter, son, and mother of the decedent, lineal heirs, and taxed at lineal heir rates, was correct.

ISSUES AND CONTENTIONS

It is the contention of the Protestant that three-fourths (3/4) of the proceeds, or Fifty Thousand Dollars (\$50,000.00), of the insurance policy paid to the decedent's sister and subsequently placed in trust for the benefit and use of the two minor children and mother of decedent, all of whom are lineal heirs, should be taxed at lineal heir rates rather than at collateral heir rates as assessed by the Estate Tax and Unclaimed Property Division.

It is the contention of the Estate Tax and Unclaimed Property Division that the insurance proceeds were distributed to the decedent's SISTER, as named sole beneficiary of said policy, and that as the sister of the decedent, she is a collateral heir and those proceeds should be taxed at collateral heir rates.

The issue to be determined in this protest is whether or not the Estate Tax and Unclaimed Property Division's Order Assessing Tax is correct and proper wherein the Estate Tax Division disallowed the lineal heir tax rate application as to that portion of the insurance proceeds that were, subsequent to the death of the decedent, paid to the named beneficiary SISTER of the decedent and which she, after receipt of said proceeds, distributed portions of said proceeds to the decedent's mother and two minor children.

APPLICABLE LAW

The evidence admitted at the hearing reflects that following the death of DECEDENT on April 18, 1981, and after the proceeds of the life insurance policy was paid over in full to SISTER, she did on or about November 6, 1981, execute certain declarations of trust for the decedent's minor daughter and minor son, placing into each "Trust" Fifty Thousand Dollars (\$50,000.00). (See Exhibit 5) Be that as it may, Section 807(A)(6) of Title 68 of the Oklahoma Statutes directs that the proceeds of the life/accident insurance policy shall be included in the value of the gross estate when at the time of death the decedent had the right, directly or indirectly, to change the beneficiary or to convert the policy to his own use or in which the decedent possessed any of the other incidence of ownership, exercisable either alone or in conjunction with any other person. In the case at bar, the evidence is un-refuted in that the DECEDENT was at the time of his death, the owner of the policy in question and had named as beneficiary his SISTER as sole beneficiary of the proceeds of the insurance policy. As such, pursuant to the provisions of Section 803.2 of Title 68 of the Oklahoma Statutes, collateral tax rates would be applicable to the entire proceeds in the amount of Two Hundred Thousand

Dollars (\$200,000.00) paid by the LIFE INSURANCE COMPANY to SISTER as the sole beneficiary and sister of the decedent.

The evidence does show that the LIFE INSURANCE COMPANY did pay over to the named beneficiary, SISTER, the sum of Two Hundred Thousand Dollars (\$200,000.00), as per insurance Policy No. XXX-XXXX on the life [OF] DECEDENT. Yet, the Estate Tax Return filed by the Estate's attorney and personal representative of the Estate, SISTER, reflects that as per Schedule J showing distribution of insurance proceeds that one-fourth (1/4) of the proceeds of said policy in the amount of Two Hundred Thousand Dollars (\$200,000.00) was distributed to SISTER of the decedent, and as sister, collateral tax rates were applied to said amount, that the remaining One Hundred Fifty Thousand Dollars (\$150,000.00) was distributed equally to the two minor children of the decedent and his mother and that as lineal heirs, lineal tax rates were applied to said One Hundred Fifty Thousand Dollars (\$150,000.00). (See Exhibit 3)

The Oklahoma Estate Tax Division, upon receipt of said return, did review the information contained therein and issued an Order Assessing Tax wherein the lineal heir tax rates were disallowed and the One Hundred Fifty Thousand Dollars (\$150,000.00) was taxed at collateral heir tax rates in compliance with the directives concerning the rate of tax to be levied on net estates pursuant to the provisions of Section 803 of Title 68 of the Oklahoma Statutes. (See Exhibit 4)

It is beside the question whether or not a trust designated as an express, resulting or constructive, was executed by the decedent's sister when viewing the taxability of this estate. The evidence reflects that at the time of the decedent's death he was the owner of the LIFE INSURANCE COMPANY Policy No. XXX-XXXX, and as the owner of said policy, he had named the sole beneficiary of said proceeds to be SISTER, who, under the provisions of the Oklahoma Estate Tax Code, is deemed collateral heir, and as a collateral heir those proceeds would be subject to the levy of collateral heir tax rates pursuant to the directives of Section 803, supra.

The fact that the decedent's sister, as named beneficiary of said policy, did, following the death of the decedent and the payment of the proceeds to her as the sole beneficiary, comply with the decedent's oral wish that she distribute three-fourths (3/4) of the proceeds to his two minor children and his mother equally does not change the levy of the Oklahoma Estate Tax upon the total proceeds at a collateral heir rate.

CONCLUSIONS

(1) The Oklahoma Tax Commission has jurisdiction in this matter.

(2) The evidence reflects that the proceeds of the life/accident insurance policy was paid to the named sole beneficiary, SISTER of the decedent, and as a collateral heir, the entire proceeds are subject to the levy of collateral tax rates pursuant to Section 803 of Title 68 of the Oklahoma Statutes.

(3) That the assessment by the Oklahoma Estate Tax and Unclaimed Property Division is correct and proper and pursuant to the statutory mandates of Section 801 et seq. of Title 68 of the Oklahoma Statutes.

(4) That the protest of the assessment of the Estate of DECEDENT be denied.

DISPOSITION

In view of the above and foregoing findings and conclusions, the OKLAHOMA TAX COMMISSION ORDERS that the protest herein be denied, and that the additional estate tax and interest, as assessed plus additional interest from the date of the assessment as such accrues, be deemed due and owing until paid in full.

COMMISSION TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.