JURISDICTION:	**OKLAHOMA TAX COMMISSION - DECISION**
CITE:	**86-03-13-03 / NON-PRECEDENTIAL**
ID:	**P-85-020**
DATE:	**MARCH 13, 1986**
DISPOSITION:	**DENIED**
TAX TYPE:	**ESTATE**
APPEAL:	**AFFIRMED / OK S.CT. 66,288**
	DECISION NOT PUBLISHED

ORDER

This matter comes on before the Oklahoma Tax Commission pursuant to regular assignment on the agenda. The Commission, having reviewed the facts and authorities presented therein, and being fully advised in the premises, finds and orders that the Order Denying Motion for Reconsideration of the Administrative Law Judge, filed herein on the 20th day of February, 1986, marked as Exhibit "A", attached hereto and hereby incorporated by reference as though fully set out herein, and that the Findings, Conclusions and Recommendations of the Administrative Law Judge, marked as Exhibit "B", attached hereto and hereby incorporated by reference as though fully set out herein, be and the same are hereby adopted as the Order of the Commission.

ORDER CORRECTING FINDINGS, CONCLUSIONS AND RECOMMENDATION

NOW on this 13th day of March, 1986, the above styled cause comes on for re-consideration before ALJ, Administrative Law Judge, upon his own motion, for the purpose of correcting the wording in the Findings, Conclusions and Recommendations filed herein on January 24, 1986, as follows:

That the sixth word of Conclusion 2 on page 7 of such Findings, Conclusions and Recommendations should be changed from "any" to "sufficient".

IT IS THEREFORE ORDERED that Conclusion 2 on page 7 of the Findings, Conclusions and Recommendations filed herein on March 6, 1986, be changed to read as follows:

> 2. That Protestant failed to present sufficient evidence that the additional attorneys' fees was reasonable pursuant to the provisions of Section 808(g) of Title 68 of the Oklahoma Statutes.

and that as herein corrected, the Findings, Conclusions and Recommendations filed herein on January 24, 1986, in all other respects stands as written.

ORDER DENYING MOTION FOR RECONSIDERATION

Now on this 20th day of February, 1986, the above styled cause comes on for consideration pursuant to a letter deemed a Motion for Reconsideration filed herein by Protestants attorney on February 5, 1986, alleging error of facts in the Findings, Conclusions and Recommendations filed herein and requesting reconsideration thereof.

Protestant did not allege that there was newly discovered evidence.

After careful consideration of the record, the exhibits, the Findings, Conclusions and Recommendations and the letter deemed a Motion for Reconsideration, the undersigned concludes that the Motion should be denied.

IT IS THEREFORE ORDERED that the Motion for Reconsideration filed by Protestant on February 5, 1986, should be and is hereby denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 24th day of January, 1986, the above styled cause comes on for consideration before ALJ, Administrative Law Judge, pursuant to assignment by the Oklahoma Tax Commission and hearing had, at which hearing the Protestant was represented by ATTORNEY, Attorney, and the Estate Tax and Unclaimed Property Division represented by OTC ATTORNEY, Attorney from the General Counsel's Office of the Oklahoma Tax Commission. The parties announced that prior to the hearing the Protestant, during informal negotiations with the General Counsel's Office, conceded the issues previously protested but that during the informal negotiations with the General Counsel's Office an ancillary issue was asserted by the Protestant to which the Protestant requested the Commission rule upon. Opening statements and remarks were made by the respective parties and exhibits, not itemized herein, were received into evidence.

There was no testimony on behalf of the Protestant, and OTC WITNESS testified on behalf of the Estate and Unclaimed Property Division of the Oklahoma Tax Commission. Closing statements were made by the respective parties and the case was submitted for a decision.

STATEMENT OF FACTS

On or about April 25, 1984 the co-trustees, by and through their attorney, ATTORNEY, filed with the Oklahoma Estate Tax Division an Oklahoma Estate Tax return in the matter of the Estate of DECEDENT setting forth therein the real estate, personal property, personal effects, balance of bank accounts, checking accounts and certificates of deposit held in the name of DECEDENT Living Trust and also listing certain deductions and expenses attributable to the Estate of DECEDENT. [Exhibit No. 3.] On or about December 27, 1984 the Oklahoma Tax

Commission Estate Tax Division issued an Order Assessing Tax, making certain adjustments to the Oklahoma Estate Tax return filed by the representative of the Estate of DECEDENT. The Order Assessing Tax placed at issue mineral interests and real estate interest valuations as well as certain tax credits for prior transfers. [Exhibit No. 2.] Thereafter on January 20, 1985 a protest to the Order Assessing Tax was filed by the Protestant's attorney formally protesting each of the adjustments made by the Order Assessing Tax issued by the Estate Tax Division on December 27, 1984. [Exhibit No. 1.]

It should be noted that each of the issues protested by the Protestant concerning the Order Assessing Tax issued by the Estate Tax Division were conceded by the Protestant at the protest hearing and that the only issue to be determined was ancillary being the additional attorney's fees deduction claimed by the Protestant in the amount of Twenty-five Thousand Dollars ($25,000.00) exclusive of what was originally filed by the Protestant on the Oklahoma Estate Tax return.

CONTENTIONS

It is the contention of the Protestant that the Estate is entitled to the deduction for the additional attorney's fees of Twenty-five Thousand Dollars ($25,000.00).

It is the Estate and Unclaimed Property Division's contention that the original attorneys' fees claimed as a deduction filed by the Protestant per the representative's Oklahoma Estate Tax return of Sixty-Five Thousand Dollars ($65,000.00) and granted by the Division cannot, following the Order Assessing Tax from Estate Tax Division, be amended in view of the fact the Protestant neither asserted his claim for additional attorneys fees prior to the Order Assessing Tax being issued nor was said issue made a part of the protest filed by the Protestant.

APPLICABLE LAW

The law applicable in this case is Title 68, Section 815(a) and (b) of the Oklahoma Statutes which reads as follows:

> (a) The executor, administrator, trustee, devisee, heir or transferee shall within nine (9) months after the date of death of the decedent, unless the time has been extended by the Tax Commission, make a detailed return, verified by affidavit, to the Tax Commission upon forms furnished by it, giving all the information called for or that may be necessary to determine the value of the net estate. The provisions of this subsection shall not apply to estates exempt from filing such return by the provisions of subsections (d) and (e) of this section.
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> (b) Upon receipt of such return the Tax Commission shall proceed to audit the same and may, for the purpose of determining the value of the estate or any transfer, audit the books of account and records of any executor, administrator, trustee, devisee, heir, corporation, bank, trust company or

> transferee, and may appraise the property transferred or returned and investigate and include any property or transfers which may have been omitted from the return and shall thereupon compute, and by order assess, the tax, together with any interest or penalty which it may find to be due, and shall forthwith notify the administrator, executor, trustee or transferee and their attorney of record of such assessment by furnishing a detailed statement of the values of said estate or transfers, as fixed by the Tax Commission and the amount of tax assessed. Such notice may be delivered in person or may be by mail addressed to such administrator, executor, trustee, transferee and their attorney of record at their last-known post office addresses, with the postage thereon prepaid, and upon receipt of such notice of assessment, the administrator, executor, trustee, devisee, heir or transferee liable for such tax shall pay the tax to the Tax Commission as provided herein. Provided, however, that if upon receipt of such notice of assessment, the administrator, executor, trustee, devisee, heir or transferee liable for such tax shall pay the tax to the Tax Commission as provided herein. Provided, however, that if upon receipt of such notice the administrator, executor, or trustee or any party interested is dissatisfied with such findings or assessment or any appraisement made by the Tax Commission, they shall, within thirty (30) days from the date of mailing of such notice, file with the Tax Commission their <u>objection, in writing, specifically setting forth the grounds of their objections</u>, and thereupon the Commission may grant a hearing, and upon such hearing may adjust the matters in controversy and correct the assessment as justice may require. Provided further, the administrator, executor, trustee or any interested party who finds, within one (1) year from the date of receipt of the notice, an error of omission or inclusion of property on return, may file in writing, an objection with the Tax Commission specifically setting forth the grounds of his objection, and thereupon the Commission shall grant a hearing, and upon such hearing shall adjust the matters in controversy and add to or delete from the return such property as justice may require. (Emphasis added)

The procedural application by the Estate Tax Division of the provisions of Section 815 as testified to by the Deputy Director of the Estate Tax Division, OTC WITNESS, reflect that the Estate Tax Division will accept from the representative of an estate after the original filing of the return pursuant to the provisions of Section 815(a) any adjustments or amendments submitted by the estate representative prior to the official issuance by the Estate Tax Division of an Order Assessing Tax, but that after the Estate Tax Division has issued its Order Assessing Tax if one is necessary, the Estate Tax Division will not accept any adjustment or amendment to the original return unless said adjustment or amendment is incorporated in the representative's protest to the Order Assessing Tax, thereby complying with the strict and specific statutory procedures and guidelines as set out under the provisions of Section 815(b) dealing with the representative's right to specifically set forth the grounds of their objection to the Order assessing tax. OTC WITNESS stated that the request by the representative for an additional deduction for attorneys' fees in the instant case could not be considered in view of the fact that they were not made a part or an issue in the protest filed by the representative on January 20, 1985; that had the representative notified the Estate Tax Division of an adjustment or an amendment to the estate

tax return prior to the Order Assessing Tax on December 27 1984 or had he included the request for an additional deduction for the attorneys' fees claimed of Twenty-five Thousand Dollars ($25,000.00), the matter would be properly before the Commission, but in view of the fact the Protestant failed to make adjustments and/or amendments to the original return prior to the Order Assessing Tax issued by the Commission or to include the issue of additional attorneys' fees within the Protestant's protest filed with the Commission on January 20, 1985, that that issue could not be entertained by the Division and the Protest denied.

In the case at bar, the co-trustee by and through their legal representative filed an estate tax return in detail with the Tax Commission placing all the information necessary for the Commission to determine the value of the net estate. Thereafter the Commission, issued an Order assessing additional tax dated December 27, 1984 basing said Order upon the information within the Estate Tax return filed by the Estate. Thereafter the representative of the Estate filed on January 20, 1985 their written protest stating with specificity the grounds of their objection to the Order Assessing Tax issued by the Estate Tax Division December 27, 1984. The protest filed by the representative of the Estate was limited in its scope to only those issues as per the Order Assessing Tax issued by the Oklahoma Estate Tax Division and no other issue, adjustment or amendment was set forth or brought to the attention of the Estate Tax Division by the Protestant in its protest letter of January 20, 1985.

Review of Exhibit No. 3, being the Estate Tax return of the Estate of DECEDENT, reflects that the Estate Tax Division accepted as filed deduction of attorneys' fees in the amount of Sixty-five Thousand Dollars ($65,000.00) and a deduction for co-trustee fees in the amount of Sixty-five Thousand Dollars ($65,000.00); that neither Exhibit No. 2, being the Order Assessing Tax, nor Exhibit No. 1 being the protest filed by the Protestant takes issue with the attorneys' fees as per the return filed in the estate, but Exhibit No. 4, being the declaration of the Executor's commission and attorneys' fees filed with the Director of the Internal Revenue Examination Division, May 31, 1985, signed by the co-trustees and the attorneys representing the Estate of DECEDENT, reflects that the subject attorneys' fees of Twenty-five Thousand Dollars ($25,000.00) "was paid or was to be paid" on or about January 9, 1985, being exactly eleven days prior to the date of the protest letter filed by the Protestant, January 20, 1985. This demonstrates and can lead but to one conclusion, that being that the additional attorneys' fees was known to the trustees and/or representatives of the estate on or about January 9, 1985, clearly within time for the Protestant to have included the additional attorneys' fee matter within the protest letter filed with the Commission.

There is little question that the provisions of the Estate Tax Code pursuant to Section 808(g) of Title 68 of the Oklahoma Statutes allow for a deduction of reasonable attorneys' fees and the cost of administration if said cost of administration and attorneys' fees are allowed by the courts and paid. In the case at bar there was neither court-sanctioned documents submitted by the Protestant showing that the additional Twenty-five Thousand Dollars ($25,000.00) was necessary for the administration of the Estate of DECEDENT, nor was there any testimony or documentary evidence demonstrating the necessity of the additional Twenty-five Thousand Dollar ($25,000.00) attorneys' fees.

The Protestant failed to submit evidence necessary to demonstrate that the additional attorneys' fees were necessary or reasonable as required by Section 808(g). The position of the Estate Tax Division and its interpretation of Section 815 is correct and proper in view of the evidence presented at the hearing. The Estate Tax Division's application and position reflects the clear intent of the Legislature as plainly expressed in the provisions of Section 815(a) and (b) and this intent must be complied with without question or further inquiry.

CONCLUSIONS

In view of the above and foregoing factual situation and applicable law thereto, the Administrative Law Judge finds as follows:

1. That the Oklahoma Tax Commission has jurisdiction in this matter.

2. That Protestant failed to present any evidence that the additional attorneys' fees was reasonable pursuant to the provisions of Section 808(g) of Title 68 of the Oklahoma Statutes.

3. That the statutory provisions of Section 815(b) of Title 68 of the Oklahoma Statutes are to be strictly construed and, as such, the Protestant is not entitled to amend or adjust its original estate tax return and claim an additional Twenty-five Thousand Dollars ($25,000.00) attorneys' fees.

4. That the protest of the Estate of DECEDENT should be denied.

DISPOSITION

In view of the above and foregoing findings and conclusions, the OKLAHOMA TAX COMMISSION ORDERS that the protest of the representatives of the Estate of DECEDENT be denied.

OKLAHOMA 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.