JURISDICTION: **OKLAHOMA TAX COMMISSION DECISION**
CITE: **86-03-18-06 / NON-PRECEDENTIAL**
ID: **P-85-212**
DATE: **MARCH 18, 1986**
DISPOSITION: **DENIED**
TAX TYPE: **ESTATE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to the undersigned Administrative Law Judge. The Protestant, EXECUTOR, the Executor of the Estate of DECEDENT, did not appear at the hearing nor was the estate represented by legal counsel, but rather notified the Administrative Law Judge's office that he would be unable to attend the hearing and, instead, would rely upon his protest filed with the Estate Tax Division. The Estate Tax Division was represented by OTC ATTORNEY of the General Counsel's Office of the Oklahoma Tax Commission. Following opening statements by the General Counsel's Office and testimony on behalf of the Estate Tax Division by WITNESS, exhibits were received into evidence which are not herein itemized, closing argument were made by the General Counsel's Office and the case was submitted for a decision.

STATEMENT OF FACTS

On or about July 10, 1985, the Estate of DECEDENT, by and through the Executor of the Estate, EXECUTOR, filed an Oklahoma Estate Tax Return prepared by PREPARER of the law firm of LAW FIRM of CITY, Oklahoma, wherein the return recited that the decedent, DECEDENT, died on March 5, 1982, a resident of BIG CITY, California, and further reflected that an ancillary probate proceeding had been instituted in COUNTY District Court under the Probate Number P-XXX. The Oklahoma Estate Tax Return as filed and signed by the Executor, EXECUTOR, showed total tax and interest due the Oklahoma Estate Tax Division of Five Thousand Eight Hundred Thirty-eight Dollars and Eighty-five Cents ($5,838.85), said amount paid under protest as per the signature of the Executor. [Exhibit A.) The Oklahoma Estate Tax Division on or about August 1, 1985 issued an Order Assessing Tax, wherein an additional interest of Five Hundred Seventy-two Dollars and Sixty-six Cents ($572.66) was shown due and owing based upon the return filed by the Executor of the Estate, the Protestant herein, EXECUTOR. The Oklahoma Estate Tax Return was accepted as correctly prepared by the Estate Tax Division with the only matter at issue as per the Order Assessing Tax was additional interest.

The Protestant by letter dated June. 30, 1985 advised the Oklahoma Tax Commission Estate Tax Division that he was protesting the confiscatory tax structure which "seems" to exist in Oklahoma and requests that he be granted a fair treatment in the amount of tax deemed due the Oklahoma Tax Commission Estate Tax Division in regard to the estate in which the Protestant served as executor.

ISSUES AND CONTENTIONS

The issue presented in this matter is whether or not the Oklahoma Estate Tax Return, prepared by the attorney representing the Estate of DECEDENT, signed by the preparer and the Executor, EXECUTOR, the Protestant herein, and the amount of tax reflected thereon paid under protest is inconsistent with the provisions of the Oklahoma Estate Tax Code, Section 801 et seq. of Title 68 of the Oklahoma Statutes.

The Protestant contends that the Oklahoma Estate Tax Code is confiscatory in nature and that the application thereof is unfair.

The Division contends that the taxes as per the Estate Tax Return filed by the Protestant although paid under protest, are in accordance with the estate tax laws of the State of Oklahoma and that the taxes upon the return as shown due and owing and paid with said return, although paid under protest, were properly calculated and that the additional assessment in the Order Assessing Tax issued by the Estate Tax Division was for additional interest in the amount of Five Hundred Seventy-two Dollars and Sixty-six Cents ($572.66) which the Protestant paid.

APPLICABLE LAW

The Protestant, Executor of the Estate of. DECEDENT, by and through the estate's legal counsel, PREPARER, filed with the Oklahoma Tax Commission Estate Tax Division an Oklahoma Estate Tax Return reflecting thereon the total gross estate of the decedent, a resident of BIG CITY, California, in the amount of Four Million Ninety-seven Thousand Eight Hundred Ninety-seven Dollars and Forty-five Cents ($4,097,897.45). Of said amount, One Hundred Seventy-seven Thousand Five Hundred Dollars ($177,500.00) represented the decedent's estate in which he held an interest within the State of Oklahoma and that based thereon the Estate of DECEDENT was required to file an estate tax return in the State of Oklahoma. In compliance with the provisions of the Oklahoma Estate Tax Code, specifically Sections 806, 807 and 808 of Title 68 of the Oklahoma Statutes, the preparer of the Oklahoma Estate Tax Return for the Protestant correctly computed the percentage of gross estate within Oklahoma of 4.33 percent by taking the total gross estate within Oklahoma and outside Oklahoma and dividing such into the total gross estate within Oklahoma. This same 4.33 percent as determined by the preparer of the return is the exact percentage used in determining the pro rata part of the net estate within Oklahoma, the pro rata part of the personal exemption attributable to the estate within Oklahoma and the percentage of the federal credit taken within the State of Oklahoma, all in compliance with the guidelines and directives of the Oklahoma Estate Tax Code, Section 801 et seq. of Title 68 of the Oklahoma Statutes, pursuant to the obvious intent of the Oklahoma Legislature in enacting such.

A cardinal rule of construction of statutes is to ascertain the intention of the Legislature by consideration of the statutory language, and when the intent of the Legislature is plainly expressed in a statute or statutes, that intent must be followed without further inquiry. In the case at bar, the application of the legislative directives pursuant to Section 801 et seq. of Title 68 of the Oklahoma Statutes as demonstrated by the preparer of the Oklahoma Estate Tax Return

and accepted by the Oklahoma Estate Tax Division is reasonable, sensible and falls clearly within the intent of the Legislature as expressed within Section 801 et seq. of Title 68 of the Oklahoma Statutes dealing with Oklahoma Estate Tax. See Walker v. St. Louis-San Francisco Ry. Co., 671 P.2d 672 (1983); In re: Hanun Production Company, 671 P.2d 50 (1983); and State ex rel. Thompson v. Ekberg, 613 P.2d 466 (1980).

The Oklahoma Estate Tax Division reviewed the Oklahoma Tax Return filed by the Protestant and found the information contained therein which had been prepared by PREPARER, the legal representative of the estate, to be correct and proper and upon review of said return, issued an Order Assessing Tax for additional interest only, and that based upon the Oklahoma Estate Tax Code provisions, the return was completed correctly and within the guidelines set out therein.

CONCLUSIONS

In view of the above and foregoing findings of fact and conclusions of law, the undersigned concludes as follows:

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

(2) That the Oklahoma Estate Tax Return filed by the Protestant in this estate was completed correctly and in accordance with the intent of the Legislature contained within the provisions of Section 801 et seq. of Title 68 of the Oklahoma Statutes and in compliance with the guidelines and acceptable standards of the Oklahoma Estate Tax Division.

(3) That the protest of the Executor of the Estate of DECEDENT is without merit and should be denied.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the Protest of EXECUTOR, Executor to 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.