

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 86-09-30-08 / NON-PRECEDENTIAL
ID: P-86-240
DATE: SEPTEMBER 30, 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 to ALJ, Administrative Law Judge, by the Oklahoma Tax Commission and hearing had, at which hearing Protestant appeared not nor was Protestant represented by counsel. The Estate Tax and Unclaimed Property Division of the Oklahoma Tax Commission was represented by OTC ATTORNEY, Attorney, of the General Counsel's office of the Oklahoma Tax Commission.

An opening statement was made by OTC ATTORNEY concerning the protest lodged with the Estate Tax and Unclaimed Property Division of the Oklahoma Tax Commission by the Protestant. Exhibits, not herein itemized, were received into evidence and the testimony of SUPERVISOR, Audit Supervisor for the Estate Tax and Unclaimed Property Division of the Oklahoma Tax Commission, was received, followed by a closing statement, at which time, the case was submitted for a decision.

STATEMENT OF FACTS

On or about November 12, 1985, an estate tax return was filed with the Estate Tax and Unclaimed Property Division of the Oklahoma Tax Commission in the matter of the estate of DECEDENT, who was a resident of CITY, Oklahoma at the time of his death on December 15, 1984 at the age of thirty-seven (37). The decedent died testate and probate proceedings were instituted in COUNTY under the probate number of P-XX-XXXX. The estate tax return as filed reflect that there was a mortgage due the decedent in the amount of Sixty Thousand Dollars (\$60,000.00) on certain real property located in TOWN, Alabama with a face value of Sixty Thousand Dollars (\$60,000.00), this amount being deducted from the total gross estate within Oklahoma.

Subsequent to the filing of the estate tax return, an order assessing tax was issued by the Estate Tax and Unclaimed Property Division of the Oklahoma Tax Commission, wherein additional tax and interest was assessed, said amount representing an increase in the personal property held by the decedent, being the face amount of the mortgage concerning the property in TOWN, Alabama. The additional tax was in the amount of Eleven Thousand Three Hundred Forty Dollars and Eighty-Four Cents (\$11,340.84) and interest of Six Hundred Eighty Dollars and Forty-Five Cents (\$680.45), for a total estate tax and interest of Twelve Thousand Twenty-One Dollars and Twenty-Nine Cents (\$12,021.29), said interest to the date of the order assessing tax December 26, 1985.

The Protestant did, on January 6, 1986, file a protest to the order assessing tax, contending that the mortgaged property was located in Alabama and that the mortgage held in the name of the decedent should not be included in the taxable estate of the decedent in Oklahoma.

ISSUES AND CONTENTIONS

It is the Protestant's contention that the inclusion of the mortgage owned by the decedent on the real property located in TOWN, Alabama should not be included in the decedent's Oklahoma gross estate for estate tax purposes, that said face amount of the mortgage should in fact be deducted from the gross estate within the State of Oklahoma for estate tax purposes.

It is the contention of the Estate Tax and Unclaimed Property Division of the Oklahoma Tax Commission that the mortgage is in fact personal property and that the personal property of the decedent, as a resident of the State of Oklahoma, should in fact be included in the total gross estate within Oklahoma and that the applicable estate tax levy be applied to said amount of gross estate.

The issue presented is whether or not a real estate mortgage is in fact tangible personal property and therein subject to the provisions of the Oklahoma Estate Tax Code contained within Title 68 O.S. § 801 et seq.

APPLICABLE LAW

Title 68 OS. § 807(D) provides as follows:

(D) The term "tangible property," as used in this article, means and includes all corporeal property such as real estate, goods, wares and merchandise, or any interest therein, or income therefrom. The term "real estate" includes any royalty, ground rental, leasehold interest or income therefrom. The terms "goods, wares, and merchandise" means and includes all property, real, personal or mixed, situated within the State of Oklahoma or within its jurisdiction. The term "intangible property," as used herein, means and includes all incorporeal property other than that named as tangible.

A mortgage is defined in Black's Law Dictionary, Fifth Edition, as "an interest in land created by a written instrument providing security for the performance of a duty or the payment of a debt." Obviously, a mortgage does not operate as conveyance vesting in the mortgagee any interest in the land, but rather creates a mere lien securing the payment of the debt. The Oklahoma Supreme Court in Kehler v. Smith, 240 P.2d 708 (Okl. 1925) concluded that a mortgage is in fact personal property.

The value of the Oklahoma gross estate is determined under the provisions of § 807, in the instant case, the specific subsections being § 807(A)(1), which states:

(A) The value of the gross estate, used as a basis for a determination of the value of the net estate, shall be determined by including:

(1) The value, at the time of the death of the decedent, or the alternate valuation as herein authorized, of all property, real, personal, or mixed, whether tangible or intangible, in which the decedent had an interest, whether vested or contingent within the jurisdiction of this state, and any interest therein, or income therefrom, which shall pass in possession or enjoyment, present or future, by distribution, by statute, descent, devise, bequest, grant, deed, bargain, sale, gift or contract, to any person or persons, associations or corporations, in trust or otherwise, by testamentary disposition or by the laws of inheritance or succession of this or any other state or country, and including the value of the homestead.

Therefore, in view of the fact that a mortgage is in fact personal property, said mortgage would be considered part of the decedent's intangible personal property for the purpose of taxation and, as such, this intangible personal property follows the domicile of the owner. See Colchensky v. Oklahoma Tax Commission, 86 P.2d 329 (Okla. 1939) and Sunray Oil Corporation v. Oklahoma Tax Commission, 134 P.2d 995 (Okla. 1943).

In the case at bar, the decedent, DECEDENT, died in the State of Oklahoma as a resident of CITY, Oklahoma and the probate proceedings were instituted in the District Court of COUNTY under Probate No. P-X-XXX. Based upon the longstanding interpretation of the Estate Tax and Unclaimed Property Division of the Oklahoma Tax Commission concerning the inclusion of mortgages held by decedents wherein said real property is located outside the State of Oklahoma to be subject to Oklahoma estate tax, the mortgage in the instant case must be included as the total gross estate within Oklahoma and therefore part of the decedent's estate for the purposes of Oklahoma estate taxes.

CONCLUSIONS OF LAW

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

- (1) The Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That the Protestant failed to appear, although Protestant did receive notice of said hearing, and present evidence showing that the subject protest had merit.
- (3) That the provisions of Title 68 O.S. § 807(A)(1) direct that a mortgage held by a resident of the State of Oklahoma on real property located outside the jurisdiction of Oklahoma would in fact be included as part of the decedent's gross estate for the purposes of Oklahoma estate taxes.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of the Estate of DECEDENT be denied and that the assessment in the amount of Twelve Thousand Twenty-One Dollars and Twenty-Nine Cents (\$12,021.29) is correct and proper and that said amount should continue to accrue interest until the tax and interest is paid in full.

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.