JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **87-01-08-03 / NON-PRECEDENTIAL**
ID: **P-85-293**
DATE: **JANUARY 8, 1987**
DISPOSITION: **DENIED**
TAX TYPE: **ESTATE**
APPEAL: **AFFIRMED / OK S.CT. 68,197**
DECISION NOT PUBLISHED

ORDER

This 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 Findings, Conclusion and Recommendations of the Administrative Law Judge, filed herein in the 1st day of December, 1986, marked as Exhibit "A", attached hereto and hereby incorporated by reference as though fully set out herein, be and the same is hereby adopted as the Order of the Commission.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 1st day of December, 1986, the above styled protest comes on for consideration pursuant to assignment regularly made to ALJ, Administrative Law Judge, by the Oklahoma Tax Commission. A hearing was held, at which hearing the Protestant, EXECUTOR, Co-executor of the Estate of DECEDENT, appeared in person and represented by Attorney ATTORNEY. The Estate Tax Division of the Oklahoma Tax Commission appeared represented by OTC ATTORNEY, Attorney for the General Counsel's Office of the Oklahoma Tax Commission.

Opening statements were made by the respective parties, and exhibits, not herein itemized, were received into evidence. EXECUTOR testified on behalf of the Protestant and AUDITOR, Estate Tax Division Auditor, testified on behalf of the Estate Tax Division of the Oklahoma Tax Commission. Closing arguments were made by the respective parties and the case was submitted for a decision.

STATEMENT OF FACTS

DECEDENT died testate on May 29, 1984. At the time of his death, certain certificates of deposit were held in joint tenancy with WIFE, decedent's wife. Certain other certificates of deposit were also held in joint tenancy with decedent's wife and with EXECUTOR, decedent's son.

The executor of the estate filed its Oklahoma Estate Tax Return with the Estate Tax Division on April 3, 1985. The order assessing additional tax in the amount of Six Thousand Eight Hundred Seventy-nine Dollars and Fifteen Cents ($6,879.15), plus interest accrued through

October 29, 1985 in the amount of Eight Hundred Twenty-five Dollars and Fifty Cents ($825.50), was issued by the Estate Tax Division on October 4, 1985. On October 24, 1985, the executor filed a protest to the additional assessment.

CONTENTIONS OF PROTESTANT

Protestant contends that all of the certificates of deposit listed in Schedule C-1 of the estate tax return were owned in joint tenancy by the decedent and WIFE, his widow. Protestant further contends that, by virtue of this joint tenancy, the whole of the certificates passed to decedent's widow, including the certificates held in joint tenancy with their son, EXECUTOR.

CONTENTIONS OF THE ESTATE TAX DIVISION

The Estate Tax Division contends that the total value of the certificates of deposit should be reported to the Estate Tax Division, and that the certificates held in joint tenancy with decedent's widow pass to her untaxed. However, the Estate Tax Division contends that, with respect to these certificates held in joint tenancy by decedent, his widow and their son, one-half (½) of the value of those certificates passes untaxed to the widow, but as to the other one-half (½), an estate tax is levied on its transfer to a lineal heir, who in this case is their son and joint tenant.

APPLICABLE LAW

Title 60 O.S. § 74 provides, in pertinent part;

> A joint interest is one owned by several persons in either real or personal property in equal shares, being a joint title created by a single instrument, will or transfer when expressly declared in the instrument, will or transfer to be a joint tenancy, . . . Such joint tenancy . . . may be created by transfer to persons as joint tenants . . . from an owner or a joint owner to himself and one or more persons, . . .
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> * * *
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> The provisions of this act shall apply to all estates in joint tenancy or tenancy by entirety in either real or personal, property heretofore or hereafter created.

In the instant case, the joint tenancy is expressly declared in the instruments. Where the joint tenancy is declared to be between DECEDENT, WIFE and EXECUTOR, the interest accruing to EXECUTOR is subject to estate tax. Under the law of joint tenancy, the survivor takes legal title and the beneficial interest unless he takes through fraud or in trust. Thomas v. Bank of Oklahoma, N.A., 684 P.2d 553 (Okla. 1984). When DECEDENT died, WIFE became both the legal and beneficial owner of the certificates of deposit held by her and decedent in joint

tenancy. WIFE and EXECUTOR became one-half owners each of the certificates held in joint tenancy with decedent.

The Oklahoma Estate Tax Code (68 O.S.1981, § 807(A)(4)) provides:

> § 807. Value of gross estate - Terms defined - Property not specifically devised - Exempt estates
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> (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:
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> * * *
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> (4) To the extent of the value of any interest of the decedent in any property owned by the decedent and any other person as joint tenants, or tenants by the entirety, including funds or securities deposited with any person, corporation, bank or trust company or held in any safety box kept by the beneficiary or joint survivor, except such part of said property or deposit as may be shown to have originally belonged to such other person and never to have been acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth. Persons claiming to own an interest with the decedent in any property, real or personal, included in the taxable estate of the decedent must support said claim by adequate proof, showing the value of claimant's interest contributed in money or money's worth from separate funds or properties, and provided that a sworn affidavit setting forth the facts supporting such claims shall be considered prima facie evidence of adequate proof.

The applicable statute provides for the full value of the certificates to be included in the estate except that portion which is contributed by one of the surviving joint tenants. The testimony is unrefuted that no contributions were made by EXECUTOR. Protestant suggests that all the certificates were intended to go to WIFE and thus are not subject to estate tax. There is no authority for considering the intent of the decedent in determining what portion of the joint tenancy property will be included in the gross estate for estate tax purposes. In the instant case, the certificates should have been included in the gross estate of decedent at full value. With respect to the certificates held by decedent in joint tenancy with WIFE, there is no additional estate tax since the full value is deductible as property passing to a spouse. However, with respect to the certificates held in joint tenancy by decedent with WIFE and EXECUTOR, one-half (½) of the property passes to WIFE on which no estate tax is due and one-half (½) passes to EXECUTOR, the lineal heir, on which estate tax is due at the lineal rate.

CONCLUSIONS

In view of the above and foregoing findings of fact and law applicable thereto, the undersigned Administrative Law Judge concludes as follows:

(1) The Oklahoma Tax Commission has jurisdiction in this matter under 68 O.S.1981, § 207.

(2) The ownership of the certificates of deposit held by DECEDENT, WIFE and EXECUTOR were expressly declared in the instrument to be held in joint tenancy.

(3) The survivor in a joint tenancy takes legal title as well as beneficial interest absent fraud or taking under a trust.

(4) Under the Oklahoma Estate Tax Code, joint tenancy property is included when determining the value of the gross estate for estate tax purposes. (68 O.S.1981, § 807.)

(5) The Order Assessing Tax in the amount of Six Thousand Eight Hundred Seventy-nine Dollars and Fifteen Cents ($6,879.15) plus interest accrued through October 29, 1985 in the amount of Eight Hundred Twenty-five Dollars and Fifty Cents ($825.50) should be upheld.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of the Estate of DECEDENT be denied, and that the assessment dated October 4, 1985, in the total amount of Seven Thousand Seven Hundred Four Dollars and Sixty-five Cents ($7,704.65) be deemed due and owing, with interest continuing to accrue thereon from October 29, 1985 until 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.