

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2001-04-24-006 / NOT PRECEDENTIAL
ID: P9800225
DATE: 04-24-01
DISPOSITION: DENIED
TAX TYPE: ESTATE
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. DECEDENT died testate on June 18, 1997. His estate's executor filed an Oklahoma Estate Tax Return on or about April 15, 1998. The return reflected a total gross estate of \$332,858.00, including \$249,558.00 in out-of-state property and \$83,300.00 in Oklahoma property, for an Oklahoma percentage of 25 percent.

2. The return also reflected unpaid mortgage debt on the Oklahoma property of \$21,442.00, which the executor deducted from the \$83,300.00 Oklahoma adjusted gross estate, resulting in a \$18,063.00 net estate subject to tax and a tax due of \$131.00.

3. The Division audited the return, adjusting the percentage of mortgage debt deducted by 25 percent, i.e. the percentage of gross estate made up of Oklahoma property, or \$5,366.00. This resulted in a \$34,139.00 net estate subject to tax.

4. On June 15, 1998, the Division assessed \$240.12 additional tax, interest and penalty against the estate. The additional amount assessed was paid by the executor on June 25, 1998.

5. Protestant's letter of protest objecting to the Division's proration of the mortgage debt was received by the Division on July 6, 1998.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction over the parties and subject matter of this action, 68 O.S.1991, § 207; that a proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect, *Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission*, 768 P.2d 359 (Okl. 1988); that estate tax is levied upon the transfer of the net estate of every decedent at the rates prescribed in Section 803 of Title 68 of the Oklahoma Statutes, 68 O.S.1991, § 802; that the net estate of every decedent is determined by deducting from the value of the gross estate of such decedent the amounts prescribed by Section 808 of Title 68 of the Oklahoma Statutes, 68 O.S.1991, § 808; that the value of the gross estate of every decedent is determined in accordance with the provisions of Section 807 of Title 68 of the

Oklahoma Statutes, 68 O.S.1991, § 807(A); that the deductions allowed by Section 808 in determining the net estate include, debts, mortgages and taxes due and unpaid at the date of death of the decedent, 68 O.S.1991, § 808(a); that when the property comprising the estate consists of property within and without the State, only the percentage of the deductions enumerated in Section 808 will be allowed as the ratio of the value of the estate within the State bears to the value of the entire estate, 68 O.S.1991, § 809(D); and that the Protestant has failed to present any evidence in support of its protest and therefore, has failed to meet its burden of proving in what respect the proposed assessment is incorrect.

DISPOSITION

THEREFORE, based on the foregoing findings and conclusions, it is DETERMINED that the protest 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 not 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.