

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2002-04-30-006 / NOT PRECEDENTIAL  
**ID:** P0000059  
**DATE:** 04-30-02  
**DISPOSITION:** DENIED  
**TAX TYPE:** ESTATE  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Decedent died on May 24, 1999, a resident of ANONYMOUS County, State of Oklahoma.

2. The Decedent was 107 years of age at the time of her death.

3. The Decedent died, leaving no children, grandchildren, or great-grandchildren. The Decedent had never given birth or adopted children during her lifetime.

4. On February 9, 2000, an Oklahoma Estate Tax Return for the estate of Decedent was filed.

5. A gross estate of \$1,266,143.00 was reported. A net estate of \$1,218,395.00 was reported after the deduction of \$47,753.00 in debts, mortgages, taxes and in funeral and burial expenses, executor commissions, attorney fees and miscellaneous expenses. The estate was not afforded and did not claim a lineal exemption, since all of the net estate passed to collateral heirs. The amount of tax was calculated by applying the collateral heir rate to the value of the net estate as reported.

6. Accompanying the return was a letter from Protestant's representative wherein she stated that the return was "being filed under protest, due to the 'penalization' to DECEDENT by not having lineal heirs." Protestant's representative indicated that the tax was being paid in the amount of \$147,959.25 and requested a hearing before the Administrative Law Judge to "review the matter of collateral heirs and the denial of exemption for what appears to be discriminatory reasons."

7. On March 15, 2000, the Division issued a Notice of Assessment, which referenced the estate tax in the amount of \$147,959.25 as filed and paid and also indicated that an audit of the estate tax return revealed no additional taxes due.

8. The parties agree that the amount of tax and the calculation thereof is not at issue. Pursuant to a position statement filed by Protestant's representative, entitled Prehearing Conference, Protestant is seeking a refund in the amount of \$40,683.75, which is the amount resulting from allowing the same exemption as that of lineal heirs taxed at the rate for collateral heirs.

## ISSUE

Whether the provisions of the Oklahoma Estate Tax Code, which provide for a tax exemption and a lower tax rate for a net estate passing to lineal heirs, but not for a net estate passing to collateral heirs, violate the Equal Protection Clause of the 14th Amendment of the United States Constitution.

## CONTENTIONS

Protestant contends that Sections 801 through 827 of Title 68 of the Oklahoma Statutes are discriminatory to decedents who do not have lineal heirs. Based on classes of heirs, Oklahoma creates a double penalty to a decedent's estate by disallowing any exemption and carrying a higher rate of tax. Additionally, Protestant asserts that "[w]hile the Fourteenth Amendment to the United States Constitution grants the individual states great latitude in creating classes and distinctions in tax issues, it does protect the public against discrimination from physical injuries or maladies, race, sex and religion. Therefore, the State of Oklahoma cannot discriminate against DECEDENTS's estate for whatever reason she was not able to leave lineal heirs."

The Division contends that the rate of tax was assessed according to statutory law as enacted by the legislative branch of the State of Oklahoma and that the question of constitutionality of a statute rests with a District Court or the Supreme Court of Oklahoma and not with an administrative agency.

## CONCLUSIONS OF LAW

1. The Tax Commission has jurisdiction over this protest pursuant to Section 207 of the Oklahoma Tax Procedure Code. 68 O.S. 1991, § 207.
2. 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.
3. 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. 68 O.S. 1991, § 808.
4. The first \$275,000.00 of the net estate transferred to parents, children, children of a spouse, adopted children or any other lineal heirs of decedent is exempt from Oklahoma estate tax. 68 O.S. Supp. 1999, § 809(A)(2).

5. Pursuant to Section 803 of Title 68, transfers made to collateral heirs are taxed at a higher rate than transfers made to lineal heirs.

6. It is the opinion of the Attorney General that Section 809 of Title 68, which grants an estate tax exemption to those estates wherein any portion of the net estate in excess of the deductions allowed in Section 808 passes to the father, mother, husband, wife, child, child of the husband or wife, adopted child or any lineal descendant but not to estates passed to collateral heirs, does not violate the Equal Protection Clause of the Fourteenth Amendment. Attorney General Opinion No. 99-11.

7. Every statute is deemed constitutionally valid until a court of competent jurisdiction declares otherwise. See *State ex rel York v. Turpin*, 681 P.2d 763, 767 (Okl. 1984). The Tax Commission as an administrative agency is not empowered to decide the constitutional validity of a taxing statute. See, *Dow Jones and Co. Inc., v. Oklahoma Tax Commission*, 767 P.2d 843, 845 (Okl. 1990).

8. Accordingly, Protestant's protest should be denied.

### **DISPOSITION**

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the estate tax protest of the Estate 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.