

**JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION****CITE: 2003-05-27-03 / PRECEDENTIAL****ID: P0200108****DATE: 05-27-03****DISPOSITION: DENIED****TAX TYPE: ESTATE****APPEAL: NO APPEAL TAKEN****FINDINGS OF FACT AND CONCLUSIONS OF LAW****A. The parties stipulate to the following:**

1. DECEDENT died May 28, 2001. She was a widow and all of her estate passed to collateral heirs. During the three years prior to her death, DECEDENT gifted out \$327,570.00 of her estate. The personal representative contends that \$212,570.00 of this amount is taxable. The Commission contends that the entire \$327,570.00 is taxable.

2. During the three (3) years preceding her death, the Decedent made gifts to individuals as follows:

06/01/98	50,000.00	(A)	01/25/00	12,210.00	(G)
06/01/98	50,000.00	(B)	01/25/00	12,210.00	(I)
06/01/98	50,000.00	(C)	01/25/00	12,210.00	(J)
06/28/98	100.00	(D)	02/11/00	100.00	(E)
07/19/98	500.00	(A)	05/12/00	16,000.00	(A)
12/22/98	1,000.00	(A)	05/12/00	100.00	(D)
12/22/98	500.00	(D)	05/12/00	1,000.00	(E)
12/22/98	500.00	(B)	05/12/00	100.00	(G)
12/22/98	500.00	(E)	08/31/00	1,000.00	(B)
12/22/98	500.00	(F)	08/31/00	1,000.00	(C)
12/22/98	500.00	(C)	10/13/00	100.00	(B)
12/22/98	500.00	(G)	10/20/00	1,000.00	(B)
11/13/99	17,100.00	(F)	10/20/00	1,000.00	(E)
12/17/99	20,400.00	(H)	12/25/00	1,000.00	(A)
01/25/00	42,200.00	(A)	12/25/00	500.00	(D)
01/25/00	12,210.00	(D)	12/25/00	500.00	(B)
01/25/00	12,210.00	(B)	12/25/00	500.00	(E)
01/25/00	12,210.00	(E)	12/25/00	500.00	(C)
01/25/00	12,210.00	(C)	12/25/00	500.00	(G)

3. Under federal law, DECEDENT could have given up to \$10,000.00 of gifts to one or more individuals during each of the three years prior to her death without being required to file a federal gift tax return.

4. It is the personal representative's position that the first \$10,000.00 of gifts made by the Decedent to any individual during each of the three years prior to her death does not require a federal gift tax return and is, therefore, excluded from the taxable estate under 68 O.S. § 807(A)(2).

5. The Commission contends that where a federal gift tax return is required, the entire gift is subject to Oklahoma estate tax. Further, the exception provided by 68 O.S. § 807(A)(2) applies only to those transfers for which a federal gift tax return was not required.

6. The issue for the Court is to determine the amount of gifts to be included in the Decedent's estate with respect to gifts made within three years of her death.

#### **B. Additional Findings:**

1. On May 31, 2002, the Division caused to be issued against the Protestant an Order Assessing Estate Tax in the aggregate amount of \$20,671.80, consisting of additional estate tax in the amount of \$19,687.80 and interest accrued through June 28, 2002, in the amount of \$984.00.

2. The additional estate tax is primarily attributable to the Division's inclusion of an additional \$130,000.00 to the amount reported by the Protestant as transfers during lifetime. Some of the additional tax is attributable to an increase in the value of a mineral interest owned by the Decedent.

3. The Protestant timely protested the Order Assessing Estate Tax and placed in controversy the additional tax attributable to the inclusion of the additional \$130,000.00 of transfers during lifetime. The Protestant agreed to the increase in the value of the mineral interest.

#### **ISSUES**

Two issues are presented for decision. The first issue is whether the exclusionary language of Section 807(A)(2) exempts from the value of a decedent's gross estate the first \$10,000 of gifts made by the decedent to a donee in a calendar year notwithstanding that the decedent was required to file a federal gift tax return with respect to the total value of the gifts made to the donee for such year. The second issue is whether the gifts comprise a material part of Decedent's estate.

### CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 2001, § 815(b).

2. Gifts of real or personal property made in contemplation of death are included in the value of the gross estate of a decedent for estate tax purposes. 68 O.S. 1991, § 807(A)(2).

3. Gifts of a material part of a decedent's estate made within three (3) years of death are presumed to be made in contemplation of death. 68 O.S. 1991, § 807(A)(2).

4. Section 807(A)(2) represents "a legislative scheme to prevent inheritance tax evasion by imposing certain criteria on inter vivos transfers." See, *Wilson v. Oklahoma Tax Commission*, 594 P.2d 1210, 1212 (Okl. 1979). The Legislative scheme has been in place since the enactment of the Inheritance and Transfer Act of 1939.<sup>1</sup>

5. Here, there is no dispute that decedent transferred property to the donees, that the transfers were made within three (3) years of decedent's death and that the transfers constituted gifts to the recipients.

6. Protestant contends that the gifts do not constitute a material part of the Decedent's estate. While admitting that the Decedent gifted out a material part of the estate within three years preceding her death when the gifts are combined, Protestant argues that Section 807(A)(2) is not directed at the total amount of the gifts, but requires an analysis of each gift in relation to the entire estate.

7. The factors to be considered in determining whether a "material part" of an estate has been transferred includes not only the proportion the gifted property bears to the total estate, but the size of the gift, the nature of the gift and the nature of the remainder of the estate. In re *Miller's Estate*, 404 Pa. 156, 170 A.2d 857 (1961); 42 Am.Jur.2d. Inheritance, Etc., Taxes § 95.

8. "Material" is defined to mean "having real importance or great consequence", Webster's New Collegiate Dictionary 702 (1979); and "important, more or less necessary, having influence or effect", Black's Law Dictionary 880 (5th ed. 1979).

9. When considering the proportion the gifted property bears to the total estate, all transfers made within three years of death should be considered together, not individually, annually or by donee. Oklahoma Tax Commission Order No. 94-06-21-003 (Prec.). To hold otherwise would permit a person to avoid the thrust of the statute by making numerous gifts, none of which would be a "material part" of the estate but which, when taken together, would constitute the disposition of a material part of the estate within the three-year period prior to death. *Id.* This analysis is consistent with the

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<sup>1</sup> Laws 1939, p. 400, § 1. The Inheritance and Transfer Act was repealed in 1965 and recodified as the Estate Tax Laws, 68 O.S.Supp.1985, § 801 et seq. Laws 1965, c.250. §§ 1-3.

requirement that statutes be construed in order that legislative intention will be given effect and the object and purpose intended will be accomplished. *State ex rel. Otjen v. Mayhue*, 476 P.2d 317 (Okla. 1970). In addition, when considering the size of the gift, a large sum of money is a material part of any estate, no matter how large, because it is a matter of substance - a matter that is not immaterial.

10. Since Protestant admits that the Decedent gifted out a material part of the estate within three years preceding her death when the gifts are combined, the burden of proof shifts to Protestant to show that the gifts were not made in contemplation of death. Oklahoma Tax Commission Order No. 94-06-21-003. Protestant has not offered any evidence to prove that the gifts were not made in contemplation of Decedent's death. Therefore, the gifts are required to be included in the value of Decedent's gross estate, unless the gifts are otherwise exempted by the exclusionary provision of Section 807(A)(2). 68 O.S. 2001, § 807(A).

11. Section 807(A)(2) was amended in 1998 to exclude certain transfers from the value of a decedent's gross estate. Laws 1998, c. 301, § 2, eff. Nov. 1, 1998. The transfers exempted from the value of the gross estate by this amendment are "any gift to a donee, excepting gifts with respect to a life insurance policy, made during the calendar year if the decedent was not required to file any federal gift tax return for such year with respect to gifts to such donee". *Id.*

12. In general and in particular to this proceeding, a federal gift tax return is required to be filed by any individual who in any calendar year makes any transfer by gift other than a transfer - which under I.R.C § 2503(b) is not to be included in the total amount of gifts for such year. I.R.C. § 6019.

13. The term "taxable gifts" for federal gift tax purposes means "the total amount of gifts made during the calendar year". I.R.C. § 2503(a). However, the first \$10,000.00 of such gifts made to any person by the donor during a calendar year shall not be included in the total amount of gifts made during such year. I.R.C. § 2503(b).

14. The fundamental rule of statutory construction is to ascertain and, if possible, give effect to the intention and purpose of the Legislature as expressed in the statute. *Jackson v. Independent School Dist. No. 16 of Payne County*, 648 P.2d 26 (Okla. 1982). Where the language of a statutory provision is plain and unambiguous, and the meaning is clear and unmistakable, no justification exists for the use of interpretative devices to fabricate a different meaning, *Neer v. Oklahoma Tax Commission*, 982 P.2d 1071, 1078 (Okla. 1999); and the clear and unmistakable meaning of the statute shall be followed without further inquiry, *Community Bankers Ass'n of Oklahoma v. Oklahoma State Banking Bd.*, 1999 OK 24, 979 P.2d 751 (Okla. 1999). Further, the general rule that tax statutes are to be construed in favor of a taxpayer does not apply if the statute at issue contains no inconsistent provisions, no ambiguities, and no uncertainties. *Neer*, supra at 1078.

15. Deductions or exemptions from the computation of a tax depend entirely upon the legislative grace. *Essley v. Oklahoma Tax Commission*, 196 Okla. 473, 168 P.2d 111 (1946). An alleged grant of exemption from inheritance tax will be strictly construed and must be in such specific and certain terms as to leave no room for doubt. *In re Noble's Estate*, 183 Okla. 148, 80 P.2d 243 (1938). Statutory tax exemption provisions are strictly construed against the taxpayer. *Ward v. Oklahoma Tax Commission*, 322 P.2d 172 (Okla. 1958).

16. Although the specific issue in this cause is one of first impression in the State of Oklahoma, the Supreme Court of Montana in *Estate of Langendorf*<sup>2</sup> addressed this issue. The statute at issue in *Langendorf* has no discernable substantive differences from Section 807(A)(2). See, MONT. CODE ANN. § 72-16-301(3). In *Langendorf*, the Montana Supreme Court reversed the decision of the District Court which "concluded that, in order to avoid an absurd result, the statute must be read to allow [a \$10,000] exclusion", at 435; and held "that Montana's inheritance tax statutes do not allow a deduction, exclusion or exception for the first \$10,000 per donee of the taxable value of a gift made in contemplation of death, at 437. In deciding the issue, the Court found that "an item may constitute a deduction only when the legislature specifically establishes the deduction", *Langendorf*, supra at 436; that the statute was "unambiguous", *Id.*; and that because a federal gift tax return was required to be filed with respect to the transfer, the exclusion under the statute did not apply. *Id.* at 437

17. Here, all of the gifts at issue, except those made to (D), (E), (F) and (G) during the 1998 calendar year, exceeded \$10,000 per donee per calendar year. Because the gifts exceeded \$10,000 per donee, per calendar year, a federal gift tax return was required to be filed with respect to those gifts. Because a federal gift tax return was required to be filed with respect to those gifts which exceeded \$10,000 per donee, per calendar year, the exclusion under Section 807(A)(2) is not triggered, and no part of the value of those gifts may be excluded from the value of Decedent's gross estate.

18. Protestant's protest to the Order Assessing Estate Tax is denied.

### DISPOSITION

Based on the above and foregoing, it is DETERMINED that the protest of the Estate of PROTESTANT be denied. It is further DETERMINED that the amount in controversy be fixed as the deficiency due and owing.

OKLAHOMA TAX COMMISSION

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<sup>2</sup> 863 P.2d 434 (Mont. 1993).