JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-08-31-09
ID: P-04-056-K
DATE: AUGUST 31, 2004
DISPOSITION: DENIED
TAX TYPE: ESTATE
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On March 20, 2003, the Division received the estate tax return of the Protestant. The return was accompanied by the remittance of $220,229.78, the amount of estate tax reported due by the return. The Division accepted the return as filed and by letter dated April 25, 2003, issued a release.

The Protestant filed an amended estate tax return on March 9, 2004. The amended return claimed a refund of a portion of the estate tax previously paid in the amount of $161,379.78. The Division by letter dated April 1, 2004, denied the refund claim. Protestant protested the denial by *Application for Hearing* filed April 26, 2004.

On May 26, 2004, the Division forwarded its file to the Office of the Administrative Law Judges ("ALJ's Office") for further proceedings consistent with the Uniform Tax Procedure Code[1]the Rules of Practice and Procedure before the Oklahoma Tax Commission[2]. The case was assigned to ADMINISTRATIVE LAW JUDGE.

A *Notice of Prehearing Conference* was issued on May 5, 2004, scheduling a pre-hearing conference for June 8, 2004. On May 26, 2004, the Division caused to be filed a *Motion to Dismiss*. By letter dated May 28, 2004, the parties were notified that the pre-hearing conference scheduled for June 8, 2004 was canceled and the *Motion to Dismiss* was scheduled for hearing on June 17, 2004, by *Notice to Appear or Respond in Writing* issued May 28, 2004. Protestant did not respond to the *Notice*.

The Division was present at the June 17, 2004 hearing, represented by OTC ATTORNEY, General Counsel's Office of the Tax Commission. Protestant did not appear at the hearing and it was noted for the record that Protestant had not contacted the ALJ's Office or the General Counsel's Office in regard to the hearing. No witnesses were called as it was concluded by the undersigned that the *Motion* did not raise a dispute as to any material facts, but only raised a question of law. The hearing was concluded and the *Motion* was submitted for decision.

Based on the finding and reasons stated in the Issues and Contentions portion of these Findings, Conclusions and Recommendations; ante, the record in this cause is closed and the protest is submitted for decision.

FINDINGS OF FACT

Upon review of the file and records, including the Division's *Motion to Dismiss* and Exhibits A through C attached thereto, the undersigned finds:

1. The DECEDENT, a resident of Cleveland County, State of Oklahoma died testate on June 16, 2002.[3]

2. The Decedent died a widow at the age of 98 without a lineal heir.[4]

3. The estate tax return for the Decedent was timely filed and received by the Division on March 20, 2003.[5]

4. A payment in the amount of $220,229.78, the amount reported due, accompanied the return of the Decedent.[6]

5. A lineal heir exemption was not claimed on the return as all of the net estate passed to collateral heirs.[7]

6. The amount of tax reported due on the return was calculated by applying the collateral heir rate to the value of the net estate.[8]

7. The Division accepted the return as filed and by letter dated April 25, 2003, issued a release.[9]

8. On March 9, 2004, Protestant filed an amended estate tax return for the Decedent, which return claimed a refund of a portion of the estate tax previously paid in the amount of $161,379.78.[10]

9. The estate tax of $58,864.89 reported due on the amended return was computed by deducting the lineal exemption of $700,000.00 from the net estate in Oklahoma passing to the collateral heirs of the Decedent and applying the lineal tax rate to the net estate subject to tax.[11]

10. In all other respects, the amended estate tax return of the Decedent filed March 9, 2004, was the same as the original estate tax return of the Decedent filed March 20, 2003.[12]

11. The Division by letter dated April 1, 2004, denied the refund claim.[13]

12. Protestant protested the denial of the claim for refund by *Application for Hearing* filed April 26, 2004.[14]

13. The amount in controversy is $161,379.78.

ISSUE AND CONTENTIONS

The Division moves for the dismissal of Protestant's protest to the denial of their estate tax claim for refund on the grounds and for the reason of Protestant's failure to present any assignment of error alleged to have been committed by the Division which the Tax Commission has authority to decide and Protestant's failure to raise any genuine issues of material fact which the Tax Commission in its adjudicative capacity in individual proceedings can decide. Essentially, the Division contends the protest should be dismissed because Protestant failed to state a claim upon which relief can be granted by this agency.

No statutory provision applicable to tax protests grants the Tax Commission authority to dismiss the present action. See, 68 O.S. 2001, § 207(d) and Oklahoma Tax Commission Order No. 1996-05-30-002 (Precedential). The Tax Commission is required to make and enter an order in writing setting forth the disposition of any timely filed protest. See, 68 O.S. 2001, §§ 207(d) and 221(D) and (G). Further, as cited by the Division, the Tax Commission shall exercise such authority as may be necessary to administer and enforce each and every provision of any state tax law. See, 68 O.S. 2001, § 203 and *OAC*, 710:1-1-2(c).

While the posture of this case is askew procedurally; i.e, a hearing was scheduled to consider the dismissal of the protest rather than a hearing scheduled to consider arguments and evidence in support of and opposed to the protest, the undersigned finds that based on the following reasons the parties are not harmed or prejudiced by the decision to submit the protest for determination without additional proceedings.

Although Protestant protested the Division's denial by filing an Application for Hearing, Protestant "anticipate[d] calling no witnesses in support of [the] application."[15] The Division's Motion, by its terms, is better couched as a motion for summary judgement. No facts material to the decision are in dispute. The protest presents a pure question of law.

Therefore, the issue presented for decision is whether the provisions of the Oklahoma Estate Tax Code[16], which provide for an exemption for distributions of the net estate in Oklahoma to lineal heirs, but not for distributions of the net estate in Oklahoma to collateral heirs, and which impose a higher tax rate on the net estate subject to tax distributed to collateral heirs, are unconstitutional in that they deny equal protection under the law.

Protestant contends that the provisions of those Oklahoma statutes pertaining to taxation of estates which allow for exemption for distributions to lineal heirs but not for distributions to collateral heirs, and which impose a higher tax rate on estates which are distributed to collateral heirs, are a denial of equal protection under the law and therefore are unconstitutional. In support of this contention, Protestant cites the test applicable to any exercise of the taxing power in ***Suglove v. Oklahoma Tax Commission***[17], and argues the legislative reasons which justify the discrimination suffered by the ESTATE OF DECEDENT are not readily apparent.

The Division contends that it properly applied the provisions of 68 O.S. 2001, §§ 803 and 809 and the Oklahoma Administrative Code to deny Protestant's request for refund. The Division further contends that the Tax Commission is without authority to determine the constitutionality of a tax statute, but rather, is bound and must proceed strictly within the provisions of the tax laws. The Division further contends that Protestant's proposition that the provisions of Sections 803 and 809 violate the equal protection clause is moot, citing Attorney General Opinion No. 99-11.[18] The Division further contends that the Tax Commission has a duty to follow and not disregard the Attorney General's Opinion, citing ***Rasure v. Sparks***[19] and ***York v. Turpen***[20].

CONCLUSIONS OF LAW

1. The Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding. 68 O.S. 2001, § 207(c) and (d).

2. A tax is levied upon the transfer of the net estate of every decedent at the rates prescribed in Section 803 of the Oklahoma Estate Tax Code. 68 O.S. 2001, § 802.

3. The tax is imposed on the value of the net estate and transfers at the rates, under the conditions, and subject to the exemptions and limitations provided in the Oklahoma Estate Tax Code. Id.

4. An exemption of up to $700,000.00 is allowed as a deduction against any portion of the net estate, in excess of the deductions allowed in Section 808, which passes to the father, mother, child, child of husband or wife, adopted child or any lineal descendant of the decedent or of such adopted child, for the estate of a decedent who dies on or after January 1, 2002, and before January 1, 2004. 68 O.S. 2001, § 809(A)(5).

5. No exemption is allowed against the portion of the net estate of a decedent which passes to a collateral heir of the decedent or any other person or institution not specified. See, 68 O.S. 2001, §§ 808(h) and 809.

6. The net estate and transfers passing to lineal heirs are taxed at a different rate than the net estate and transfers passing to anyone or anything other than lineal heirs. See, 68 O.S. 2001, § 803(1) and (2).

7. Section 809 of the Oklahoma Estate Tax Code, which grants an exemption from estate tax to those estates wherein a portion of the estate passes to the father, mother, child, child of husband or wife, adopted child or any lineal descendant of a decedent but not to collateral heirs, does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. 29 Okl. Op. Atty. Gen. 59. The Tax Commission is under a duty to follow and not disregard an opinion of the Oklahoma Attorney General if there is any doubt as to the construction of a statute. ***Rasure v. Spark***, 1919 OK 231, 183 P. 495, 498. *See also,* ***York v. Turpen***, 1984 OK 26, 681 P.2d 763, 765. The duty to follow and not disregard the opinion of the Oklahoma Attorney General continues until a court of competent jurisdiction determines the opinion expressed is in error. ***York v. Turpen****, supra* at 765, citing *Pan American Petroleum v. Board of Tax Roll Corrections of Tulsa County*, 510 P.2d 680 (Okla. 1973); *State v. District Ct. of Mayes Cty.*, 440 P.2d 700 (Okla. 1968).

8. Every statute is presumed constitutionally valid until a court of competent jurisdiction declares otherwise. ***Strelecki v. Oklahoma Tax Commission***, 1993 OK 122, 872 P.2d 910, 917; ***York v. Turpen***, *supra*. The Tax Commission as an administrative agency is powerless to strike down a statute for constitutional repugnancy. ***Dow Jones and Co., Inc. v. Oklahoma Tax Commission***, 1990 OK 6, 787 P.2d 843, 845. The authority to invalidate an unconstitutional enactment resides *solely* in the judicial department. Id. (Emphasis original). The Tax Commission, as an administrative agency, only has that quantum of "judicial power" which is necessary to support its exercise of adjudicative authority in individual proceedings brought before it. Id.

8. Protestant's protest to the denial of the estate tax claim for refund should be denied.

DISPOSITION

THEREFORE, based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest to the denial of the estate tax claim for refund of Protestant, 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 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.

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[1] 68 O.S. 2001, § 201 et seq.

[2] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code (OAC).*

[3] The estate tax return of DECEDENT, received by the Division on March 20, 2003, of which official notice is taken.

[4] See, Note 3.

[5] See, Note 3.

[6] Fact not in dispute as shown by Paragraph 3 of the Relevant Facts of the Division's *Motion to Dismiss* filed in the ALJ's Office on May 26, 2004 and the second paragraph of the Protestant's *Application for Hearing* filed in the ALJ's Office on April 27, 2004.

[7] See, Note 3.

[8] See, Note 3.

[9] Official notice of the Division's letter of April 25, 2003 is taken.

[10] Official notice of the amended estate tax return of DECEDENT, is taken.

[11] See, Note 10 and the letter dated March 9, 2004, from the representative of the Protestants, which letter accompanied the amended estate tax return of the Decedent and of which official notice is taken.

[12] See, Note 3 and Note 10.

[13] Exhibit C attached to the Division's *Motion to Dismiss*.

[14] Exhibit A attached to the Division's *Motion to Dismiss*.

[15] Exhibit A attached to the Motion to Dismiss.

[16] 68 O.S. 2001, § 801 et seq.

[17] 1979 OK 168, 605 P.2d 1315.

[18] 29 Okl. Op. Atty. Gen. 59.

[19] 1919 OK 231, 183 P. 495.

[20] 1984 OK 26, 681 P.2d 763.