JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2005-01-25-09 (PRECEDENTIAL)
ID: P-04-084-H
DATE: JANUARY 25, 2005
DISPOSITION: SUSTAINED
TAX TYPE: ESTATE
APPEAL: NONE

ORDER OF THE OKLAHOMA TAX COMMISSION

The issue in this estate tax protest is, where no objection was filed with the Commission within thirty days of the mailing of the Order of Assessment, may the Estate claim, within one year of the mailing of that Order, omitted or underestimated administrative expenses, when finally determined, as erroneous omissions or inclusions of property under the provisions of 68 O.S. §815(B). We conclude that it can, and that any prior Commission order inconsistent with this decision should be overruled.

FINDINGS OF FACT

1. DECEDENT ("Decedent") was born on November 7, 1914, and died on May 25, 2002, at the age of eighty-seven.

2. By letter dated April 4, 2003, the Estate requested an extension of time to file the Oklahoma Estate Tax Return (Form 454) and paid estimated Oklahoma estate tax of $181,028.00. With the letter, the Estate submitted a copy of its Application for Extension of Time to File a Return and / or Pay U.S. Estate Taxes (Form 4768).

3. The Division granted the Estate a six-month extension to August 25, 2003, to file the Oklahoma Estate Tax Return (Form 454).

4. The Estate filed the United States Estate Tax Return (Form 706) on August 15, 2003. The IRS issued its closing document on February 4, 2004, on the original Federal Estate Tax Return (Form 706).

5. The Decedent's personal representative caused the Oklahoma Estate Tax Return (Form 454) to be filed on August 15, 2003. The Form 454 was forwarded to the OTC under letter dated August 15, 2003, from ACCOUNTANT, CPA.

6. By Order of Assessment dated September 30, 2003, the Division assessed the Estate $3,522.09 of interest for the period February 25, 2003, to April 11, 2003. The Division forwarded a copy of the Order of Assessment to the Estate by "NOTICE" dated September 30, 2003.

7. The Order of Assessment is stamped "PAID CLOSE" and dated October 29, 2003.

8. The Commission issued the ORDER RELEASING TAXABLE ESTATE on October 31, 2003.

9. By letter dated April 13, 2004, the Estate forwarded an AMENDED Form 454 to the Division. On the Amended Form 4554, the Estate claimed "additional expenses of administration totaling $35,418.00 not previously claimed."

10. On April 13, 2004, the Estate filed an Amended United States Estate Tax Return (Form 706). On the amended Form 706, the Estate claimed an additional $35,418.00 of expenses to administer the Estate.

11. The Internal Revenue Service issued an Estate Tax Closing Document for the Estate of DECEDENT on May 7, 2004. The Estate Tax Closing Document reflects acceptance by the IRS of the net estate tax and state death tax credit reported by the Estate on the amended Form 706.

12. By letter dated May 10, 2004, the Division returned the Estate's Amended Oklahoma Estate Tax Return. The Division cited 68, section 815(b) as precluding the Division from changing values reported on the Estate's original Oklahoma Estate Tax Return on which the release issued on October 31, 2003, was based.

13. On May 11, 2004, the District Court in and for Pawnee County, State of Oklahoma issued its Final Decree, Determination of Death Distribution and Discharge in the Matter of the Estate of DECEDENT. At ¶ 6., the court indicated "that the Personal Representative shall receive a statutory fee of $22,418.23." At ¶7., the court allowed "a reasonable attorney fee of $17,500.00 and an additional $6,000.00 for accounting fees."

14. By letter dated May 21, 2004, the Estate refiled the amended Form 454 with its "Formal Objection and Protest."

CONCLUSIONS OF LAW

1. Oklahoma law provides that, upon the filing of an estate tax return, the Commission shall make such examination as is necessary, and shall by order assess the tax due on such estate. 68 O.S. §815(B). The estate representative or other interested party has thirty days thereafter (now sixty days) in which to file a protest containing written objections to that assessment and any appraisement connected therewith. *Id.*

2. Section 815(B) also contains the following proviso:

> Provided further, the administrator, executor, trustee or any interested party who finds, within one (1) year from the date of mailing of the notice, an error of omission or inclusion of property on [the] return, may file in writing, an objection with the Tax Commission specifically setting forth the grounds of the objection, and thereupon the Tax Commission shall grant a hearing, and upon such hearing shall adjust the matters in controversy and add to or delete from the return such property as justice may require. *Id.*

3. In 1989, the Commission held that the "error of omission or inclusion of property" must constitute a mistake, and must be one of which the taxpayer had no knowledge prior to the lapse of the thirty-day protest period. OTC Order No. 89-07-06-003. However, no authority was cited for either conclusion, and we are aware of none. The statute itself makes no such requirement. In its simplest terms, the proviso says only that if the net value of the estate is incorrectly reported, the estate has one year to correct it. That is what happened here.

4. The 1989 Order should be overruled, and this protest should be sustained.

ORDER

In accordance with the foregoing, OTC Order No. 89-07-06-003 is expressly overruled; and this protest is sustained.