JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2005-04-19-12
ID:	P-04-100-K
DATE:	APRIL 19, 2005
DISPOSITION:	DENIED
TAX TYPE:	ESTATE
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On March 15, 2004, the Division received the estate tax return of Protestant. The return reported a balance due of zero. The Division audited the return and on April 12, 2004, issued an Order Assessing Tax in the amount of $2,971.27, inclusive of interest. Protestant, by letter dated May 12, 2004, timely protested the assessment.

On July 28, 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] and the Rules of Practice and Procedure before the Oklahoma Tax Commission[2]. The case was docketed as Case No. P-04-100-K and assigned to ALJ, Administrative Law Judge.[3]

A pre-hearing conference was scheduled for September 23, 2004, by *Notice of Prehearing Conference* issued on August 16, 2004.[4] The pre-hearing conference was held at the appointed date and time with the parties' representatives in attendance. Pursuant to the pre-hearing conference, a *Prehearing Conference Order and Notice of Alternative Hearing Date*[5] was issued setting forth dates for the parties to file a stipulation of facts and briefs in support of their respective positions or, in the event the parties could not stipulate to a full and complete factual record, a date for the parties to file pre-trial briefs and a trial date of January 10, 2005. On December 17, 2004, the parties filed their *Written Statement of Material Facts as to Which no Substantial Controversy Exists*, negating the need for the hearing.[6] Protestant failed to file a brief in chief and response brief as directed by the *Prehearing Conference Order* issued September 30, 2004. The Division filed its *Brief* on February 8, 2005, as directed. The record was closed and this cause was submitted for decision on March 1, 2005.[7]

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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] *OAC*, 710:1-5-22(b).

[4] *OAC*, 710:1-5-28.

[5] *OAC*, 710:1-5-28(b).

[6] *OAC*, 710:1-5-38.

[7] *OAC*, 710:1-5-39(a).

FINDINGS OF FACT

Upon review of the file and records, including the *Written Statement of Material Facts as to Which no Substantial Controversy Exists* and attached Exhibits A through E, G and L, and the *Brief* of the Division, the undersigned finds:

A. The parties stipulate to the following:

1. Decedent died on February 26, 2003. The Decedent was born on September 25, 1909. Decedent was ninety-three years old at the date of his death. Exhibit A to the Stipulation of Facts.[8]

2. The Decedent's youngest son is SON 1. SON 1 died in October of 2000.

3. SON 1 and his wife, DAUGHTER-IN-LAW, were married for 36 years.

4. DAUGHTER-IN-LAW is the daughter-in-law of Decedent.

5. GRANDDAUGHTER 1 and GRANDDAUGHTER 2 are the daughters of SON 1 and DAUGHTER-IN-LAW and granddaughters of the Decedent.

6. The Oklahoma Estate Tax Return, Form 454, was received on March 5 [*sic*][9], 2004. The Form 454 indicates that REPRESENTATIVE prepared the document and signed as the Personal Representative. Exhibit B to the Stipulation of Facts.[10]

7. The Decedent executed his Last Will and Testament on August 22, 2001, stating that on the death of the decedent, distribution of estate was to be made to the Living Trust dated August 22, 2001. Exhibit C to the Stipulation of Facts.[11]

8. The Living Trust made a specific distribution of one-third of the estate to DAUGHTER-IN-LAW. Exhibit D to the Stipulation of Facts.[12]

9. The Living Trust also provided that if DAUGHTER-IN-LAW failed to survive the Decedent, the bequest was to be distributed to her two daughters: GRANDDAUGHTER 1 and GRANDDAUGHTER 2. Exhibit D to the Stipulation of Facts.

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[8] Copy of the State of Oklahoma Certificate of Death of DECEDENT.

[9] The return was received on March 15, 2004. See, Exhibit B to the Stipulation of Facts filed December 17, 2004.

[10] Copy of the Oklahoma Estate Tax Return of Decedent.

[11] Copy of the Last Will and Testament of Decedent.

[12] Copy of The DECEDENT Living Trust dated August 25, 2001.

10. The Form 454, Schedule J indicates that DAUGHTER-IN-LAW is a daughter-in-law. The Schedule J also indicates that $81,650.00 was passed to a Lineal Heir, DAUGHTER-IN-LAW. Exhibit B to the Stipulation of Facts.

11. On April 12, 2004, the Division assessed the Estate a total of $2,971.27. This assessment consists of $2,782.50 for tax due and $188.77 for interest charges through 5/11/04. Exhibit E to the Stipulation of Facts.[13]

12. The Estate protested the Division's assessment by letter dated May 12, 2004, received by the Division May 17, 2004. Exhibit G to the Stipulation of Facts.

13. DAUGHTER-IN-LAW executed The DAUGHTER-IN-LAW Living Trust on May 28, 2002. The DAUGHTER-IN-LAW Living trust designates that upon her death the residuary of the trust be distributed to DAUGHTER-IN-LAW'S children in equal shares. Exhibit L to the Stipulation of Facts.[14]

14. The estate tax protest of the Estate is properly before the Commission.

B. Additional findings:

1. On the Oklahoma Estate Tax Return of Decedent, Protestant reported an adjusted gross estate of $250,250.00 allocable One Hundred percent (100%) to Oklahoma, consisting of real estate in the amount of $50,000.00 and personal property in the amount of $200,250.00. Schedules A-1 and C to Exhibit B to the Stipulation of Facts.

2. After deducting funeral expenses of $5,300.00, the Return reflects a net estate in Oklahoma of $244,950.00. Schedule H-1 to Exhibit B to the Stipulation of Facts.

3. The Return also reflects the Oklahoma net estate was distributed to lineal heirs and after deducting the statutory lineal exemption allowance ($700,000.00), reports a net estate subject to tax of zero. Exhibit B to the Stipulation of Facts.

4. The Last Will and Testament of Decedent directs that the property of the Estate be distributed to Decedent's Living Trust and that such property be administered and distributed as provided under the Trust. Exhibit C to the Stipulation of Facts.

5. With respect to the distribution of the assets of Decedent's estate, Decedent's Living Trust provides:

> **V. DEATH OF THE GRANTOR**. Upon the death of the Grantor, and after the payment of the Grantor's just debts, funeral expenses, and expenses of last illness, the following distributions shall be made:

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[13] Copy of the Notice and Order Assessing Estate Tax.

[14] Copy of The DAUGHTER-IN-LAW Living Trust dated May 28, 2002.

> *A. Specific Distributions*. The following specific distributions shall be made from the assets of the Trust. However, such distributions (other than distributions, if any, to the Grantor's children) shall be made only if the Grantor's children do not survive the Grantor.
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> > one-third of estate assets shall be distributed to DAUGHTER-IN-LAW. If this beneficiary does not survive the Grantor, this bequest shall be distributed to GRANDDAUGHTER 1 & GRANDDAUGHTER 2, Equally. If this beneficiary does not survive the Grantor, this bequest shall be distributed with the residuary assets of this Trust.
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> *B. Residuary Assets.* The residuary assets of this Trust shall be distributed to the Grantor's children in equal shares. If a child, other than SON 1, Deceased, does not survive the Grantor, such deceased child's share shall be distributed in equal shares to the children of such deceased child who survive the Grantor, by right of representation. If a child does not survive the Grantor and has no children who survive the Grantor, such deceased child's share shall be distributed in equal shares to the Grantor's other children, if any, or to their respective children by right of representation. If no child of the Grantor survives the Grantor, and if none of the Grantor's deceased children are survived by children, the residuary assets of this Trust shall be distributed to the Grantor's heirs-at-law, their identities and respective shares to be determined under the laws of the State of Oklahoma, then in effect, as if the Grantor had died intestate at the time fixed for distribution under this provision.

Exhibit D to the Stipulation of Facts.

6. Decedent's Living Trust was revocable. Exhibit D to the Stipulation of Facts, Page 4, Paragraph IX.

7. The Oklahoma Estate Tax Return of Decedent reports that one-third of the assets of the estate (value of $81,650) were distributed to DAUGHTER-IN-LAW, Decedent's daughter-in-law. The Return also reports that the distribution to DAUGHTER-IN-LAW was a distribution to a lineal heir. Schedule J to Exhibit B to the Stipulation of Facts.

8. Upon review of the Estate Tax Return of the Decedent, the Division increased the adjusted gross estate in Oklahoma by $6,000.00[15] and disallowed the statutory lineal exemption for the amount distributed to DAUGHTER-IN-LAW, which resulted in the assessment of estate tax on the amount of this distribution. Exhibit E to the Stipulation of Facts, Page 4.

[15] Proceeds from a life insurance policy issued by INSURANCE COMPANY. The beneficiaries of the policy were SON 2 and SON 3, Decedent's sons and thus, the proceeds of the policy did not result in any estate tax liability.

9. In the letter of protest, Protestant states that the portion of the assets of Decedent's estate distributed to DAUGHTER-IN-LAW were placed in her Living Trust. Exhibit G to the Stipulation of Facts.[16]

10. The DAUGHTER-IN-LAW Living Trust does not specifically identify any assets used to fund the trust, in particular, the distribution from Decedent's estate. Exhibit L to the Stipulation of Facts, Page 1, Paragraph II.

11. The DAUGHTER-IN-LAW Living Trust is revocable. Exhibit L to the Stipulation of Facts, Page 5, Paragraph IX.

12. The amount in controversy is $2,971.27, inclusive of any additional accrued and accruing interest until paid. Exhibit E to the Stipulation of Facts.

ISSUE AND CONTENTIONS

The issue presented for decision is whether the Division's denial of Protestant's claim to a lineal exemption under 68 O.S. 2001, § 809(A) for the portion of the estate distributed to Decedent's daughter-in-law is erroneous.[17]

Protestant contends that the Order Assessing Estate Tax is erroneous in that the Division denied the statutory lineal exemption to the portion of the estate distributed to Decedent's daughter-in-law. In support of this contention, Protestant argues that since the portion of the estate distributed to Decedent's daughter-in-law was placed in her Living Trust and the residuary beneficiaries of the trust are Decedent's natural grandchildren (lineal heirs) the distribution should be considered to be a distribution to the lineal descendants of Decedent. In support of this argument, Protestant asserts that the crux of the matter is that the children of Decedent's daughter-in-law are lineal heirs of Decedent and therefore, the distribution should be considered as a distribution on a lineal line. Protestant also asserts that had Decedent died intestate the portion of the estate distributed to Decedent's daughter-in-law would have been distributed to Decedent's grandchildren by right of representation and the statutory lineal exemption would have applied to the distribution.

The Division requests that two (2) recommendations be forwarded to the Commission in this cause: (1) that the protest be denied because Protestant did not sustain its burden of proof; and (2) that the tax and interest due be fixed as the amount due. In support of these requests, the Division argues three (3) propositions, to-wit: (1) Section 809(A) of Title 68 is clear and unambiguous, and is not subject to statutory interpretation; (2) the transfers made by the Decedent to his daughter-in-law do not qualify for the statutory lineal exemption; and (3) Protestant failed to sustain its burden of proof. In support of these propositions, the Division argues that the exemption

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[16] A verification of the statements was not provided in or with the letter of protest.

[17] See, Statement of Issue, *Written Statement of Material Facts as to Which no Substantial Controversy Exists*, Page 1. The issue as stipulated by the parties is: "[w]here the DECEDENT Trust (`Living Trust'), distributed one-third of DECEDENT'S (`Decedent') estate to DAUGHTER-IN-LAW, a daughter-in-law of the Decedent, may the Estate Claim a lineal exemption under Section 809 of Title 68 of the Oklahoma Statutes."

only applies to certain individuals having a specifically expressed relationship to the decedent or are of the same consanguinity as the decedent, that a daughter-in-law is not a specifically named relationship nor a lineal descendant and that consequently the exemption does not apply to the transfer in this case.

CONCLUSIONS OF LAW

1. The Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding. 68 O.S. 2001, § 815(B).

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.[18] 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 expressly specified. See, 68 O.S. 2001, §§ 808(h) and 809.

6. As a general rule, statutes exempting property from taxation are to be strictly construed against the allowance of an exemption. ***Autumn House v. Oklahoma Tax Commission***, 1991 OK 73, 814 P.2d 1036; ***Matter of Wal-Mart Stores, Inc.***, 1991 OK CIV APP 73, 817 P.2d 1281; ***Bert Smith Road Machinery Co. v. Oklahoma Tax Commission***, 1977 OK 75, 563 P.2d 641. Claims of exemption from taxation must be plainly and unmistakably supported by express grant. ***In re Noble's Estate v. State ex rel. Oklahoma Tax Commission***, 1938 OK 324, 80 P.2d 243. An exemption cannot exist by implication and any doubt is fatal to the claim of exemption. ***Phillips Petroleum Co. v. Oklahoma Tax Commission***, 1975 OK 146, 542 P.2d 1303; ***Oklahoma City v. Shields***, 1908 OK 195, 22 Okla. 265, 100 P. 559. The burden of proving the existence of an exemption is on the one claiming the exemption to show it falls squarely within the specific language of the exemption. ***Austin, Nichols & Co. v. Oklahoma County Bd. of Tax-Roll Corrections***, 1978 OK 65, 578 P.2d 1200.

Tax statutes are penal in nature. ***Globe Life and Accident Insurance Company v. Oklahoma Tax Commission***, 1996 OK 39, 913 P.2d 1322. Penal statutes are to be strictly construed. ***Mid-Continent Pipeline Co. v. Crauthers***, 1954 OK 61, 267 P.2d 568. Strict construction with respect to a penal statute is that which refuses to extend the law by implication or

[18] 68 O.S. 2001, § 801 et seq.

equitable consideration and confines its operations to cases clearly within the letter of the statutes, as well as within its spirit of reason. ***State ex rel. Allen v. Board of Education of Independent School Dist. No. 74 of Muskogee County***, 1952 OK 241, 206 Okla. 699, 246 P.2d 368. Courts cannot enlarge the taxing act's ambit to make its provisions applicable to cases not clearly within the legislature's contemplation or to fill lacunae in the revenue law in a manner that would distort the enactment's plain language. ***Globe***, supra at 1327.

7. Neither the Oklahoma Estate Tax Code nor the administrative rules of the Tax Commission on estate taxation as codified in the OAC[19] provide a definition for the words "lineal" and "descendant". Words in a statute are given their plain and ordinary meaning unless a contrary intention is apparent. ***Neer v. Oklahoma Tax Commission***, 1999 OK 41, 982 P.2d 1071. The subject matter and purpose of a statute are material to ascertaining the meaning of a word or phrase used and that language should be construed to be harmonious with the purpose of the act, rather than in a way which would defeat it. ***Bishop v. Takata Corp.***, 2000 OK 71, 12 P.3d 459.

The word "lineal" as used in Section 809(A) is defined as "(3)(a): consisting of or being in a direct male or female line of ancestry; (b): relating to or derived from ancestors : HEREDITARY; (c): descended in a direct line; (4)(a): belonging to one lineage <~ relatives>". Webster's Ninth New Collegiate Dictionary, 694 (1987). The word "descendant" as a noun is defined as "(1): one descended from another or from a common stock". Webster's, 343. The phrase "lineal descendant" is defined to mean "[a] person in the direct line of descent such as a child or grandchild as contrasted with a collateral descendant such as a niece." Black's Law Dictionary, 837 (5th ed. 1979).

8. Here, Decedent through his Last Will and Testament and Living Trust devised one-third of the assets of his estate to DAUGHTER-IN-LAW, his daughter-in-law. The fact that DAUGHTER-IN-LAW transferred the distributed estate assets to her Living Trust and the fact that the residuary beneficiaries of her Living Trust are Decedent's grandchildren are immaterial. The devisee of Decedent's bequest was DAUGHTER-IN-LAW, Decedent's daughter-in-law. Further, the Living Trust of DAUGHTER-IN-LAW is a "grantor trust"[20] and is revocable.

The relationship of daughter-in-law to a decedent is not specifically expressed as qualifying for the statutory lineal exemption, 68 O.S. 2001, § 809(A); and a daughter-in-law is not a "lineal descendant" of a decedent, Black's Law Dictionary, 837 (5th ed. 1979). Accordingly, the Division's denial of Protestant's claim to a lineal exemption under 68 O.S. 2001, § 809(A) for the portion of the estate distributed to Decedent's daughter-in-law is not erroneous.

9. Protestant's protest to the Order Assessing Estate Tax should be denied.

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[19] 710:35-1-1 et seq.

[20] Defined as "[t]rusts whereby the grantor retains control over the income or corpus, or both, to such an extent that such grantor will be treated as the owner of the property and its income for income tax purposes. The result is to make the income from a grantor trust taxable to the grantor and not to the beneficiary who receives it. I.R.C. §§ 671-677." Black's Law Dictionary, 630 (5th ed. 1979).

DISPOSITION

THEREFORE, based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Protestant, Estate of DECEDENT, be denied. It is further ORDERED that the amount in controversy, inclusive of any additional accrued and accruing interest, be fixed as the amount due and owing.

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.