JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2005-06-28-05
ID:	P-04-053-K
DATE:	JUNE 28, 2005
DISPOSITION:	SUSTAINED
TAX TYPE:	ESTATE
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

By Supplemental Order Assessing Estate Tax issued November 10, 2003, the Division caused to be issued an assessment of additional estate tax and interest against Protestant. Protestant's personal representative timely protested the assessment by letter dated December 18, 2003. An oral hearing was not requested in the letter of protest.

On April 14, 2004, the Division forwarded its file in this matter to the Office of the Administrative Law Judges ("ALJ's Office") for further proceedings pursuant to 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-04-053-K and assigned to ALJ, Administrative Law Judge.[3]

A pre-hearing conference was scheduled in this cause for June 8, 2004, by *Notice of Prehearing Conference* issued May 5, 2004.[4] By *Memorandum* filed June 8, 2004, the Division on behalf of the parties filed a *Prehearing Conference Report Filed in Lieu of Prehearing Conference* requesting a continuance of 45 days in order to attempt to resolve the protest.[5] By letter dated June 9, 2004, the parties were notified that their request for continuance was granted and the pre-hearing conference was considered held. The parties were also directed to file a status report on or before July 27, 2004.

The parties subsequently requested several continuances which upon good cause shown were granted. By *Memorandum* filed March 10, 2005, the Division filed a *Status Report* advising that they had not been able to contact Protestant's representative and requesting that this matter be set for hearing. By letter dated March 11, 2005, the ALJ's Office acknowledge receipt of the Division's *Memorandum* and directed the Division to file a Verified Response to Protest on or before April 11, 2005. Protestant did not respond to this letter.

[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*, 710:1-5-30.

Division's Verified Response to Protest was filed on April 11, 2005.[6] Attached to the verified response were Exhibits A through J. On April 29, 2005, the record in this cause was closed and this matter was submitted for decision.

FINDINGS OF FACT

Upon review of the file and records, including the *Order Assessing Tax* and Explanation of Adjustments, the letter of protest, and the *Division's Verified Response to Protest* and attached exhibits, the undersigned finds:

1. Decedent, DECEDENT, died intestate on April 1, 2001, a resident of Tulsa County, State of Oklahoma. Exhibit A.[7]

2. The Estate Tax Return of the Decedent reported a total gross estate in Oklahoma of $565,989.34, consisting of stocks, bonds, etc. of $74,627.50, personal property of $246,361.84 and life insurance of $245,000.00. Exhibit A.

3. After deducting the property passing to Decedent's surviving spouse, WIDOW, of $480,658.76 and deductions of $14,691.16, the net estate subject to tax was reported as $70,638.90. Exhibit A.

4. The taxable portion of the Estate, consisting of shares of stock, shares of a mutual fund and six U.S. savings bonds all held in joint tenancy; was distributed to Decedent's ex-wife, EX-WIFE, a collateral heir. Exhibit A.

5. Estate tax on the net estate was calculated at the collateral heir rate and reported as $1,115.97. Exhibit A.

6. Decedent's estate was the subject of a probate proceeding in Tulsa County, Case No. XX-2001-111.

7. In the cover letter to the return, the personal representative advised that she believed the return was complete except for reporting the social security number of the ex-wife due to the ex-wife's refusal to co-operate or communicate with her, that payment of the tax did not accompany the return as she felt this was the obligation of the ex-wife and that upon receipt of the tax statement she would present this to the ex-wife for payment. Exhibit A.

8. By *Notice* and accompanying *Order Assessing Estate Tax* dated October 17, 2001, the Division notified the personal representative that an audit of the estate tax return resulted in a tax liability of $2,219.00 on the net estate subject to tax. Exhibit B.

---

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

[7] Consisting of a cover letter dated September 19, 2001, the Estate Tax Return of the Decedent marked received by the Division September 24, 2001 and State of Oklahoma, Certificate of Death of Decedent.

9. The *Order Assessing Estate Tax* reflects that the Division adjusted the amount of the net estate subject to tax to $70,388.98, and applied the collateral heir rate of tax to the taxable portion of the estate. Exhibit B.

10. A response to the *Notice* and *Order Assessing Estate Tax* was not received by the Division and as a result the Division issued a *Pre-Warrant Letter* dated February 15, 2002, to the personal representative notifying her that "[a]s of April 1, 2002, a total of tax and interest still owing is $2,302.00." Exhibit C.

11. The personal representative forwarded a check to the Division for the amount of the tax assessed and in an accompanying letter dated March 19, 2003, requested that all interest and penalty be waived and that "in exchange for paying $2,219.00, I no longer be [sic] held personally liable for any monies owed to the Oklahoma Tax Commission, and that your records reflect that I am not responsible for any debts of the estate owed to your office." Exhibit D.

12. For purposes of the waiver request, the personal representative wrote "the tax is due on the portion of the estate held in joint tenancy with [Decedent's] ex-wife, EX-WIFE. None of the property held in joint tenancy went to me personally, and it was explained to me that the tax was to [be] paid by the ex-wife [sic] since she was receiving the property." Exhibit D.

13. The Division processed the personal representative's check and notified her by letter dated July 11, 2003, that the waiver request of $609.00 in interest and warrant penalty was approved.[8] Exhibit E.

14. The Division by *Notice, Order Releasing Taxable Estate* and *Order Assessing Estate Tax* showing a zero balance due all dated August 8, 2003, notified the personal representative that an audit of Decedent's Estate Tax Return found no additional tax liability and that the lien against the property of the estate, real or personal, tangible or intangible, had been released. Exhibit E.

15. On October 27, 2003, the Division received a *Life Insurance Statement* from The Equitable Life reporting that $18,689.99 in proceeds from an Equitable Life Account established November 1, 1984, was paid to EX-WIFE, the beneficiary of the policy on the named insured and owner of the policy, the Decedent. Exhibit F.

16. The personal representative had reported on Schedule D to the Estate Tax Return of the Decedent that there was no insurance on the life of the Decedent that was not included on the return. Exhibit A.

17. The insurance proceeds paid to EX-WIFE as reported by The Equitable Life were not included on the Decedent's Estate Tax Return. Exhibit A, Schedule D.

18. By *Notice* and accompanying *Supplemental Order Assessing Estate Tax* dated November 10, 2003, the Division notified the personal representative that an audit of the estate tax return resulted in a tax liability of $1,191.50, consisting of additional estate tax of $934.50

[8] The personal representative was required to remit $26.00 in filing fees for the Division to agree to the waiver.

and interest accrued from January 2, 2002 through November 2, 2003 of $257.00 on the net estate subject to tax of $18,689.99 passing to the Decedent's ex-wife, EX-WIFE, a collateral heir. Exhibit G.

19. By letter dated December 18, 2003, the personal representative protested the Division's findings and assessment, asserting:

> I am objecting on the grounds that the assessment is based on non-probate [sic] property of which I, as the Personal Representative of the estate, had no knowledge [sic]. Since DECEDENT'S death, I made [sic] many attempts to contact his ex-wife regarding the settlement of his estate. She has ignored my letters and phone calls, which has made the settlement and closing take far longer than [sic] it would have otherwise. Furthermore, the proceeds of life insurance at issue went directly to the ex-wife of the deceased, not to the estate. Since the ex-wife received the proceeds of the policy, I believe the tax should be assessed against her, not the estate, which is without the funds to pay its legitimate debts.

Exhibit H.

20. By letter dated March 9, 2004, the Division acknowledge receipt of the personal representative's letter of protest and advised that "[p]er OTC Rule 710:35-3-4(a) the executor or administrator of the decedent's estate is responsible for paying estate tax owed, regardless of the fact that the gross estate consists in part of property which does not come within the possession of the executor or administrator." Exhibit I.

21. On June 8, 2004, the personal representative of the estate provided the Division a copy of an account statement on BANK account no. 1111111111 titled SPECIAL ADMINISTRATOR, Special Administrator of the Estate of DECEDENT and a "rough accounting" for the account. Exhibit J.

22. The account statement shows an ending balance as of April 5, 2004, of $815.55. Exhibit J.

23. The "rough accounting" shows the payment of debts of the estate and certain other individuals. Exhibit J.

24. The amount in controversy is $1,191.50 and any additional interest accrued and accruing until paid.

ISSUE

The issue presented for decision is whether the personal representative of Protestant should be held liable for the additional estate tax and interest assessed against the estate on the insurance proceeds distributed to Decedent's ex-wife, EX-WIFE a collateral heir?

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law:

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

2. The Oklahoma Estate Tax Code[9] levies a tax "upon the transfer of the net estate of every decedent, whether in trust or otherwise, to persons * * * of property, real, personal, or mixed, whether tangible or intangible, or any interest therein or income therefrom, by will or the intestate laws of this state, * * * by deed, grant, bargain, sale, or gift made in contemplation of death of the grantor, * * * or intended to take effect in possession or enjoyment at or after such death". 68 O.S. 2001, § 802. An "estate tax" is an excise tax rather than a property tax and, unlike an inheritance tax, is a tax imposed on the privilege of transfer at death, rather than a tax on a beneficiary's right to receive. ***Ward v. Oklahoma Tax Commission***, 1957 OK 141, 322 P.2d 172; ***In re Bass' Estate***, 1947 OK 362, 200 Okla. 14, 190 P.2d 800.

3. "The value of the gross estate, used as a basis for a determination of the value of the net estate" includes "the proceeds of life insurance" * * * "[t]o the extent of the amount receivable directly, in trust, or as annuities by all other beneficiaries[10], by virtue of policies taken out on the life of the decedent and in which, at the time of death, the decedent had the right, directly or indirectly, to change the beneficiary or to convert the policy to decedent's own use, or in which the decedent possessed any other incidents of ownership, exercisable either alone or in conjunction with any other person". 68 O.S. 2001, § 807(A)(6)(a). *See*, ***State ex rel. Oklahoma Tax Commission v. Hewett's Estate***, 1980 OK 192, 621 P.2d 542. Life insurance policy proceeds are included in a decedent's gross estate and are subject to estate tax, unless specifically exempted, notwithstanding whether the proceeds are included in a decedent's probate estate. ***Hewett's Estate***, *supra* at 545.

4. "Each and every insurance company, association or other institution which has outstanding on the life of a deceased resident of this state policies of insurance in an aggregate amount of Two Thousand Five Hundred Dollars ($2,500.00), or more, immediately upon being notified of the death of the insured, shall file with the Oklahoma Tax Commission an information return containing complete information pertaining to such insurance, including any information on file with the reporting insurer concerning policies of insurance issued by other insurers on the life of the decedent." 68 O.S. 2001, § 807(A)(6)(c). No insurer is liable for any part of the estate tax levied against the proceeds of a life insurance policy, nor is an insurer required to retain any portion of the proceeds of a policy to pay the tax. *Id.*

5. "The executor, administrator, trustee, devisee, heir or transferee shall within nine(9) months after the date of death of the decedent, unless the time has been extended by the Tax Commission, make a detailed return, verified by affidavit, to the Tax Commission upon forms

[9] 68 O.S. 2001, § 801 et seq.

[10] 68 O.S. 2001, § 807(A)(5) provides that "the total amount of the proceeds of insurance payable or accruing to the decedent's estate" shall be included in decedent's gross estate". (Emphasis added).

furnished by it, giving all the information called for or that may be necessary to determine the value of the net estate." 68 O.S. 2001, § 815(A)(1). "If an estate tax return is filed as required by law, additional assessment may be made based upon unreported assets of the estate if such assessment is made not later than ten (10) years from the date of death of the decedent; provided, however, such additional assessment shall be made and any lien applicable thereto shall attach only against such unreported assets." 68 O.S. 2001, § 815(C).

6. The estate tax levied by the provisions of the Oklahoma Estate Tax Code is and shall remain a lien upon all the property transferred until paid, except such part of the gross estate used for the payment of charges against the estate and expenses of administration, allowed by the court having jurisdiction thereof. 68 O.S. 2001, § 811(a). "The person, * * * to whom the property is transferred and the administrator, * * * of every estate so transferred who, before paying the tax, distributes or transfers any of said estate, to the extent of the value of the property at the time the tax became due, shall be personally liable for such tax until its payment." *Id.*

7. "If any executor, administrator, trustee, or other person serving in a fiduciary capacity shall make written application to the Oklahoma Tax Commission for a determination by the Commission of the amount of the tax, and discharge from liability therefor, accompanied by an inventory of the estate prepared by such person showing the estate taxable pursuant to the [Oklahoma Estate Tax Code], the Oklahoma Tax Commission, as soon as possible, and in any event within one (1) year from the date such application is filed, unless such time shall be extended by an order of the district court having jurisdiction of the estate, shall notify such executor, administrator, trustee, or other applicant of the amount of tax due." 68 O.S. 2001, § 811(b). Upon payment of the amount of tax as determined by the Oklahoma Tax Commission, such executor, administrator, trustee, or other applicant shall be discharged form personal liability for any deficiency in tax thereafter found to be due, unless such additional tax thereafter found to be due shall arise by reason of a false or fraudulent inventory filed by such applicant. *Id.* The applicant is entitled to a receipt in writing showing such discharge. *Id.*

8. "Oklahoma follows the same approach to personal liability [of a personal representative as] taken under federal law." 2 Okla. Prob. Law & Prac. § 39.1 (3d ed.). This section of the Oklahoma Probate Law & Practice provides:

> The personal representative is responsible for filing the Oklahoma estate tax return and paying the tax even though there is property subject to tax that does not come into the personal representative's possession. 68 Okl.St.Ann. §§ 802, 804 and 806; Okla. Tax Commn. Rule § 710:35-3-4(a). Personal liability is imposed on the personal representative for unpaid Oklahoma estate taxes if other claims are paid first. 68 Okl.St.Ann. § 811(a); Okla. Tax Commn. Rule § 710:35-3-4(b). As under federal law, the personal representative may request a determination of the Oklahoma estate tax due and a release of personal liability. 68 Okla.St.Ann. § 811(b). The procedure is identical to that followed in the case of a request for determination and discharge of personal liability for federal estate tax, except the Oklahoma Tax Commission is given

> [sic] one year from the date the request is filed to act. 68 Okla.St.Ann. § 811(b). Only the personal representative's personal liability is released; the property of the estate remains subject to the Oklhaoma estate tax lien whether or not distributed. 68 Okla.St.Ann. § 811(c).

The personal representative may request a discharge of his personal liability for federal estate tax either before of after the estate tax return is filed. I.R.C. § 2204(a). The IRS must act, if at all, by giving notice to the personal representative of the estate tax due within nine months after the later of (1) the filing of the request or (2) the filing of the federal estate tax return. *Id*. If the notice is given within the nine month time period, the personal representative's personal liability is discharged upon payment in full of the estate tax shown due. If no notice of estate tax due is given within the nine month period, the personal representative is discharged from personal liability upon expiration of the period. 2 Okla. Prob. Law & Prac. § 39.1 (3d ed.).

9. If the estate tax owed on the proceeds from a life insurance policy can not be paid out of other estate property, the taxes may be assessed against and paid from the insurance proceeds. ***Hewett's Estate***, *supra*. The notice of assessment must apprise the person to whom the proceeds were transferred of his or her potential personal liability for the estate taxes owed on the proceeds. *Id.*

10. Here, the undersigned finds that the personal representative of the Protestant complied with the provisions of § 811(b), that the Division does not assert the estate tax return of the Decedent reporting the assets of the estate is either false or fraudulent and that the personal representative should be discharged from personal liability for the additional estate tax owed on the proceeds of the life insurance policy paid to Decedent's ex-wife. The personal representative of the estate of the Decedent, subsequent to filing the estate tax return and issuance of the *Order Assessing Estate Tax*, paid the amount of estate tax due and requested a waiver of all interest and penalty and a discharge from personal liability for any additional taxes due to the state from the estate of the Decedent. The Division thereafter granted the waiver and by *Notice, Order Releasing Taxable Estate* and *Order Assessing Estate Tax* showing a zero balance due, notified the personal representative that an audit of the return found no additional tax liability and the lien against the property of the estate had been released.

11. Protestant's protest to the *Notice* and Supplemental *Order Assessing Estate Tax* should be sustained.

DISPOSITION

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 sustained.

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.