

SYNOPSIS

WEST VIRGINIA ESTATE TAX --INTEREST DUE ON OVERPAYMENT-- CALCULATED UNDER CLEAR STATUTE FROM DATE CLAIM FILED, NOT FROM DATE OF PAYMENT OF TAX -- Under the clear provisions of W. Va. Code § 11-10-17(d), as cross-referenced by W. Va. Code § 11-11-40, the State Tax Commissioner must calculate any interest due on an overpayment of West Virginia estate tax from the date that the claim for refund was filed, and not from the earlier date that the tax (as estimated) was paid.

WEST VIRGINIA ESTATE TAX -- 90-DAY GRACE PERIOD BEFORE ANY INTEREST DUE ON OVERPAYMENT -- Under the clear provisions of W. Va. Code § 11-10-17(e)(1), as cross-referenced by W. Va. Code § 11-11-40, no interest -- not even just from the date that the state tax refund claim was filed -- is due on an overpayment of West Virginia estate tax when the State Tax Commissioner issues a requisition for refund within 90 days after the date that the taxpayer files the claim for refund.

WEST VIRGINIA ESTATE TAX – “CLAIM FOR REFUND”-- Written notice of a potential, or contingent, claim of overpayment of West Virginia estate tax does not constitute a “claim for refund,” within the meaning of W. Va. Code § 11-10-14(c).

WEST VIRGINIA ESTATE TAX -- STATE TAX COMMISSIONER AND WEST VIRGINIA OFFICE OF TAX APPEALS MUST APPLY CLEAR STATUTES ON INTEREST ON OVERPAYMENT OF TAX -- Under the explicit provisions of W. Va. Code § 11-1-2, and under the state constitutional principle of separation of powers, W. Va. Const. art. V, § 1, the State Tax Commissioner and the West Virginia Office of Tax Appeals, in West Virginia estate tax matters, must apply the clear statutory provisions on interest on an overpayment of tax, W. Va. Code §§ 11-10-17(d) and 11-10-17(e)(1), as cross-referenced by W. Va. Code § 11-11-40; the State Tax Commissioner and the West Virginia Office of Tax Appeals, being parts of the executive branch of state government, do not have the authority to ignore these clear statutory provisions even if the Tax Commissioner or the Office of Tax Appeals were to view the provisions as unfair or unwise or even unconstitutional on their face as argued by the taxpayer.

FINAL DECISION

FINDINGS OF FACT

The Petitioner Estate's decedent, died testate in West Virginia, on June 1, 1999. Petitioner's Exhibit # 2 (original West Virginia estate tax return).

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2. In January, 2000, the Executor of the Petitioner Estate filed a declaratory judgment action in the Circuit Court to obtain a court ruling deciding a legal controversy as to whether the decedent in her will had exercised a certain power of appointment. Petr. Exh. # 3.
3. The Petitioner Estate was not able to prepare and to file the federal and West Virginia estate tax returns, and was unable to pay any precisely calculated tax due, by the original due date of March 1, 2000, because of the undecided legal controversy about the decedent's exercise, or not, of the power of appointment. Attachment # 1 to Petition for Refund, Petr. Exh. # 10. Accordingly, on or about February 25, 2000, the Petitioner Estate timely filed with the Internal Revenue Service ("the IRS") an application for extension of time to file the federal estate tax return (Federal Form 4768), along with a cover letter to the IRS (dated February 24, 2000) summarizing the pending declaratory judgment action. Petr. Exh. # 1. The IRS granted the requested six-month extension (to September 1, 2000).
4. Also on February 25, 2000, to attempt to prevent an underpayment of West Virginia estate tax and the resulting liability for interest on such an underpayment, the Petitioner Estate "conservatively" estimated (that is, intentionally erred in favor of overestimating) the West Virginia estate tax liability and, on February 25, 2000, paid a certain amount of West Virginia estate tax. Attachment # 1 to Petition for Refund, Petr. Exh. # 10.
5. On the extended filing due date of September 1, 2000, the Petitioner Estate filed the original federal and West Virginia estate tax returns; a copy of the declaratory judgment action complaint was attached to this original West Virginia estate tax return. State's Exh. # 1.
6. On February 26, 2001, the parties, with court approval, settled the declaratory judgment action and agreed to the amounts of net assets to be distributed to the beneficiaries in question of the Petitioner Estate. Petr. Exh. # 4. This settlement resulted in a greater charitable deduction, and less estate tax due, than set forth in the original federal and West Virginia estate tax returns. Attachment # 1 to Petition for Refund, Petr. Exh. # 10.
7. Using the information obtained from the settlement of the declaratory judgment action, the Petitioner Estate, on January 18, 2002, filed an amended West Virginia estate tax return that showed a significant overpayment of that tax. State's Exh. # 2.
8. Thirteen (13) days later, that is, on January 31, 2002, the West Virginia State Tax Department mailed a refund for overpayment by the Petitioner Estate of West Virginia estate tax; this amount was for tax only and, unlike the refund for overpayment of the federal estate tax, did not include any

amount for interest on the overpayment of the West Virginia estate tax. State's Exh. # 3; Attachment # 1 to Petition for Refund, Petr. Exh. # 10.

9. On July 29, 2002, the Petitioner Estate filed a claim for refund of interest on the Petitioner's overpayment of West Virginia estate tax; in its interest refund claim the Petitioner Estate calculated the interest from the original date of payment of the tax on February 25, 2000, through the July 29, 2002 filing of the interest refund claim, at the rate of 12% per year for that time period (the same rate of interest charged on West Virginia estate tax underpayments, see W. Va. Code § 11-11-15(a)), and calculated the interest at the "statutory" rate, see W. Va. Code § 11-10-17(d), after July 29, 2002, until the date that the West Virginia State Tax Department would ultimately pay the interest refund. Petr. Exh. # 8.
10. The Special Audits & Estate Tax Unit of the Internal Auditing Division of the West Virginia State Tax Department, by letter dated August 22, 2002, denied all of the interest refund claim. The reason stated for this total denial was, essentially, that the West Virginia state tax statutes do not authorize interest on an estate tax overpayment from the date of payment. Petr. Exh. # 9.
11. Thereafter, by hand delivery on October 23, 2002, the Petitioner Estate timely filed a petition for refund with the State Tax Commissioner's Office of Hearings and Appeals, the predecessor agency to this tribunal, the West Virginia Office of Tax Appeals (the latter was created effective January 1, 2003). See Petr. Exh. # 10.
12. Subsequently, this tribunal sent to the Petitioner Estate written notice of a hearing on the petition for refund, and this tribunal held a hearing, in accordance with the provisions of W. Va. Code § 11-10A-10 [2002]. During the hearing counsel presented evidence in a very organized manner and very ably presented oral argument on the issues of law.

DISCUSSION

The first issue of law is whether the Petitioner Estate is entitled to interest on the West Virginia estate tax overpayment -- like on the federal estate tax overpayment -- from the date of payment of the tax (February 25, 2000). The short answer is no.

The Petitioner Estate refers to the fact that the subsection of the West Virginia Estate Tax Act that explicitly addresses interest, W. Va. Code § 11-11-15(a), is silent

as to when interest on an overpayment of West Virginia estate tax commences to accrue. From this silence the Petitioner argues that, under the general construction and administration principles set forth in W. Va. Code §§ 11-11-2(c) and 11-11-33(b), the State Tax Commissioner is to administer the state estate tax like the federal estate tax, and for purposes of the federal estate tax, any interest due on an overpayment of federal estate tax is allowed ordinarily from the date of payment of the tax, not just from the subsequent date that the return is filed showing the overpayment.

The Petitioner's argument on this point is not sound. W. Va. Code § 11-11-2(c), for example, provides in pertinent part: "Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relative to estate taxes, unless a different meaning is clearly required by the provisions of this article." (emphasis added) The latter clearly is the case with respect to interest on overpayments of state estate tax. W. Va. Code § 11-11-15(a) clearly addresses only interest on underpayments of state estate tax. For interest on overpayments of state estate tax, W. Va. Code § 11-11-40 cross-references the West Virginia Tax Procedure and Administration Act, which is set forth in W. Va. Code, chapter 11, article 10. W. Va. Code § 11-10-17(d), which explicitly addresses interest that, in certain circumstances, may be due on overpayments of state taxes in general, provides in relevant part as follows: "Such interest shall be allowed and paid for the period commencing with the date of the filing by the taxpayer of a claim for refund or credit with the tax commissioner and ending with the date of a final administrative or judicial determination of overpayment." (emphasis added)

Therefore, it is very clear that the Legislature has decided that the event that triggers potential accrual of interest on an overpayment of most state taxes, including the West Virginia estate tax, is the filing of a claim for refund or credit, not the payment of the tax.

The second issue is whether liability for any interest accrued on the tax overpayment in this matter. Again, the short answer is no.

W. Va. Code § 11-10-17(e)(1) provides a 90-day grace period before interest on an overpayment of most state taxes, including the West Virginia estate tax, is due: “[W]here the tax commissioner issues his requisition or establishes a credit as requested by the taxpayer within ninety days after the date of the filing by the taxpayer of a claim for refund or credit, no interest shall be allowed under this section.” (emphasis added) (Similarly, a 6-month grace period is provided with respect to the accrual of interest on overpayments of West Virginia personal income tax or West Virginia corporate net income tax. W. Va. Code § 11-10-17(e)(2).)

Here, the State Tax Commissioner issued the refund requisition, and, in fact, mailed the actual remittance of the refund, within 13 days after the Petitioner filed its claim for refund of interest on the state estate tax overpayment. Therefore, according to the Legislature, the State Tax Department does not owe any interest on the state estate tax overpayment by the Petitioner in this matter.

The third issue, raised by the Petitioner at the hearing, is whether the Petitioner’s attachment of a copy of the declaratory judgment action complaint to Schedule “O” (on charitable bequests) of the original West Virginia estate tax return

filed on September 1, 2000 constituted a "claim for refund," within the meaning of W. Va. Code § 11-10-14(c). Again, the short answer is no.

As worded by the Petitioner, that attachment constituted, at best, a written notice of a "potential" overpayment. Transcript of evidentiary hearing at page 15. At that time the Petitioner obviously could not, and was not, claiming an existing overpayment of a fixed amount. To use a concept from real property law, the interest (or alleged claim) here on September 1, 2000 was contingent, not vested.

The fourth and final issue is whether the State Tax Commissioner, or the West Virginia Office of Tax Appeals, should, for various reasons, ignore the clear provisions of W. Va. Code §§ 11-10-17(d) and 11-10-17(e)(1) and, instead, calculate interest on any overpayment of West Virginia estate tax from the date the tax was paid.

The Petitioner argues that this issue should be answered in the affirmative because of one or more of the following reasons: (1) the IRS and all of the other 34 states having a "pick up" state estate tax, like this State's, calculate interest on federal or state estate tax overpayments from the date of payment; or (2) courts in some other states have held in state estate tax cases that interest on an overpayment of tax is recoverable from the date of payment of the tax, under an equitable theory of an "implied contractual" obligation to pay such interest in addition to principal; or (3) public policy should be to encourage payment before precise tax calculation -- especially for a complicated estate -- of an estimated amount of state estate tax due, by allowing interest on any subsequently determined overpayment to be calculated from the date of payment of tax, even without filing a return or claim at

the time of payment; or (4) substantive due process would require “just compensation,” which includes interest from the date of payment of the tax, in order to make any governmental taking of private property to be lawful.

Without deciding the merits of these points, this quasi-judicial tribunal, like the State Tax Commissioner, must be mindful of the following: (1) the State Tax Commissioner’s explicit statutory “duty” to see that state tax laws “are faithfully enforced,” W. Va. Code § 11-1-2; (2) the holding of the West Virginia Supreme Court of Appeals that “tax law is a creature of statute and it is the statute that determines the issue. It is well settled in this State that when a tax statute is clear and free from ambiguity, it will be applied and not construed.” W. Va. Tractor & Equipment Co. v. Hardesty, 167 W. Va. 511, 516, 280 S.E.2d 270, ____ (1981); and (3) the separation of powers clause to the State Constitution, W. Va. Const. art. V, § 1, precludes the State Tax Commissioner and this tribunal, as parts of the executive branch of state government, from exercising the power, residing only in the courts, to declare clear statutes to be unconstitutional on their face. In short, assuming arguendo, that this last set of Petitioner’s arguments is valid, appropriate relief may be granted only by the courts or by the Legislature.

CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

1. Under the clear provisions of W. Va. Code § 11-10-17(d), as cross-referenced by W. Va. Code § 11-11-40, the State Tax Commissioner must calculate any interest due on an overpayment of West Virginia estate tax from the date that the claim for refund was filed, not from the earlier date that the tax (as estimated) was paid.
2. Under the clear provisions of W. Va. Code § 11-10-17(e)(1), as cross-

referenced by W. Va. Code § 11-11-40, no interest is due on an overpayment of West Virginia estate tax when the State Tax Commissioner issues a requisition for refund within 90 days after the date that the taxpayer files a claim for refund.

3. Written notice of a potential, or contingent, overpayment of West Virginia estate tax does not constitute a "claim for refund," within the meaning of W. Va. Code § 11-10-14(c).
4. Under the explicit provisions of W. Va. Code § 11-1-2, and under the state constitutional principle of separation of powers, W. Va. Const. art. V, § 1, the State Tax Commissioner and the West Virginia Office of Tax Appeals, in West Virginia estate tax matters, must apply the clear statutory provisions on interest on an overpayment of tax, W. Va. Code §§ 11-10-17(d) and 11-10-17(e)(1), as cross-referenced by W. Va. Code § 11-11-40; the State Tax Commissioner and the West Virginia Office of Tax Appeals, being parts of the executive branch of state government, do not have the authority to ignore these clear statutory provisions even if the Tax Commissioner or the Office of Tax Appeals were to view the provisions as unfair or unwise or even unconstitutional on their face as argued by the taxpayer.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioner's petition for refund of interest on the Petitioner's West Virginia estate tax overpayment must be and is hereby **DENIED**.