

SYNOPSIS

WEST VIRGINIA ESTATE TAX -- NO LIABILITY UNLESS FEDERAL ESTATE TAX LIABILITY IS "PAYABLE" -- NOT WHEN ENFORCEMENT OF FEDERAL ESTATE TAX LIABILITY IS BARRED BY FEDERAL LIMITATION PERIOD – Under W. Va. Code § 11-11-3 [1996], no West Virginia estate tax liability accrues if no federal estate tax liability is "payable," and the federal estate tax liability is not "payable" when enforcement of that liability is barred by the federal statutory period of limitation for assessing the same, and the Internal Revenue Service fully refunds a voluntary payment of the federal estate tax made after the expiration of that limitation period.

FINAL DECISION

On March 19, 2003, the Petitioner, deceased, by counsel for the then Executor of the Estate, filed a claim for refund tax (plus interest) of West Virginia estate tax for the estate tax year of 1998. The Special Audits and Estate Tax Unit of the Internal Auditing Division of the West Virginia State Tax Commissioner's Office ("the Commissioner" or the "Respondent"), by letter dated March 21, 2003 (the date of receipt thereof is not set forth in the record), denied the entire refund claim. The reason stated for the total denial was essentially that no West Virginia statute required or authorized the payment of the requested refund.

Thereafter, by mail postmarked May 02, 2003, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for refund.

See W. Va. Code § 11-10A-8(2) [2002].

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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FILED

Pursuant to the provisions of 121 C.S.R.1, § 53.1 (Apr. 20, 2003), the parties subsequently submitted the matter, on December 12, 2003, for decision on the stipulated facts and memoranda of law.*

FINDINGS OF FACT

The parties' stipulations as to the material facts, with the exhibits attached thereto, indicate the following:

1. The Petitioner estate's decedent, died testate on March 25, 1998, a resident of the State of West Virginia.

2. On or about June 28, 1999, the Petitioner estate filed the original federal estate tax return reflecting no federal estate tax due.

3. Also on or about June 28, 1999, the Petitioner estate filed the original West Virginia estate tax return reflecting no West Virginia estate tax due.

4. On or about July 16, 2002, the Petitioner estate filed an amended federal estate tax return reflecting a liability, after a credit for West Virginia state death taxes. A check was enclosed.

5. Based upon the filing of the amended federal estate tax return, which reflected a credit for West Virginia state death taxes, the West Virginia State Tax Commissioner's Special Audits and Estate Tax Unit, on or about July 17, 2002, issued to the Petitioner estate a written "notice of deficiency" -- a billing that is a precursor to a West Virginia state tax "assessment"; that notice of deficiency claimed that West Virginia estate tax, plus interest, was due to the Commissioner.

* After counsel for the Petitioner estate had submitted the Petitioner's initial memorandum of law, the Petitioner's then (successor) fiduciary removed counsel as its legal representative for purposes of this

6. On or about July 31 2002, the Petitioner estate remitted the amount demanded by the Commissioner in the notice of deficiency.

7. On or about November 13, 2002, the Internal Revenue Service informed the then Executor of the Petitioner estate that the Service could not and would not accept the payment of federal estate tax as remitted with the amended federal estate tax return, unless the then Executor chose to make a voluntary payment of the tax, because the applicable three-year statute of limitation had expired on June 28, 2002.

8. On or about November 22, 2002, the then Executor of the Petitioner estate, by counsel at the time, requested that the Internal Revenue Service refund all of the federal estate tax paid with the amended federal estate tax return.

9. On or about December 31, 2002, the then Executor of the Petitioner estate received a refund check from the Internal Revenue Service for all of the federal estate tax remitted with the amended federal estate tax return, plus an amount for interest.

10. As stated at the outset of this Final Decision, the West Virginia State Tax Commissioner essentially was of the opinion that, due to the (alleged) lack of an explicit state law addressing this precise (and very unusual) factual situation, she was constrained from granting the Petitioner estate's March 19, 2003 claim for refund of West Virginia estate tax (including interest) paid by the Petitioner estate on or about July 31, 2002, in response to the notice of deficiency.

DISCUSSION

matter. The Petitioner was given until December 12, 2003, to submit a reply memorandum of law. None was submitted.

The only issue that must be decided is whether the Petitioner estate is entitled to the refund under the West Virginia estate tax statutory law, because no federal estate tax liability was “payable.”

W. Va. Code § 11-11-3 [1996] provides, in relevant part:

Whenever a federal estate tax is payable to the United States, there is hereby imposed a West Virginia estate tax equal to the portion, if any, of the maximum allowable amount of federal credit for state death taxes which is attributable to property located in this state, or within its taxing jurisdiction. In no event, however, shall the estate tax hereby imposed result in a total death tax liability to this state and the United States in excess of the death tax liability to the United States which would result if this article were not in effect[.]

(emphasis added) Thus, the West Virginia estate tax currently is a so-called “pick up” tax, limited to the amount of the maximum allowable credit against the federal estate tax liability, if any, for West Virginia state death taxes payable. *See also* W. Va. Code § 11-11-33(b) [1985] (construction of West Virginia estate tax statutes to follow federal rules, regulations, and precedents, as nearly as practicable).

The parties have not addressed the applicability of W. Va. Code § 11-11-30(a) [1985], on the time period for filing a claim for refund of excess West Virginia estate tax due to a final determination of an overpayment of federal estate tax, and this tribunal does not believe that that statute sheds any light on the issue presented here.

It is also noted that W. Va. Code § 11-10-14(a) [1996, 2003] provides, in pertinent part: “In the case of overpayment of any tax . . . or interest . . ., the tax commissioner shall, subject to the provisions of this article, refund to the taxpayer the amount of the overpayment . . . [.] includ[ing] any interest due the taxpayer under the provisions of section seventeen of this article.”

CONCLUSIONS OF LAW

In light of the nature of the West Virginia estate tax as a “pick up” tax, it is **DETERMINED** that:

1. Under W. Va. Code § 11-11-3 [1996], no West Virginia estate tax liability accrues if no federal estate tax liability is “payable,” and the federal estate tax liability is not “payable” when enforcement of that liability is barred by the federal statutory period of limitation for assessing the same, and the Internal Revenue Service fully refunds a voluntary payment of the federal estate tax made after the expiration of that limitation period.

2. In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon the petitioner-taxpayer, to show that the petitioner-taxpayer is entitled to the refund. *See* W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, §§ 63.1 and 53.2 (Apr. 20, 2003).

3. In light of conclusion of law no. 1, the Petitioner-taxpayer in this matter has carried the burden of proof with respect to the issue of law raised.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioner’s petition for refund of West Virginia estate tax, for the estate tax year of 1998, is hereby **AUTHORIZED**.

As set forth in W. Va. Code § 11-10A-18 [2002], the West Virginia State Tax Commissioner’s Office is to see that the payment of the refund, plus any statutory interest, is issued promptly.