

NO. CV 02 0521605S : SUPERIOR COURT
THIEMANN, HELEN CLARK : TAX SESSION
v. : NEW BRITAIN
ESTATE OF MARY E . CLARK : MAY 13, 2004

MEMORANDUM OF DECISION

This action involves a claim by the plaintiff, Helen Clark Thiemann, executrix of the estate of Mary E. Clark, that the commissioner of revenue services (Commissioner) refused to refund succession taxes, which the plaintiff alleges had been mistakenly paid by the estate. The issue here is whether the plaintiff's claim for a refund of succession taxes is governed by General Statutes § 12-367 (b)¹ or General Statutes § 12-367 (d).²

¹ General Statutes § 12-367 (b) recites in pertinent part, "Within sixty days after the mailing of the computation by the Commissioner of Revenue Services, the fiduciary or transferee or any other party in interest may make written application to the Probate Court for a hearing upon the determination of the tax or computation thereof."

²General Statutes § 12-367 (d) recites in pertinent part, "The Commissioner of Revenue Services may authorize a refund of an overpayment of such tax made because (1) property was incorrectly included in the gross taxable estate because of a mistake or error . . . [and] is discovered after the tax computation in accordance with this section has been made and the appeal period provided for in chapter 796 has run, if a claim for refund is filed with the Commissioner of Revenue Services and the Probate Court by the fiduciary or transferee who has paid the tax within two years after the computation or the decree provided for in subsection (b) of this section determining the amount of the tax in which the overpayment is included or within two years of the date of the computation rendered by the Commissioner of Revenue Services"

The significant difference between those two sections is that under § 12-367 (b) the estate has sixty days to appeal the determination of the Commissioner; whereas in § 12-367 (d) the estate has two years to appeal the determination of the Commissioner.

Both the executrix and the Commissioner have filed cross motions for summary judgment.

The parties do not dispute the following facts. The decedent in this case, Mary Ellen Clark, died on April 6, 1999 while an inpatient at the Carolton Chronic and Convalescent Hospital of Fairfield, Connecticut. The deceased had been admitted to the hospital on November 19, 1998 having been diagnosed with colon cancer. On January 4, 1999, while a patient at the hospital, the decedent executed a last will and testament in which she declared herself to be a resident of and domiciled in the state of Connecticut. On April 12, 1999, following the death of the decedent, the plaintiff, as the executrix of the estate, filed an application for probate of the decedent's last will and testament with the Probate Court for the district of Fairfield. In this application, the plaintiff listed the decedent as domiciled in the state of Connecticut. As part of the probate proceedings, the plaintiff prepared and filed with the Fairfield Probate Court a Connecticut Succession Tax Return, a state Form Ct-706 Connecticut Estate Tax Return and a copy of the federal form 706, reciting that the decedent was a resident of Connecticut and that the decedent was, at the time of her death, a Connecticut domiciliary. The Succession Tax Return listed all of the assets of the estate including all intangible personal property. The plaintiff, on behalf of the estate, paid the Commissioner the sum of \$69,300 for the succession taxes due on the estate on December 30, 1999. On September 19, 2001 the Commissioner issued a succession tax assessment which showed that the estate owed a succession tax in the amount of \$53,608.57. Because the estate had previously overpaid the succession tax due, the Commissioner issued a refund to the estate of \$17,889.33.

On April 15, 2002, the state of New York determined that the decedent was domiciled in that state and assessed a succession tax of \$29,230, which was paid apparently without objection. However, on April 19, 2002, the plaintiff made a demand upon the Commissioner for a refund of the succession taxes paid by the estate on the basis that the decedent was not a domiciliary of Connecticut on the date of her death, and

therefore no Connecticut succession tax was due on intangible personal property of the decedent located in New York. The Commissioner denied this claim.

The plaintiff then filed an application with the Fairfield Probate Court contesting the Commissioner's denial of the estate's claim for a refund of succession taxes. Following a hearing, the Probate Court denied the estate's application on the grounds that the executrix had voluntarily submitted to the continuing jurisdiction of the state of Connecticut, and that the application was untimely because it was filed more than 270 days after the Department's issuance of its computation and final receipt, citing § 12-367 (b).

The plaintiff's appeal to the Probate Court challenged the Commissioner's finding that the decedent was domiciled in the state of Connecticut and her refusal to issue a refund of the succession taxes paid to the state. The plaintiff claims that if the decedent was not domiciled in Connecticut, the intangible personal property of the decedent, consisting of stocks, bonds, bank accounts, brokerage accounts, and IRA accounts located in New York could not be taxed by the state of Connecticut pursuant to General Statutes § 12-340.³

The plaintiff has framed the issue in this case as "whether the estate is entitled to a factual determination of whether 'property was incorrectly included in the gross taxable estate because of mistake or error' as is provided in [§ 12-367 (d) (1)]." (Brief in Support of Plaintiff-Appellant's Motion for Summary Judgment, dated March 13, 2004, p. 2.)

³General Statutes § 12-340 recites in pertinent part: "A tax is imposed, under the conditions and subject to the exemptions and limitations hereinafter prescribed, upon transfers, in trust or otherwise, of the following property or any interest therein or income therefrom: (a) When the transfer is from a resident of this state . . . (2) tangible personal property, except such as has an actual situs without this state; (3) all intangible personal property"

The Commissioner frames the issue as follows: “whether the [p]laintiff’s claim for refund was governed by the provisions of . . . § 12-367 (b) or . . . § 12-367 (d).” (Defendant’s Memorandum of Law in Support of Motion for Summary Judgment, dated March 15, 2004, p. 8.)

Because of their divergent views of the issue, it is important to understand the arguments of the parties. The plaintiff contends that § 12-367 (b) is a process whereby an estate may challenge the computation of succession taxes that the Commissioner is required to file under § 12-367 (a). Furthermore, the plaintiff claims that it is not the Commissioner’s computation that she is disputing, but rather, what is disputed is the inclusion in the succession tax of intangible personal property located in New York on the basis of a mistake or error made in declaring Connecticut as the decedent’s domicile. For this reason, the plaintiff argues that § 12-367 (d) controls, not § 12-367 (b).

The Commissioner, on the other hand, argues that § 12-367 (d) was enacted by the legislature to provide relief to an estate where specific property has been included in the inventory of that estate, which, because of mistake or error, should not have been. The Commissioner contends that the plaintiff’s claim does not come within the meaning of § 12-367 (d) because the plaintiff submitted to the jurisdiction of the Fairfield Probate court by initially reciting that the decedent died a resident and a domiciliary of Connecticut, thereby conferring jurisdiction on the Probate Court.

Where we have a dispute over which state has domicile, it is “recognize[d] that only the state of the decedent’s domicile may impose a tax on the decedent’s intangibles that have not acquired a business situs elsewhere, [and] there is often controversy over which state is in fact the decedent’s domicile. The controversy has sometimes led to inconsistent determinations of domicile, which, in turn, have spawned controversies

between states as to which state may properly tax the bulk of a decedent's estate." 2 J. Hellerstein & W. Hellerstein, *State Taxation* (3d Ed. 2003) § 21.09, p. 47-48.

In the resolution of the issue in this case, we are guided by the well settled rules of statutory construction. "The process of statutory interpretation involves a reasoned search for the intention of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. In seeking to determine that meaning, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter." (Internal quotation marks omitted.) Lombardo's Ravioli Kitchen, Inc. v. Ryan, 268 Conn. 222, 230-31, 842 A.2d 1089 (2004).

Section 12-367 (b) recites in part, "[w]ithin sixty days after the mailing of the computation by the Commissioner of Revenue Services, the fiduciary . . . may make written application to the Probate Court for a hearing upon the determination of the tax or computation thereof. . . ." The key phrases of this statute, as related to the issue in this case, are "determination of the tax" and "computation thereof." In § 12-367 (d), the key phrase is "the property was incorrectly included in the gross taxable estate because of a mistake or error"

The plaintiff's claim is not that intangible personal property located in New York should have been excluded from the inventory of the estate, but rather that the Commissioner's determination and calculation of the succession tax was based upon the

⁴See footnote 2, *supra*.

Commissioner accepting the fact, as stated in the tax returns, that the decedent died domiciled in Connecticut.

In looking for the reason behind the enactment of § 12-367 (d), both the plaintiff and the Commissioner refer to the testimony of First Assistant Tax Commissioner Robert J. Hale before the joint standing committee on the judiciary, stating as follows: “I’ve had approximately ten cases come to me since I took office in which requests were made for refunds, all had to be refused, unfortunately but all of them were cases of property that simply had been incorrectly included in the original estate, in most cases it was real estate.” Conn. Joint Standing Committee Hearings, Judiciary, Pt. 2, 1965 Sess., p. 612.

Hale also went on to state that “[the amendment] simply takes the present 12-367 which talks about the way the tax will be computed and so forth, provides for an extension of time if there’s good reason before the Court. . . . I’ve never had a case where I wouldn’t have granted the refund. They’re clear cut cases. What they amount to are cases where many years ago somebody died and property was incorrectly included in that decedent’s estate. . . . The typical case is one where property has simply been incorrectly and [sic] included in a given estate. It is then discovered and brought to light. Tax should not have been paid on it and a refund ought to be granted.” Conn. Joint Standing Committee Hearings, *supra*, p. 661-62.

We see no ambiguity in § 12-367 (d). It was enacted, at the request of the Department of Revenue Services, as evidenced by First Assistant Hale’s presentation, to correct a “mistake or error” where property was included in the estate that should not have been.

As the Commissioner points out, that is not the case here. The plaintiff filed an application with the Fairfield Probate Court for the probate of the decedent’s last will and testament, reciting that domicile was in the Fairfield Probate District. (See Defendant’s

Memorandum of Law, dated March 15, 2004, Exhibit 3.) The last will and testament of the decedent, executed on January 4, 1999 recited that the decedent was a resident of and domiciled in the state of Connecticut. (See Defendant's Memorandum of Law, dated March 15, 2004, Exhibit 1.) The plaintiff filed federal and state succession tax returns also reciting that the decedent was domiciled in Connecticut.

The issue raised by the plaintiff is not whether there was a mistake or error in including the intangible personal property of the decedent in the inventory of the estate, but whether the decedent died domiciled in the state of New York or in the state of Connecticut. The fact that New York was able to persuade the estate that the decedent died domiciled in that state, contrary to all of the documentation showing the intention of the decedent to be domiciled in Connecticut,⁵ emphasizes that the issue raised by the plaintiff is domicile, not whether property was listed in the estate's inventory by mistake or error.

Section 12-367 (b), as we have previously noted, deals with the determination and computation of the Commissioner. The Commissioner made a determination that the decedent died domiciled in Connecticut based upon the information provided by the plaintiff herself that initially conceded domicile. The subsequent agreement between the state of New York and the plaintiff, without the concession of the Commissioner, raises no bar to the original determination of the Commissioner that the decedent died domiciled in Connecticut. The attempt by the plaintiff to change the Commissioner's determination of the decedent's domicile following the action of the state of New York could only be addressed by an appeal pursuant to § 12-367 (b), not § 12-367 (d). We

⁵“Domicile is the legal *situs* of a person. This may be either by choice or by operation of law.” 1 W. Locke & P. Kohn, Connecticut Probate Practice (1951) § 51, p. 92. See also Adame v. Adame, 154 Conn. 389, 391, 225 A.2d 188 (1966) (intention is a necessary element to establish domicile).

therefore reject the plaintiff's request to remand this case to the Probate Court "to reconsider the appeal de novo from the Commissioner's denial of a refund made in accord with § 12-367 (d) of the Connecticut General Statutes." (Plaintiff's Motion for Summary Judgment, dated March 12, 2004, p. 1.)

We note that General Statutes § 45a-309 provides that a court of probate, upon the admission of any will to probate, must make a finding of the decedent's domicile at the time of death. This was apparently done at the time the Fairfield Probate Court admitted the decedent's will to probate. This finding, with the exception of the situation provided for in § 45a-309 (b), can only be challenged by an "interested" person as provided in General Statutes § 45a-186. This means that an aggrieved person challenging the finding of domicile by the Fairfield Probate Court at the time that Clark's will was admitted to probate would have had only thirty days from that finding to appeal to the Superior Court. See General Statutes § 45a-187. This was not done. Section 45a-309 (b) provides an exception to the process whereby the Probate Court makes a finding of domicile at the time of the admission of the decedent's will. This statutory section provides that "[n]otwithstanding the provisions of subsection (a) of this section, any such finding of domicile shall be subject to a subsequent determination of domicile in accordance with the provisions of chapter 217." Chapter 217 of the General Statutes is very limited, and deals only with the Estate Tax.⁶ No reference is made in § 45a-309 to

⁶"Two taxes may become due to the State of Connecticut on the occasion of the death of an individual: the succession tax, and the estate tax. Briefly summarized, the succession tax applies, subject to allowable exemptions and deductions, to certain transfers from a deceased resident of this State The Connecticut estate tax applies to the estates of all resident decedents in which the federal estate tax credit for state death taxes allowed by the Internal Revenue Code (26 U.S.C.A. sec. 2011) exceeds the sum of such taxes actually paid. . . .The purpose of this tax is to insure that the total of the death taxes imposed by the State is enough to absorb the full credit available against the federal tax, without increasing the tax liability of any estate, and thus claim for the State revenue which would otherwise go to the federal government." G. B. Wilhelm, Connecticut

domicile with regard to Chapter 215 of the General Statutes, dealing with the succession tax that is the subject of this appeal.

Section 12-391 (d) (1) provides that “each decedent shall be presumed to have died a resident of this state. The burden of proof in an estate tax proceeding shall be upon any decedent’s estate claiming exemption by reason of the decedent’s alleged nonresidency.” If a decedent is alleged to have died a nonresident of this state, § 12-391 (d) (2) requires that a “request for determination of domicile [be filed] in writing with the Commissioner of Revenue Services, stating the specific grounds upon which the request is founded” Section 12-391 (d) (2) requires the Commissioner to make the determination of domicile, not the Probate Court. As noted in *G. B. Wilhelm, supra*, § 4:2, p. 4-5, for the purposes of the Estate Tax, the issue of domicile can only be questioned if the “Commissioner has not previously determined whether the decedent died a resident of Connecticut.” In the present appeal, the Commissioner has previously made a determination that the decedent was domiciled in Connecticut by levying a tax on the intangibles of the decedent’s estate located in New York.

Recognizing, as we have, that § 12-367 (d) is inapplicable because it deals with property mistakenly included in the inventory of an estate, whereas the present appeal deals with a dispute over domicile, we are left with the plaintiff’s challenge that the decedent’s domicile was in New York and not Connecticut. We have concluded that at the time of the admission of the will to probate, the Fairfield Probate Court determined the decedent’s domicile to be in Connecticut, and no contest of that decision was made

Estates Practice Series: Death Taxes (3d Ed. 2003) § 1:2, p. 5 - 7. An Estate Tax is a tax “imposed upon the transfer of the estate of each person who at the time of death was a *resident* of this state.” (Emphasis added.) General Statutes § 12-391 (a). On the other hand, § 12-391 (b) imposes a tax “upon the transfer of the estate of each person who at the time of death was a *nonresident* of this state” (Emphasis added.)

within the statutory period of thirty days. As part of our analysis, we note that the Commissioner also made a determination of domicile when she computed the amount of succession taxes due from the estate. That determination could only be challenged pursuant to § 12-367 (b) within the sixty day appeal period contained in that statute. The Fairfield Probate Court was correct in denying the plaintiff's appeal of the Commissioner's decision because, under § 12-367 (b), the application was not timely filed.

Accordingly, judgment may enter in favor of the Commissioner dismissing this appeal without costs to either party.

Arnold W. Aronson
Judge Trial Referee