

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

FILED

JUN 9 1972

THE REGENTS OF THE UNIVERSITY OF MICHIGAN,)
)
 Petitioner,)
)
 v.)
)
 DISTRICT OF COLUMBIA,)
)
 Respondent.)

Superior Court of the
District of Columbia
Tax Division
DOCKET NO. 2153

O P I N I O N

This case involves the petition of the Regents of the University of Michigan who appeal from a decision of the Revenue Division of the District of Columbia Finance Office which denies their claim for interest on the refund of taxes. The answer of the District of Columbia opposes the claim.

THE FACTS OF THE CASE

The late Florence T. Spaulding, a resident of the District of Columbia, by will dated November 13, 1958, bequeathed the residue of her estate in trust to the University of Michigan. She directed, however, that the net income from this trust would first be paid to her husband, Thomas M. Spaulding, during his lifetime. After his death, the net income would be used by the Regents of the University of Michigan to provide scholarships at the University of Michigan for "students of the Caucasian Race".

Mrs. Spaulding died while domiciled in the District of Columbia on July 10, 1967. Pursuant to 47 D. C. Code 1606, decedent's husband filed a six-month District of Columbia inheritance tax return which included the assets bequeathed under the trust. In computing the tax due, Mr. Spaulding listed the interest in the appointed assets which passed to

the University of Michigan as "entirely exempt" from C. inheritance taxes and showed no tax payable as to the University's share.

Upon review of the six-month return the District disallowed the claimed charitable exemption for the amounts passing to the University and assessed inheritance tax against Petitioner's share in the amount of \$2,746.38. That amount was paid on April 18, 1968, by check marked "under protest".

On his final D. C. inheritance tax return, Mr. Spaulding again listed the interest of the University as "entirely exempt", and the return showed no tax payable as to the University's share. The District again disallowed the claimed charitable exemption, and on January 9, 1969, assessed inheritance taxes upon the University's share in the amount of \$154,957.30. On January 13, 1969, the University paid that amount under protest.

The Regents of the University of Michigan then filed an action in the U. S. District Court (Civil No. 256-69) against Thomas M. Spaulding and the Riggs National Bank of Washington, D. C., as executors under decedent's will, and against Thomas M. Spaulding, Edwina T. Haggard and Sarah T. Brooks, as next of kin and heirs at law of decedent. By judgment dated May 20, 1969, the District Court ordered,

" . . . that the words 'of the Caucasian race' appearing in Item VI of the Will of Florence Tucker Spaulding, deceased, be and the same hereby are declared null and void and of no force and effect, and that said words be and the same hereby are struck from the Will as of the date of said decedent's death, pro non scripto. . . ."

On October 28, 1970, Petitioner filed claim for refund, with interest, of said inheritance taxes which had been paid to the District of Columbia under protest on April 18, 1968, and January 13, 1969.

By check dated November 27, 1970, Respondent refunded to Petitioner the said inheritance taxes in the amount of \$157,703.68 plus interest at 4% thereon from October 28, 1970 to November 27, 1970 (amounting to \$518.48).

On February 1, 1971, Petitioner filed a claim for interest on the amount of inheritance taxes refunded from April 18, 1968 and January 13, 1969 to October 28, 1970 (amounting to \$11,417.73).

Petitioner's claim for interest was denied by Respondent on February 25, 1971.

Petitioner's Contentions

Petitioner's arguments may be summarized as follows:

1. Since the amounts paid by the University under protest on April 18, 1968 and January 13, 1969, were assessed and paid as a deficiency or as an additional tax, interest at 4% yearly must be paid "from the date the overpayment was paid until the date of refund." 47 D. C. Code 2413(c) (Supp. V, 1972).

2. Congress has expressly defined "deficiency" for D. C. tax purposes as the amount by which "the tax imposed . . . as determined by the assessor exceeds the amount shown as the tax by the taxpayer upon his return . . .", 47 D. C. Code 1551b, 1967 ed. Congress, therefore, clearly intended interest to run during the whole period that a taxpayer has surrendered amounts at the District's insistence and over the

1/ "Any other provision of law to the contrary notwithstanding, if it is determined by the Commissioner or by the Superior Court that there has been an overpayment of any tax, whether as a deficiency or otherwise, interest shall be allowed and paid on the overpayment at the rate of 4 per centum per annum from the date the overpayment was paid until the date of refund, but with respect to that part of any overpayment which was not assessed and paid as a deficiency or as additional tax interest shall be allowed and paid only from the date of filing a claim for refund or a petition to the Superior Court as the case may be."

taxpayer's protest, where those amounts are refunded as not due. See also H.R. Rep. 1977, 82nd Congress, 2nd Session (May 22, 1952)^{2/}.

3. The District, according to well-seasoned Constitutional principles and numerous case authorities, should have declared the purported racial restriction in decedent's scholarship bequest as null and void. The Internal Revenue Service, in determining federal tax questions, does not rely on state court decisions but makes its own independent finding of the law and facts. (Commissioner v. Estate of Bosch, 387 U.S. 456 (1967), and the District likewise could do so.^{3/}

4. As a matter of policy and fundamental fairness, if a taxpayer immediately alerts the District that the taxes may later be refunded, so that the District does not knowingly count on such taxes as collected and available for expenditure without possible need for repayment, the statute (47-2413(c)) provides that interest runs from the date of overpayment.

2/ "A distinction is made, however, between overpayments resulting from original or voluntary payments of tax by a taxpayer and overpayments resulting from the assertion of a deficiency or additional tax by the District. As to the former, interest begins to run on the date on which the District is apprised of the fact that an overpayment is claimed to have been made." (H.R. Rep. 1977, at p. 4; emphasis added.)

3/ I.R.S. §2055 provides a charitable deduction from the federal estate tax for "the amount of all bequests * * * or transfers * * * to or for the use of any corporation organized and operated exclusively for religious, charitable, * * * or educational purposes * * *." D. C. Code §47-1601(e) provides a charitable exemption from the D. C. inheritance tax for "property transferred * * * exclusively for charitable, educational, or religious purposes * * *." While one statute speaks of "deduction" and the other of "exemption", the two run parallel in not taxing bequests for charitable or educational purposes.

Respondent's Contentions

The District of Columbia was not apprised of the change in the factual situation surrounding Petitioner's claim of exemption (the United States District Court's elimination of the racial restriction from the terms of Florence Tucker Spaulding's will) until Petitioner filed its claim for refund on October 28, 1970.

Petitioner has been refunded the full amount of the District of Columbia inheritance tax it had paid plus interest at 4 percent from the date the District of Columbia was apprised of the reformation of Florence Tucker Spaulding's will by the United States District Court for the District of Columbia. There could have been no "overpayment" of the inheritance taxes by Petitioner prior to this reformation of Florence Tucker Spaulding's will. Petitioner was not entitled to an exemption from these taxes on Florence Tucker Spaulding's bequest prior to the District Court's reformation of the will because the public policy of the District of Columbia precluded the granting of an exemption to the recipient of the bequest containing a racial restriction such as the one contained in Florence Tucker Spaulding's will.

FINDINGS OF FACT

1. Petitioner, the Regents of the University of Michigan, sought a charitable exemption for a trust contained in the will of Florence T. Spaulding which provided for scholarships at the University of Michigan for "students of the Caucasian race".

2. Pursuant to 47 D. C. Code 1601(e), 1967 ed., the District of Columbia in its administrative capacity denied the exemption as racially restrictive and therefore against

its general policy and assessed an inheritance tax. Petitioner paid the tax under protest on April 18, 1968, and January 13, 1969.

3. On May 20, 1969, the U. S. District Court, having been presented with a petition for construction of the Spaulding will, ordered that the words "of the Caucasian race" be declared null and void, and that they be struck pro non scripto.

4. On October 28, 1970, Petitioner filed a claim for refund, with interest, of the inheritance tax which had been paid under protest on April 18, 1968, and January 13, 1969, to the District of Columbia.

5. The District refunded the inheritance taxes paid in the amount of \$157,703.68, plus interest at 4% from October 28, 1970 (the date of the claim for refund) to November 27, 1970 (the date the claim was paid), amounting to \$518.48.

CONCLUSIONS OF LAW

For the following reasons, the Court concludes that the amounts paid by the Petitioner on April 18, 1968, and January 13, 1969, were assessed as a deficiency or as an additional tax but that an "overpayment" did not result until May 20, 1969, when the U. S. District Court construed the will:

1. D. C. Code 47-2413(c), (Supp. V, 1972) requires that interest must be paid from the date the overpayment was made, if assessed as a deficiency or as an additional tax, until the date of refund.^{4/} It is however evident that even though "payment" was made on April 18, 1968, and January 13, 1969, it did not become an "overpayment" until the racially

^{4/} See footnote 2/ on page 3.

restrictive covenant was struck from decedent's will n May 20, 1969. The will presented to the District with the words "students of the Caucasian race" was substantially different from the one presented without them. Therefore, no overpayment could become effective until May 20, 1969, when the provisions of the will met the 47 D. C. Code 1601(e), 1967 ed. requirements of a charitable exemption.

2. Petitioner's contention that the District should have declared the purported racial restriction in decedent's scholarship bequest as null and void is misplaced. Petitioner concedes that the restriction is invalid under the 14th Amendment of the U. S. Constitution.^{5/} In light of this provision and the general policy of the District with respect to racially restrictive covenants, the burden was on the Petitioner to prove that the clause in question was not racially restrictive. In failing to do so, the burden does not then shift to the District to strike the clause and allow the exemption.

Petitioner has not cited any rule which would give the District of Columbia Finance Office, Revenue Division, Inheritance and Estate Tax Section, power to amend decedent's will by striking this clause. The Court would view any such attempt as an infringement of decedent's right to make his own will and of the powers of the courts to construe wills.

^{5/} See also Commonwealth of Penn. v. Board of Directors of City Trusts of City of Philadelphia, 353 U.S. 230, 1 L.ed. 2d 792, 77 S.Ct. 806 (1957).

ORDERED that the petition of the Regents of the University of Michigan for a refund of interest on the overpayment of inheritance taxes assessed upon the estate of the late Florence T. Spaulding be and it is hereby granted as of May 20, 1969, until October 28, 1970, for the reasons stated above; and it is further

ORDERED that Petitioner and Respondent submit computations for entry or decision pursuant to this opinion in accordance with Rule 15(a) of the Rules of the Tax Division of the Superior Court of the District of Columbia, by the 12/22 of June, 1972.

By the Court,


W. Byron Sorrell
Judge

Copies to:

Robert K. Eifler, Esq.
Richard B. Ruge, Esq.
Attorneys for Petitioner
Hogan & Hartson
815 Connecticut Avenue, N. W.
Washington, D. C. 20006

Finance Office, D. C.

Corporation Counsel, D. C.

Phyllis R. Liberti, Clerk