

No. A-12-0428

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STATE OF MINNESOTA  
IN SUPREME COURT

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Candy S. Bradison, Personal Representative of the Estate of Katelyn S. Janson;

Relator,

vs.

Commissioner of Revenue,

Respondent.

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**BRIEF OF RESPONDENT COMMISSIONER OF REVENUE**

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## LEGAL ISSUES

- I. Was Katelyn Janson domiciled in the State of Minnesota at the time of her death, thereby permitting the state to impose an estate tax upon her Estate?

The tax court held that Katelyn Janson was domiciled in Minnesota at the time of her death.

*Apposite Cases and Statutes:*

*State ex rel. Larson v. Larson*, 190 Minn. 478, 252 N.W. 329 (1934)

Minn. Stat. § 524.1-301 (2010)

Minn. Stat. § 291.005, subd. 1(8) (2010)

- II. Was the value of the annuities in the Estate of Katelyn Janson subject to estate taxation by the State of Minnesota?

The tax court held that the State of Minnesota properly assessed estate tax upon the value of the annuities in the Estate of Katelyn Janson.

*Apposite Statutes:*

I.R.C. § 104

I.R.C. § 2039

## STATEMENT OF THE CASE

Relator Candy Bradison has brought this appeal in her capacity as personal representative for the Estate of Katelyn Janson (the “Estate”). Relator challenges a ruling of the Minnesota Tax Court that affirmed an assessment by the Commissioner of Revenue on the Estate. *Candy S. Bradison v. Commissioner of Revenue*, Docket No. 8286-R, 2012 WL 360461 (Minn. Tax Ct., Jan. 31, 2012) (the “Order”).

The tax court held that the decedent, Relator’s daughter, Katelyn Janson, was domiciled in the State of Minnesota at the time of her death, thereby subjecting her Estate to taxation by the state. The tax court further held that the value of annuity payments guaranteed to be paid until 2016 to the Estate and its beneficiary were properly included in the Estate for purposes of estate taxation.

## STATEMENT OF FACTS

Katelyn Janson (“Katelyn”) was born in 1995 in the State of Wyoming. Order, at 1; Exhs. 111, 112. She and her family moved to Iowa in 1997. *Id.* Shortly thereafter she and other members of her family were involved in a car accident, in which Katelyn suffered severe injuries. Order, at 2; Exh. 110; Tr. 9-10. In 2001, a state district court in Iowa approved a settlement of a lawsuit brought by Katelyn, Candy Bradison, and others involved in the 1997 accident. Order, at 2; Exhs. 108-109; Tr. 31. Pursuant to the terms of the settlement Katelyn received cash and future payments from two annuities. Order at 2; Tr. 32. A conservatorship was set up in Iowa, with Katelyn’s mother as conservator for her daughter. *Id.* In July 2001, Katelyn and her family moved from Iowa back to the State of Wyoming, where they stayed until May 2004. Order, at 2; Exh. 110; Tr. 37.

Subsequent to the family's move to Wyoming, a district court in that state approved a petition by Candy Bradison to set up a conservatorship for Katelyn with a bank as conservator and to transfer assets from the control of the Iowa court to the Wyoming court. Order, at 2; Exh. 110. The petition requested a conservator be appointed to "maintain the custody and control of Katelyn's property" and to "protect Katelyn's assets and estate." *Id.*, Verified Pet. for Appointment of Conservator, ¶¶ 3, 9. In this petition Ms. Bradison noted that she, as natural mother for Katelyn, was "currently responsible for the care, custody and control of Katelyn." *Id.*, ¶ 5.

By order dated July 17, 2003, the Wyoming court approved the conservator's request to make payment to Ms. Bradison for special medical treatment for Katelyn in Minnesota or in any other state. Order, at 3; Exh. 110. In May 2004, Ms. Bradison moved the family to the Twin Cities because the area offered better medical care for Katelyn and because her then-husband, Christopher Bradison, had family in Minnesota. Order, at 3; Tr. 38-39; Exhs. 111, 112.

Katelyn had surgery in Minnesota in late 2005. Order, at 3; Tr. 12. She passed away unexpectedly on April 30, 2006 in Minnesota. Order, at 3; Tr. 8. Her mother and the rest of the family stayed in Minnesota until 2008, when they moved to Arizona. Exhs. 111, 116. Subsequent to that time, Ms. Bradison relocated to the State of Washington. *Id.*

In January 2007, the Estate of Katelyn Janson filed with the Minnesota Department of Revenue a Minnesota estate tax return, form M706, and a supporting federal estate tax return, form 706. Order, at 5; Exh. 100. This federal return declares the

legal residence of the decedent to be Anoka County, Minnesota, and declares that her Estate is being probated in Anoka County Probate Court. Order, at 6; Exh. 100. The federal return lists the total gross Estate value to be a little over \$2,000,000. The primary declared assets of the Estate included stocks and bonds in the approximate amount of \$456,000 and the rights to payments from two annuities in the approximate amount of \$1,565,000. *Id.* The federal estate tax return showed zero taxes owed because the applicable credit was greater than the estate tax. *Id.*

The M706 Minnesota estate tax return filed in January 2007 was filed as an “estate of residents of Minnesota” and calculated the Minnesota estate tax due as \$99,590. Order, at 7; Exh. 100; Tr. 92. The Estate submitted partial payment of \$41,000 with this return. *Id.* Between February 2010 and October 2011 the Estate filed three amended federal and state estate tax returns. Order, at 12; Exhs. 101, 104, 107. Of the four federal estate tax returns, all but the third return declare Katelyn’s legal domicile to be Minnesota. *Id.* In each of the three amended Minnesota estate tax returns the Estate declared the tax due to be zero. *Id.* In each of the state returns the Estate identified Katelyn as a resident decedent of Minnesota. *Id.*

In the first amended state estate tax return, the Estate sought a refund of the \$41,000 paid with the original return. Order, at 8; Ex. 101. On April 7, 2010, the Minnesota Commissioner of Revenue issued a tax order denying the claimed refund of the Estate. Order, at 8; Ex. 102. The grounds for the tax order were that the decedent was a resident of Minnesota per her death certificate and that Minnesota could tax the value of the Estate’s intangible assets such as interests in stocks, bonds, and annuities no

matter where the certificates or contracts evidencing these intangible assets were physically located. Order, at 8; Exh. 102.

The Estate filed an administrative appeal of the tax order, claiming that Katelyn was domiciled in Wyoming at the time of her death because her only property was located in Wyoming and because she was a ward of a Wyoming court, and asking for a refund of the \$41,000 paid earlier. Order, at 8; Exh. 103. By Notice of Determination on Appeal dated July 27, 2010, the Commissioner of Revenue denied the administrative appeal. The basis for the denial was that Katelyn Janson was domiciled in Minnesota at the time of her death because all of the returns and other legal documents signed by Ms. Bradison and filed soon after Katelyn's death listed Katelyn's legal residence at the time of death to be in Minnesota. Order, at 8; Exh. 105. .

In the initial Form 706 filed as the federal estate tax return of Katelyn Janson, the Estate declared that its assets included the right to payments under two annuities, valued at nearly \$800,000 each. Order, at 6; Exh. 100. Under the terms of each of the annuities payments are guaranteed until 2016. *Id.* Both annuities provided that, if the measuring life of the annuities, Katelyn Janson, were to die prior to the last payment, all remaining payments were to be paid to the contingent payee, the Estate of Katelyn Janson. *Id.* Subsequent to Katelyn Janson's death, the guaranteed monthly payments have gone to Ms. Bradison as the beneficiary of the Estate. Order, at 7; Tr. 26.

### **STANDARD OF REVIEW**

Each of Relator's challenges to the tax court ruling presents a claim that the tax court misinterpreted or misapplied the law to the facts of this case. Relator does not

challenge the findings of fact of the tax court. Accordingly, the issues raised by Relator are subject to this Court's *de novo* review and plenary power. See *F-D Oil Co., Inc. v. Comm'r of Revenue*, 560 N.W.2d 701, 704 (Minn. 1997); *Morton Bldgs., Inc. v. Comm'r of Revenue*, 488 N.W.2d 254, 257 (1992).

## ARGUMENT

### **I. THE TAX COURT CORRECTLY HELD THAT KATELYN JANSON WAS DOMICILED IN THE STATE OF MINNESOTA AT THE TIME OF HER DEATH.**

A “resident decedent” means “an individual whose domicile at the time of death was in Minnesota.” Minn. Stat. § 291.005, subd. 1 (8) (2010). Administrative rules define “domicile” as follows:

The term “domicile” means the bodily presence of an individual person in a place coupled with an intent to make such a place one’s home. The domicile of any person is that place in which that person’s habitation is fixed, without any present intentions of removal therefrom, and to which, whenever absent, that person intends to return.

Minn. R. 8001.0300, subp. 2 (2011). The Court can consider “the acts and circumstances of [the taxpayer] in evaluating the sincerity” of a claimed intent to change a domicile. *Sanchez v. Comm'r of Revenue*, 770 N.W.2d 523, 526 (Minn. 2009) (quoting *Comm'r of Revenue v. Stamp*, 296 N.W.2d 867, 869 (Minn. 1980)).

The Estate’s intent regarding domicile was clearly stated in the filed estate tax returns. The Estate filed four Minnesota estate tax returns from January 2007 through October 2011. In all four returns the Estate identified Katelyn as a resident decedent of Minnesota, not as a nonresident. *Supra*, at 4. Thus, the Estate conceded that Katelyn was domiciled in Minnesota as of April 30, 2006. Minn. Stat. § 291.005, subd. 1(8).

Furthermore, the Estate of Katelyn Janson is being probated in Minnesota. This is also an admission that Katelyn was a legal domiciliary of Minnesota at the time of her death. The scope and jurisdiction of the probate courts in Minnesota extends to the estates of decedents “domiciled in [Minnesota].” Minn. Stat. § 524.1-301 (2010). The Estate has conceded that Katelyn was a domiciliary of Minnesota by filing, and maintaining to the present, this probate action in Minnesota.

Even if the Estate had not admitted through its actions that the decedent’s domicile at the time of her death was Minnesota, the tax court carefully analyzed the 26 domicile factors set forth in Minn. R. 8001.0300, subp. 3 (2011) and concluded that Ms. Bradison was domiciled in Minnesota as of April 2006. Order, at 15-24. A minor child’s domicile is that of the custodial parent. *State ex rel. Larson v. Larson*, 190 Minn. 478, 492, 252 N.W. 329, 330 (1934); Minn. R. 8001.0300, subp. 2 (2011). Therefore, Katelyn’s domicile at the time of her death was also Minnesota.

On appeal Relator does not contest the application of the 26 factors to the domicile issue. Instead, Relator appears to be arguing that Katelyn’s domicile was not the same as hers, and that Katelyn’s legal domicile was in Wyoming. The basis for Relator’s claim is that a Wyoming court had jurisdiction and control over Katelyn because she was an incapacitated minor. App. Mem., at 3-4.<sup>1</sup>

The tax court properly rejected this argument. The Wyoming court supervised a conservatorship over the assets of the decedent, but the Wyoming court did not appoint a

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<sup>1</sup> “App. Mem.” refers to Relator’s letter supplementing her trial memoranda, a letter which is entitled “Appellant Memoranda.”

guardian to care for Katelyn herself. Order, at 24-25; Exh. 110 (last document). No court ever terminated the natural parental rights of Katelyn's mother, and she retained those rights. Thus, Katelyn's domicile was that of her mother.

**II. INTERNAL REVENUE CODE SECTION 104 DOES NOT BAR RESPONDENT'S ASSESSMENT OF ESTATE TAX ON THE ESTATE OF KATELYN JANSON.**

Relator argues that I.R.C. § 104 bars taxation of payments made to Katelyn's Estate after her death. App. Mem., at 3. I.R.C. § 104(a)(2) provides in relevant part that "gross income does not include the amount of any damages (other than punitive damages) received (whether by suit or agreement or whether as lump sum or as periodic payments) on account of personal physical injuries or physical sickness." The tax court correctly held that I.R.C. § 104 is not relevant to the estate tax issues in this case. Order, at 25-26. This provision concerns income tax, not estate tax. The State of Minnesota has not attempted to impose an income tax upon payments made to the Estate, either before or after Katelyn's death.

**III. THE TAX COURT CORRECTLY HELD THAT THE VALUE OF THE ANNUITY PAYMENTS RECEIVABLE BY THE ESTATE OF KATELYN JANSON AFTER HER DEATH CONSTITUTED TAXABLE ASSETS OF THE ESTATE.**

Relator argues that the value of the annuity payments receivable by the Estate after Katelyn's death do not constitute assets of the Estate for purposes of state taxation. App. Mem., at 2-3. The basis for Relator's argument is that payments ceased to be made to Katelyn after her death, and that payments are now being made to Candy Bradison as an individual and as conservator for Katelyn Janson. *Id.*

The tax court correctly held that the value of the annuity payments is properly included in the value of the Estate. Order, at 26-28. First, as the court noted, it does not matter that Katelyn was not "owner" of the annuities because it is the value of payments receivable which are included in the Estate. I.R.C. § 2039(a) provides in relevant part that an estate "includes the value of an annuity or other payment receivable by any beneficiary...." *Accord Anthony v. United States*, 520 F.3d 374, 377 (5th Cir. 2008) (recognizing that annual payments made pursuant to a private annuity after the death of the decedent are included within the definition of a taxable estate).

Under the settlement of the personal injury lawsuit, Katelyn received monthly payments. Order, at 6-7; Exh. 100. Both annuities guaranteed monthly payments until 2016, even if Katelyn Janson did not live that long. *Id.* If Katelyn were to die before the end of the 15 years, payments would continue to the contingent payee, the Estate of Katelyn Janson, and ultimately to the Estate's beneficiary, Candy Bradison. *Id.*; Tr. 26.

The State of Minnesota imposes an estate tax upon the transfer of estates of decedents domiciled in Minnesota. Minn. Stat. §§ 291.01, 291.03 (2010). In this case,

the right to receive monthly payments until 2016 has been transferred from the Estate of Katelyn Janson to its beneficiary. It is these payments that the State of Minnesota is taxing.

Relator has also relied upon I.R.C. § 2039(b) to argue that the value of the Estate does not include the value of the annuities because Katelyn did not contribute any part of the purchase price of the annuities. I.R.C. § 2039(b) provides that “the amount includable in the decedent’s estate is the portion of the value of the annuity or other payment receivable under the contract or agreement that is attributable to the part of the purchase price contributed by the decedent.”

The tax court correctly held that Katelyn did contribute the purchase price of the annuities. Order, at 27-28. Katelyn contributed the funds used to purchase the annuities where the funds arose from a settlement based on a cause of action personal to her, and the payments compensated her for personal injuries. Order, at 27-28; I.R.S. Technical Advice Memorandum 9530002 (April 14, 1995). In an analogous situation the Minnesota court of appeals held that a trust established pursuant to a judicially-approved settlement of a personal injury case was an “available asset” to the grantor or settler of the trust for purposes of determining eligibility for public medical assistance. *ITMO Kindt*, 542 N.W.2d 391, 397 (Minn. Ct. App. 1996) (holding that trust was available asset to grantor because trust was “funded pursuant to a plan devised by *his* guardian for *his* benefit, using funds released for the purpose of settling *his* claim, and was written in a manner that potentially shelters assets for the ultimate benefit of *his* children.” (emphasis in original)). See also *In Re Estate of John Hickey*, 263 Ill. App. 3d 658, 660, 635 N.E.2d

853, 855 (Ill. Ct. App., 1 Dist., 1994) (recognizing that personal injury plaintiff and beneficiary is true settlor of trust because he furnished consideration for creation of trust when he exchanged his chose-in-action for settlement funds deposited in trust).

**CONCLUSION**

Respondent Commissioner of Revenue requests that the Court affirm the decision of the Minnesota Tax Court in its entirety.

Dated: April 20, 2012

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

**WITH MINN. R. APP. P 132.01, Subd. 3**

The undersigned certifies that the Brief submitted herein contains 2,723 words and complies with the type/volume limitations of the Minnesota Rules of Appellate Procedure 132. This Brief was prepared using a proportional spaced font size of 13 pt. The word count is stated in reliance on Microsoft Word 2003, the word processing system used to prepare this Brief.

  
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MARK B. LEVINGER