

No. A11-2282

STATE OF MINNESOTA
IN SUPREME COURT

Estate of Ruth Singer,

Relator,

vs.

Minnesota Commissioner of Revenue,

Respondent.

**BRIEF
OF
RESPONDENT COMMISSIONER OF REVENUE**

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LEGAL ISSUES

1. Is Minnesota Statute § 291.215 constitutional?

The Tax Court held Minnesota Statute § 291.215 is constitutional.

Apposite authorities:

Minn. Stat. § 291.215

McLane Minn., Inc. v. Comm'r of Revenue, 773 N.W.2d 289 (Minn. 2009)

2. Does an estate need to substantiate deductions from the taxable corpus of the estate? May the Commissioner of Revenue apply penalties when a taxpayer refuses to substantiate claimed deductions pursuant to Minnesota Statute § 270C.31?

The Tax Court held that under Minnesota law an estate must substantiate deductions and respond to reasonable requests for information pursuant to Minn. Stat. § 270C.31. If the Commissioner's request is refused, the Commissioner may impose penalties and propose his own valuation.

Apposite Authorities:

Minn. Stat. § 270C.31

Blumberg v. Palm, 56 N.W.2d 412 (Minn. 1953)

Dreyling v. Comm'r of Revenue, 711 N.W.2d 491 (Minn. 2006)

3. Does the Federal estate tax system preempt the Minnesota estate tax system?

The Tax Court held in the negative.

Apposite authority:

Wyeth v. Levine, 555 U.S. 555 (2009)

4. Does an estate have a "right" to choose an alternate valuation date rather than the date of death?

The Tax Court held in the negative.

Apposite authorities:

Minn. Stat. § 291.215

26 U.S.C. § 2032

5. Does the Minnesota Tax Court have the jurisdiction to determine whether or not a property was taken by adverse possession prior to the date of death, in order to determine the tax consequences?

The Tax Court held in the affirmative.

Apposite authorities:

Minn. Stat. § 508.02

Ruikke v. Nall, 798 N.W.2d 806 (Minn. Ct. App. 2011)

6. Does remand to the Hennepin County District Court solely to complete the “*Eerie Shuffle*” obligate the Hennepin County District Court to retain the matter, rather than transferring the case back to Minnesota Tax Court?

The Tax Court implicitly held in the negative.

Apposite authorities:

Erie Mining Co. v. Comm’r of Revenue, 343 N.W.2d 261 (Minn. 1984)

In re McCannel, 301 N.W.2d 910 (Minn. 1980)

Nagaraja v. Comm’r of Revenue, 352 N.W.2d 373 (Minn. 1984)

STATEMENT OF THE CASE AND FACTS

Relator Estate of Ruth Singer (the "Estate"), through its personal representative Jack M. Singer ("Mr. Singer"), is appealing the Tax Court's entry of judgment after trial on the merits. At issue on appeal is whether the taxpayer has the burden of proving the validity of what is reported on the tax return, whether federal or state estate tax law is preempted, and whether or not Minnesota's estate tax is constitutional. The amount at issue is \$69,679.75 in Minnesota estate tax and interest.

Ms. Ruth Singer passed away on May 26, 2008. Mr. Singer, son of the decedent and personal representative for the Estate, filed the Estate's tax return on or about February 24, 2009. On April 24, 2010, Respondent Commissioner of Revenue ("Commissioner") requested additional documentation in its review of the return. On or about May 19, 2010, Mr. Singer replied with a letter stating that he would not comply with the Commissioner's request for additional documentation, because there were "three legal issues that must be resolved." Mr. Singer, by the same letter, requested an Order from the Commissioner so the Estate may appeal to Tax Court.

On November 23, 2010, the Commissioner issued a Tax Assessment Order assessing the Estate \$65,178.00 in estate tax, and \$4,501.75 in interest. In the explanation of adjustments, the Commissioner explained that deductions on estate tax return schedules J, L, and O were disallowed because of lack of substantiation and information. The Commissioner denied the 100% deduction for real property as it was still property of Ruth Singer when the estate was created on her death. The Commissioner disallowed the \$100,000 deduction from the IRA balances for lack of

substantiation and information. In addition, the Commissioner valued the assets of the estate as of the date of death, as required by Minnesota Statute § 291.215.

The Estate timely appealed the Order of the Commissioner on December 15, 2010. Despite the Commissioner's requests to see the Estate's exhibits, Mr. Singer refused to share any exhibits with Commissioner's counsel prior to introducing the exhibits at trial. Trial was held on August 19, 2011, at the Minnesota Tax Court before the Honorable Judge Sheryl A. Ramstad. Post Trial Briefs were filed. The Court issued its Findings of Fact, Conclusions of Law, and Order for Judgment on September 16, 2011. The Estate then filed a Motion for Amended Findings, asking that the Tax Court transfer the case to District Court, requesting a new trial to determine the value of the estate, and for a writ of ejectment.¹ On October 12, 2011, the Tax Court issued an Order allowing the transfer of the case to district court for jurisdiction over the constitutional issues, but denied the Estate's request for a new trial either for a writ of ejectment or a new valuation of the estate. The Tax Court submitted the case to the Hennepin County District Court and asked the District Court to refer the matter back to the Minnesota Tax Court, pursuant to *Erie Mining Co.*² The District Court referred the matter to the Minnesota Tax Court.

On November 9, 2011, the Tax Court held another hearing on the constitutional issues raised by the Estate. By Judge Ramstad's Order the same day, the Tax Court

¹ In his brief, Mr. Singer argues that the Commissioner must remove him from the property via a writ of ejectment. The Commissioner is not requesting Mr. Singer vacate the premises, and the Commissioner has not asserted any interest in the property.

² *Erie Mining Co. v. Comm'r of Revenue*, 343 N.W.2d 261 (Minn. 1984).

denied the Estate's Motion for Amended Findings which contained the constitutional claims. This appeal to this Court followed.

ARGUMENT

I. STANDARD OF REVIEW.

"This court reviews findings of fact of the tax court to determine whether there was sufficient evidence to support the tax court's decision." *Igel v. Comm'r of Revenue*, 566 N.W.2d 706 (Minn. 1997) (citing *Benoit v. Comm'r of Revenue*, 453 N.W.2d 336, 339 (Minn. 1990)). "The tax court's conclusions of law and interpretation of statutes are reviewed *de novo*." *Chapman v. Comm'r of Revenue*, 651 N.W.2d 825, 830 (Minn. 2002). "Decisions that involve questions of fact are reviewed to determine whether there is sufficient evidence to support the decision." *Sanchez v. Comm'r of Revenue*, 770 N.W.2d 523, 525 (Minn. 2009) (quoting *Miller's Estate v. Comm'r of Taxation*, 59 N.W.2d 925, 926 (Minn. 1953)).

"A taxpayer challenging the constitutionality of a state tax statute has a heavy burden to show, beyond a reasonable doubt, that the statute is unconstitutional." *McLane Minn., Inc. v. Comm'r of Revenue*, 773 N.W.2d 289, 298 (Minn. 2009) (quoting *Chapman v. Comm'r of Revenue*, 651 N.W.2d 825, 830 (Minn. 2002)). "We invoke every presumption in favor of constitutionality and a statute will not be declared unconstitutional unless the party challenging it demonstrates beyond a reasonable doubt that the statute violates some constitutional provision." *Schober v. Comm'r of Revenue*, 778 N.W.2d 289, 293 (Minn. 2010) (quoting *Minnesota Automatic Merch. Council v. Salomone*, 682 N.W.2d 557 (Minn. 2004)).

The Tax Court upheld the Commissioner's Tax Order in its entirety after trial on the merits, and refused to declare the Minnesota estate tax statutes unconstitutional or preempted by federal law. As explained below, judgment in favor of the Commissioner was proper.

II. THE VALUATION OF THE ESTATE FOR TAX PURPOSES, MINNESOTA STATUTE § 291.215, IS CONSTITUTIONAL.

The Tax Court correctly rejected the Estate's argument that Minnesota Statute § 291.215 is unconstitutional because it is "regressive" and does not allow the "rights" afforded by federal law. Citing *Schober v. Comm'r of Revenue*, the Tax Court stated, "[w]e have upheld many classifications in the tax statutes against the challenge that they violated Equal Protection Clause and the Uniformity Clause.' Even if there is an inequality '[f]or constitutional purposes, absolute equality and uniformity in taxation is not required.'" Tax Court Order (November 9, 2011).

Minnesota imposes a tax on the transfer of an estate of decedents. Minn. Stat. § 291.01 (2010). The estate is valued, for Minnesota income tax purposes, in accordance with the provisions of the Internal Revenue Code, specifically sections 2031, 2032, and 2032A. Minn. Stat. § 291.215, subd. 1 (2010). That statute provides that any election made for federal tax purposes shall be applicable to the state tax counterpart. *Id.* The federal election must be made for it to be applied to Minnesota state tax. *Id.* The Internal Revenue Code states that no election for alternative value may be made unless the election will decrease the sum of the tax imposed by Chapter 11 of the Internal Revenue Code. 26 U.S.C. § 2032(c)(2). Minnesota Department of Revenue Notice #06-04 makes

it clear that for estates below \$2,000,000, the federal election cannot be made, so it is inapplicable to the state tax, pursuant to Minn. Stat. § 291.215. Minn. Dept. Rev. Not. #06-04 (May 8, 2006).

The Estate, valued at approximately \$1,500,000, is in a different tax class and bracket than estates valued at \$2,000,000 and above, and thus is not eligible for certain exemptions pursuant to statute. Minn. Stat. § 291.215 (2010). While the Estate dislikes its tax classification because it is not eligible for certain exemptions, the classification of the Estate to determine the amount of tax due does not deny the Estate equal protection under the laws.

There is no authority to support the proposition the U.S. Constitution requires all estates must be able to elect the alternative valuation. Although the alternative valuation may provide relief for estates that shrink due to market forces, this does not automatically make it a right guaranteed under the Constitution. *See Maass v. Higgins*, 312 U.S. 443, 446 (1943).

III. THE MINNESOTA ESTATE TAX SYSTEM IS NOT PREEMPTED BY FEDERAL LAW.

Minnesota estate tax law has not been preempted by federal estate tax law. Federal law even contemplates state estate taxes by giving estates credit for state taxes paid on their federal estate taxes. 26 U.S.C. § 2011(a)(2008). As the Tax Court observed,

Whether a state law is preempted must be guided by two cornerstones of our preemption jurisprudence. First, “the purpose of Congress is the ultimate touchstone in every presumption case.” Second, “[i]n all preemption cases, and particularly in those in which Congress has legislated ... in a field which the States have traditionally occupied,” ...we

start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.

Wyeth v. Levine, 555 U.S. 555 (2009) (citations omitted).

Where the U.S. Congress has allowed for a credit to be applied for any state tax paid, Congress has not contemplated occupying the whole field of estate tax. Additionally, the federal estate tax only begins at \$2,000,000, and does not apply to any estate below that amount. The Estate cites *HMN Financial*, but preemption of state law was not an issue in that case. *HMN Financial, Inc. v. Comm'r of Revenue*, 782 N.W.2d 558 (Minn. 2010).

IV. THE COMMISSIONER PROPERLY DENIED THE DEDUCTIONS FROM THE ESTATE.

A. The Taxpayer Is Required To Cooperate And Substantiate Tax Returns.

A taxpayer is required to substantiate information on their tax returns. Minn. Stat. § 270C.31 (2010). Failure to produce evidence by the party in control of that evidence allows for the inference that the evidence is unfavorable to that party. *Blumberg v. Palm*, 56 N.W.2d 412, 415 (Minn. 1953); *see also Dreyling v. Comm'r of Revenue*, 711 N.W.2d 491, 497 (Minn. 2006).

From the very first contact with the Commissioner, the Estate refused to provide the necessary substantiation for the tax return. Without substantiation, the Commissioner had no choice but to deny the deductions listed, as well as to value the real property in the best, most reasonable method possible. The Tax Court properly upheld the Commissioner's denial of deductions and valuation.

Additionally, like Minnesota statutes, the Federal statutes do put the initial burden of proof on the taxpayer to show the IRS was incorrect in an appeal to court. 26 U.S.C. § 6201(d); *see also Popky v. U.S.*, 326 F.Supp.2d 594, 605 (E.D. Pa. 2004); *Mayer v. C.I.R.*, 2000 WL 1349156, *1-2 (U.S. Tax Ct. 2000). IRC § 7517 states that if the Secretary of the Treasury makes a determination, that determination and expert opinions that led to the determination must be furnished to the taxpayer. 26 U.S.C. § 7517 (2010). The Commissioner did furnish the Estate an explanation of the adjustments with his Tax Order, which substantively meets the requirements of IRC § 7517. *Id.*

B. The Tax Court Had Jurisdiction To Decide Constitutional Issues Pursuant To The *Erie Mining* “Shuffle”.

The Tax Court correctly recognized that it did not initially have jurisdiction to hear the constitutional claims, absent the jurisdiction from the District Court. Order (Oct. 12, 2011). Pursuant to the process established by this Court’s decisions, the Tax Court referred the matter to the Minnesota District Court. *Erie Mining Co. v. Comm’r of Revenue*, 343 N.W.2d 261 (Minn. 1984); *In re McCannel*, 301 N.W.2d 910 (Minn. 1980); *Nagaraja v. Comm’r of Revenue*, 352 N.W.2d 373 (Minn. 1984).

It was the decision of the Hennepin County District Court whether to hear the case or transfer jurisdiction back to the Minnesota Tax Court. The District Court chose to transfer the case back to the Minnesota Tax Court. It is the District Court’s prerogative to do so. Additionally, the Estate had the choice from the outset to bring this action in Minnesota Tax Court, or pay the assessment and take a refund claim to the District Court.

The Estate chose to proceed in the Tax Court, and it was proper that the case remained there.

C. Singer Did Not Establish He Owned the Property By Adverse Possession.

Mr. Singer did not gain ownership of the house through adverse possession, and therefore the house was part of the Estate. The Tax Court properly determined the home is Torrens registered property. Real property registered with the Torrens system cannot be taken by adverse possession. Minn. Stat. § 508.02 (2010); *see also Ruikke v. Nall*, 798 N.W.2d 806, 817 (Minn. Ct. App. 2011).³

D. The Estate Of Hubert Is Not Applicable To This Case.

Comm'r of Internal Rev. v. Estate of Otis Hubert, 520 U.S. 93 (1997) is a U.S. Supreme Court case regarding whether the payment of administrative expenses should decrease the marital deduction and charitable trusts or whether it could be taken out of income of the estate. This has no application to the facts of this case. *Estate of Hubert* does not provide authority for Mr. Singer to value the Estate at a date other than the date of death as provided in Minnesota statutes. As the Court correctly recognized in *Estate of Hubert*, 26 U.S.C. § 2031(a) provides that, “[a] necessary first step in calculating the

³ Even if the property was subject to adverse possession, Mr. Singer did not show that he occupied the property in a manner that was “actual, open, hostile, continuous, and exclusive” by clear and convincing evidence. *SSM Investments v. Siemers*, 291 N.W.2d 383, 384 (Minn. 1980) (quoting *Ehle v. Prosser*, 197 N.W.2d 458, 463 (Minn. 1972)). Mrs. Singer lived in the home with Mr. Singer for roughly nine of the last 15 years prior to her death. Mr. Singer admitted at trial that although he physically caused the property taxes to be paid, they came out of the accounts of Mrs. Singer. Therefore, Mr. Singer fails the hostile and exclusive possession prongs of the test for adverse possession.

taxable estate for federal estate tax purposes is to determine the property included in the gross estate, and its value.” Though an alternative valuation date is authorized, the executors of the Hubert estate used the standard date-of-death valuation. *Estate of Hubert*, 520 U.S. at 99, 100.

Not only does the above passage undercut the Estate’s assertion that valuation of assets is a future-based proposition, it undercuts its later argument that a six-month valuation period is a constitutional right. Under federal law, the estate may use the alternative date — by operation of statute.

The Court in *Estate of Hubert* certainly does not state that requiring estates to justify deductions is unconstitutional. Under federal law, deductions in any return must be justified, and the taxpayer must reasonably cooperate with the Secretary of the Treasury. *See* 26 U.S.C. § 6201(d) (2010).

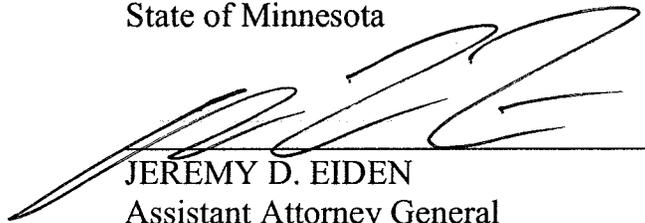
CONCLUSION

The Commissioner asks this Court to uphold the Tax Court's Orders affirming the Commissioner's Tax Order.

Dated: February 16, 2012

Respectfully submitted,

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