

PROBATE COURT OF HAMILTON COUNTY, OHIO

ESTATE OF EARL N. SANDERS

CASE NO. 961746

**OPINION AND ENTRY OVERRULING OBJECTIONS TO DETERMINATION
OF TAX COMMISSIONER**

This matter came before Judge Wayne F. Wilke on January 14, 1999, regarding the Estate's objections to the Ohio Tax Commissioner's determination that an additional estate tax was due from the Estate. Present were Irwin Katzman, Philip A. Logan and Robert A. Goering on behalf of the Estate, and Assistant Attorney General Barbara L. Barber on behalf of the Tax Commissioner of Ohio. The parties were given time to file written closing arguments and replies to those arguments and they have so submitted those documents. Accordingly, this matter is ripe for decision.

The decedent, Earl N. Sanders, died testate on February 27, 1996. The decedent's will was admitted to probate on April 16, 1996, the same day that Ella Alice Sanders, the decedent's wife, was appointed executor of the estate. Pursuant to R.C. §5731.21(A)(1)(a), the executor was required to file an Ohio estate tax return within nine months of the date of the decedent's death, or November 27, 1996. The executor never obtained an extension in which to file the return. She finally did file the estate tax return on September 3, 1997.

On October 17, 1997, the Tax Commissioner notified the Executor in writing that a tax of \$4,423.67 was due. The Tax Commissioner timely filed exceptions to the

Estate's tax return, which indicated no taxes were due, with this court on October 28, 1997. Since this court is administering the Estate of Earl N. Sanders, all three statutory jurisdictional requirements for an appeal, pursuant to R.C. §5731.21(B), have been met.

The Tax Commissioner admittedly made his original reference to R.C. §5731.21(b). The Court finds as a matter of law that that typographical error does not render the Tax Commissioner's exceptions constitutionally deficient. Rather, the estate's attempt to emphasize the importance of the Commissioner's typographical error illustrates the weakness of its defense to the Tax Commissioner's determination.

Similarly, the Estate's contention that the Tax Commissioner has not proven the amount of deficiency cannot be given serious consideration. Pursuant to Civ.R. 36(B), any matter admitted in a written request for admission is conclusively established unless a court permits withdrawal or amendment of the admission. The Estate admitted in writing that it was late in filing an estate tax return; that the Executor did not request or receive an extension of time for filing that return; and that the copies of correspondence relied upon by the Tax Commission to support his assessment of deficiency were authentic copies. Along with the Court's own records, the evidence presented by the Tax Commissioner amply demonstrates the Estate's objections have no merit and shall be overruled.

The language used in R.C. §5731.15(B)(2) is an abnormally lucid piece of statutory text: "[a]n election to have property treated as qualified terminable interest property for purposes of the [QTIP deduction] shall be made by the person filing the estate tax return under this chapter, in writing, on or before the date by which the return is required to be filed." (emphasis added). There is no ambiguity that, absent an extension,

a valid QTIP election must be made within nine months from the date of death. The Executor made her QTIP election some nineteen (19) months after the decedent's death. The Estate had the burden to demonstrate the Tax Commissioner's determination was clearly erroneous and it completely failed to carry that burden. See, e.g. *Tax Commission v. Paxson, Admr.* (1928) 118 Ohio St. 36; *Estate of Goetz* (1973) 35 O.O.2d 398, 399. The estate brought no evidence to support its position. Its mere allegation that the estate tax return was correct is simply insufficient.

Accordingly, the Estate's objections to the Tax Commissioner's exceptions are hereby overruled and the Tax Commissioner's determination denying the QTIP deduction shall be affirmed.

SO ORDERED.

WAYNE F. WILKE, JUDGE

cc: Barbara L. Barber
Robert A. Goering
Irwin Katzman
Philip A. Logan