

**TAX APPEAL BOARD OF THE STATE OF DELAWARE**

<b>PIET H. vanOGTROP, Attorney</b>	)	
<b>for estate of MARY T. JORDAN</b>	)	
Petitioner,	)	
	)	
v.	)	<b>Docket No. 1118</b>
	)	
<b>DIRECTOR OF REVENUE,</b>	)	
Respondent.	)	
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Before: Joseph S. Yucht, Esquire, Chairman, John H. Cordrey, Esquire, Vice Chairman; David Eppes, and Regina Dudzic, Members.

Petitioner is represented by Piet H. vanOgtrop, Esq. of Daley, Erisman vanOgtrop & Hudson.

Joseph Patrick Hurley, Jr., Esquire, Deputy Attorney General for Respondent.

**DECISION AND ORDER**

John H. Cordrey, Esquire, Vice Chairman. This is the Board's decision after briefing and oral argument.

The parties have stipulated to the facts regarding this matter and are set forth in the parties' stipulation of agreed facts dated January 8, 1993. The essential facts are that Mary T. Jordan died and left surviving her two stepsons, Robert D. Jordan and William E. Jordan. William E. Jordan had a wife, Barbara Jordan, who was also a beneficiary of the estate of Mary T. Jordan. The petitioner filed an inheritance tax return in which the funds inherited by Barbara Jordan were claimed to be subject to Delaware inheritance tax (30 Del.C. §1322) as a "Class B" beneficiary. The Respondent filed an assessment claiming Barbara Jordan is a "Class D" beneficiary and thus owed a larger inheritance tax.

The issue before the Board is whether the spouse of a step-child is considered to be

a "Class B" beneficiary as described in 30 Del.C. §1322(2) or a "Class D" beneficiary as described in 30 Del.C. §1322(4). Subsection 4 describes "Class D" beneficiaries as all persons who are not described as Class A, B, or C beneficiaries. The only other class which Petitioner claims applicable is Class B which provides:

(2) *Class B.* Where the property or any interest or estate therein passes to or for the use of a parent, grandparent, child by birth, wife or widow of a son or the husband or widower of a daughter, a child by legal adoption, the lineal descendant of the decedent or a stepchild of the decedent, the tax on such property, interest or estate shall be at the following rates...

All parties agree that the spouse of a stepchild is not specifically identified in the statute as a Class B beneficiary.

Petitioner asserts that a spouse of a stepchild should fall within the purview of the statute because all persons similarly situate should be treated in a like fashion. Petitioner argues that as spouses of a child by birth and a spouse of a legally adopted child are treated as Class B recipients, there is no reason for treating a spouse of a stepchild differently. Further, Petitioner argues that there is no reason for treating the lineal descendants of a child by birth and a stepchild the same and treating spouses of them differently.

The Petitioner's argument fails because of the clear and concise wording of the statute. There is no dispute that the spouse of a child is specifically included in the definition of a Class B recipient ("wife ... of a son"). There is also no dispute that the similar language regarding the spouse of a stepchild is not found in the statute. There is no ambiguity in the statute and there is no basis for this Board to interpret the statute in a different fashion.

This Board is unwilling, if not unable, to determine that the legislature intended to

include spouses of stepchildren as Class B recipients. The statute is clear and the spouse of a stepchild must be determined to be a Class D beneficiary.

Based upon the foregoing the Director's Notice of Assessment is affirmed.

SO ORDERED, this 9<sup>th</sup> day of June, 1995.

John H. Cordrey

Joseph S. Yucht

Regina C. Anderson

David Eppes / ac