TAX APPEAL BOARD OF THE STATE OF DELAWARE

WILLIAM H. McKEE, III,	)	
EXECUTOR OF THE ESTATE	)	
OF WILLIAM H. McKEE, JR., DEC.	)	
Petitioner,	)	
	)	
v.	)	**Docket No. 1231**
	)	
DIRECTOR OF REVENUE,	)	
Respondent.	)	
	)	

Before: John H. Cordrey, Esquire, Chairman; David Eppes, Regina Dudziec, and Cynthia Hughes Jarman, Members.

Petitioner is represented by Glenn E. Hitchens, Esq. of Morris, James, Hitchens & Williams.

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

DECISION AND ORDER

John H. Cordrey, Esquire, Chairman. This is the Board's decision regarding this matter.

The facts are contained within the Stipulation of Agreed Facts filed with the Board and the other pertinent filings. In summary the facts are that William H. McKee, Jr. died testate on May 7, 1991. At the time of his death he owned a number of certificates of deposits (hereafter "CDs") which were owned jointly with the Petitioner, the decedent's son, or the decedent's grandson, Barry S. Roy. Despite the joint ownership of the CDs, Petitioner decided to follow the directions contained in his father's will and as Executor distributed the CDs without regard to their joint ownership provisions and in accordance with the will. This intention was memorialized by the Petitioner by a writing dated March 10, 1994 to his attorney, but no disclaimer was filed with the Division of Revenue or the Register of Wills. The inheritance tax was paid on the distributions as made which resulted in additional "exempt" bequests and lower inheritance tax rates than if the

bequests were taxed as joint owners. The Respondent filed a notice of assessment seeking the additional inheritance tax of $3,645.64 and Petitioner filed this appeal with the Board.

Petitioner's first argument is that the account title was created as a matter of convenience and not for the purposes of testamentary distribution and therefore the will, not the joint tenancy contractual agreement with the bank, controls the distribution of the assets. This is in accordance with the line of cases of Rauhut v. Reinhart, Orhpans' Ct. of Del., 180 A. 913 (1935); Bailey v. Sussex Trust Co., Del.Ch., 187 A.2d 825 (1963); and Messersmith v. Delaware Trust Company, Del. Ch., 215 A.2d 721 (1965). Respondent argues that parole evidence of the Decedent's intent when he created the joint CDs should not be introduced as found in Walsh v. Bailey and Sussex Trust Co., Del.Supr., 197 A.2d 331 (1964). The CDs and their terms were not placed into evidence by either party so the Board does not have the opportunity to determine the meaning of the contractual terms. In Mr. Hitchens' letter to the Petitioner of March 8, 1994, which is part of the record, he writes:

> You have stated that even though most of the bank accounts and CDs are in joint names with you, you recognize the fact that your name was added to the accounts for the sake of convenience, and not for the purpose of transferring title to all those accounts to you on the death of your father. In other words, even though they may have technically passed to you as surviving joint tenant at the time of your father's death, it is your wish to treat all of those accounts as part of the residuary estate to be divided in accordance with the 50-25-25% arrangement set forth in your father's Will. [Emphasis added.]

The other references to these CDs merely refer to them as "joint accounts" which could also be used to describe property owned as tenants in common with no survivorship provisions. In Petitioner's response to the above letter he agreed with the content. It seems clear that the Board was presented with sufficient evidence of the Decedent's intent with regard to these accounts.

This is not the normal situation where the persons seeking to set aside the joint tenancy is a residual heir. Here both the residual heirs and the person purportedly owning the joint tenancy interest agree that the joint tenancy survivorship provisions were never intended by the decedent. This Board will not disturb that agreement between the parties and therefore we find that the CDs' title should not operate to transfer title to the Petitioner upon the death of the decedent.

A second argument which is argued by the Petitioner buttresses our findings above. As stated before, Petitioner responded to Mr. Hitchen's letter with a hand written document which provided in part: "As for all other bank account is to go 1/4 to Paula 1/4 to Stacey and 1/2 'left' [unreadable] to myself as in will." Petitioner argues that this should be considered a renouncement of his interest in the property as a joint tenant. Respondent argues that the letter fails to comply with the provisions of 12 Del.C. §603. The Board finds that the letter does meet the spirit of §603, if not the technical requirements. The note must not be read in a vacuum, it must be read in conjunction with the letter of Mr. Hitchens to which he was responding. In that light, the letter is in writing, describes the property, declares the extent of the disclaimer and was signed by the disclaimant. Although there are not the words required in §603(1) of "an irrevocable and unqualified refusal by the disclaimant to accept property" the two documents, read together, give no doubt of their intentions.

That the disclaimer should be effective is further supported by 12 Del.C. §606 which permits disclaimers through other means. The suggestion that a writing needs to be delivered to the Personal Representative by the Disclaimant in this case is a meaningless act. The disclaimant and the personal representative are the same person so it seems silly that he be required to write a letter to himself to tell himself what action he desires to take. There was no question as to the intent of

the Petitioner's letter and the Board finds that if a joint tenancy did exist as to these CDs, the Petitioner properly disclaimed his interest in them and they then passed to the respective heirs pursuant to the will.

For the foregoing reasons Respondent's Notice of Assessment is REVERSED. SO ORDERED, this 15th day of December, 1997.

John N. Cordy

Regina C. Quelgiveo

Cynthia Hughes Jarman