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BEFORE THE TAX APPEAL BOARD OF THE STATE OF DELAWARE

DELAWARE TRUST COMPANY)	
Executor of the Estate of)	
CHARLOTTE B. JESTER, deceased,)	
)	
Petitioner,)	
)	
v.)	Docket No. 614
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

Before: Maurice A. Hartnett, III, Esquire, Chairman; Joseph S. Yucht, Esquire, Vice-Chairman; Cyric W. Cain, Jr., Rhett McGriff, and Nettie C. Reilly, Members.

Leon G. Lockerman, Vice-President, Delaware Trust Company
for Petitioner

John P. Fedele, Esquire, Assistant Attorney General for
Respondent.

DECISION AND ORDER

Maurice A. Hartnett, III, Esquire, Chairman: The relevant facts are not in dispute.

James B. Jester died while a resident of New Jersey in 1973. Under his Will all of his estate passed to his wife, Charlotte B. Jester.

As a result of Mr. Jester's death, New Jersey imposed an inheritance tax on that portion of the estate of Mr. Jester passing to Mrs. Jester. Before Mrs. Jester was able to pay the New Jersey Inheritance Tax assessed on the property of Mr. Jester, passing to her, she died (in 1974) while a resident of Delaware.

In filing a Report of Deductions for Inheritance Tax purposes (Form 25-J) with the Delaware Division of Revenue, the

Executor of the Estate of Charlotte B. Jester listed as a deduction and as a debt of the decedent, the sum of the New Jersey Inheritance Tax due on the Estate of James B. Jester.

The Director of Revenue disallowed the deduction taking the position that no sums due for inheritance taxes may be deducted in computing the estate for Delaware Inheritance Taxes. The Executor of the Estate of Mrs. Jester appealed the disallowance.

30 Del. Code §1323(a) states:

"In determining the value of the net estate for distribution the deductions allowable from the fair market value of the estate on the date of decedent's death shall be as follows:

- (1) Funeral and burial expenses.
- (2) Debts of decedent owing at the date of death.
- (3) Mortgages unpaid on date of death.
- (4) Commission of executors and administrators allowed by Register of Wills.
- (5) Costs of administration including attorney's fees but not including losses on sales of assets."

30 Del. Code §1329 states:

"In determining the value of any estate or interest taxable under the provisions of this chapter, the Department of Finance shall make no deduction therefrom nor reduction thereof by reason or on account of the payment, or liability for payment, of any Delaware inheritance, legacy or succession tax, or of any Delaware estate tax, or of any estate, inheritance, legacy or succession tax of the United States or of any state or jurisdiction outside of this State."

The question presented is whether the deduction is allowable as a debt pursuant to 30 Del. Code §1323, or whether it is not allowable because of the limitations imposed by 30 Del. Code §1329.

We hold that the inheritance tax due to New Jersey because of the death of James B. Jester is deductible as a debt from the Estate of Charlotte B. Jester.

When the provisions of Chapter 13, Title 30, Delaware Code relating to Inheritance Tax are read as a whole, the scheme of taxation obviously relates to the concept of imposing an inheritance tax on the net estate of a decedent. Debts of the decedent are deducted before the inheritance tax is computed.

The provisions of 30 Del. Code §1323(a) allowing debts to be deducted does not contain any limitation such as "except as otherwise provided in this chapter".

We feel that the General Assembly in enacting 30 Del. Code §1329 which prohibits the deductibility of inheritance taxes paid before computing the inheritance tax, only intended to prohibit the deduction of inheritance taxes on the estate of the decedent which was the subject of the return and did not mean to prohibit the deduction, as a debt, of inheritance tax on a different estate and different decedent.

James B. Jester
Joseph D. Gucht
Kevin C. Can
William C. Kelly
Phett McGriff

Dated

5/12/76

SYNOPSIS

DOCKET NO. 614

TAX SEGMENT: INHERITANCE TAX
 Debt of Estate

ISSUE: The question is whether the inheritance tax due to the State of New Jersey on the property acquired by the decedent in that state was deductible as a debt from the estate of the decedent.

 Debts of the decedent are deductible whereas inheritance taxes paid before computing the inheritance tax are not.

TAB DECISION: In the instant case it was determined that the law did not mean to prohibit the deduction, as a debt, of inheritance tax on a different estate and different decedent.

DECISION: For Petitioner

DECISION DATE: May 12, 1976