

TAX APPEAL BOARD OF THE STATE OF DELAWARE

RACHEL A. SCHABACH, )  
 )  
Petitioner, ) Docket No. 632  
 )  
v. )  
 )  
DIRECTOR OF REVENUE, )  
 )  
Respondent. )

Before: James C. Eberly, Sr., Esquire, Chairman; Joseph S. Yucht, Esquire, Vice-Chairman; Cyric W. Cain, Jr., Harry B. Roberts, Jr., and Nettie C. Reilly, Members.

Rachel A. Schabach, pro se

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

DECISION AND ORDER

James C. Eberly, Sr., Esquire, Chairman: The facts presented to the Tax Appeal Board are admitted by the parties to be as follows:

1. Angelina E. Acocella and Rachel A. Schabach were joint tenants of property, the payment for which was from funds supplied by Angelina E. Acocella;
2. Angelina E. Acocella departed this life on or about January 29, 1976, leaving the Petitioner, Rachel A. Schabach, to survive her and succeeding to full right title and interest in the jointly held property, which was the sum of Mrs. Acocella's estate;

3. In carrying out the wishes of her mother, Mrs. Acocella, the Petitioner expended the sum of Twenty Thousand Three Hundred Eighty Dollars (\$20,380.00) for a mausoleum for her mother's final resting place, these funds being taken from the jointly held property above referred to;

4. The Petitioner, with unofficial help, filled out and caused to be filed the State of Delaware's "Inventory, List and Statement of Real or Personal Property Jointly Held and Report of Deductions for Register of Wills and Inheritance Tax Report" (otherwise known as a Form 25c).

5. In filling out the Form 25c, Petitioner claimed the full amount of the cost of the above-mentioned mausoleum as a deduction from the gross estate.

The issue before the Tax Appeal Board was raised by a determination by the Director of Revenue that an allowance of only one-half (1/2) of the cost of the mausoleum would be allowed as a deduction from the gross estate for inheritance tax purposes. The issue, succinctly put, is whether or not the entire cost of the mausoleum is an allowable deduction from the gross estate of Angelina E. Acocella.

It should be noted that the Director of Revenue waived any objection to the timeliness of this appeal pursuant to 30 Del. C. §1332(a), by so stating this waiver before the Tax Appeal Board during the hearing on the issue.

It should be further noted that the Director of Revenue does not deny that the sum of Twenty Thousand Three Hundred Eighty

Dollars (\$20,380.00) was, in fact, paid.

The Director of Revenue's position is that the full cost of the mausoleum is an unreasonable expense, and further because the mausoleum is designed to accommodate two bodies, and therefore only one-half (1/2) of its costs should be allowed as a deduction from the gross estate.

The Petitioner's position is that the full cost was paid pursuant to the decedent's wishes, and further was paid from the assets jointly held, and the full cost of the mausoleum is deductible.

The Director of Revenue concedes that, even if only one-half (1/2) of the mausoleum's cost is deductible from the gross estate, the remaining one-half (1/2) of the cost would not be deductible from the surviving joint tenant's (Petitioner's) estate upon her death.

30 Del. C. §1323 states in pertinent part:

"(a) 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 the decedent's death shall be as follows:

(1) Funeral and burial expenses; . . ."

The Director of Revenue is unable to cite to the Board any controlling authority, by either case law or statute, whereby he is permitted or directed to disallow a deduction for any expense for funeral or burial for unreasonableness. There is, to the Board's knowledge, no such authority vested in the Director of Revenue.

We hold that the cost of the mausoleum is a "Funeral and burial expense" within the meaning of 30 Del. C. §1323, and as such is an allowable deduction from the decedent's estate, and as such the entire cost thereof is an allowable deduction therefrom.

James C. Ely

Nettie C. Reilly

Wm. J. Ely

Op. W. Ely

Harold R. Ely

Dated: 4/13/77

SYNOPSIS

DOCKET NO. 632

TAX SEGMENT:        INHERITANCE TAX  
                         Funeral Expenses

ISSUE:                        The question is whether the cost of a mausoleum shall be allowed as a full deduction from the gross estate where it can accommodate two bodies or whether only one-half of its costs should be allowed as a deduction.

TAB DECISION:            The Tax Appeal Board held for the petitioner in that 30 Del. C. § 1323 allows a deduction for funeral burial expense and does not disallow a deduction for any expense for funeral or burial for unreasonableness.

DECISION:                    For Petitioner

DECISION DATE:        April 13, 1977