TAX APPEAL BOARD OF THE STATE OF DELAWARE

JOHN N. FORTNER and MYRTLE M. MCKINNEY, Petitioners,	)	
v.	)	Docket No. 708
DIRECTOR OF REVENUE, Respondent.	)	

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

Charles M. Allmond, III, Esquire, Attorney for Petitioners.

John P. Fedele, Esquire, Attorney for Respondent.

DECISION AND ORDER

Joseph S. Yucht, Chairman:

The question for decision concerns the right of an individual whose name was added to a bank account for the convenience of the other joint owners, to renounce or disclaim any interest in said account, following the death of one of the joint owners so that no inheritance tax would be imposed against said renouncing or disclaiming individual.

The facts presented to the Tax Appeal Board were not in issue in that the parties filed a Stipulation of Facts, which in pertinent part is as follows:

1. John R. McKinney and Myrtle M. McKinney, his wife, opened joint savings account No. 000-492183 in the Wilmington Savings Fund Society on May 20, 1972.

2. On February 25, 1975, John N. Fortner, a nephew

of Myrtle M. McKenney, was added as a depositor or owner of said account.

3. John R. McKinney died on October 31, 1977.

4. John N. Fortner did not file a disclaimer renouncing his interest in said account with the Register of Wills, but did attach an Affidavit to the Inheritance Tax Returns filed as a result of the death of the said John R. McKinney, which said:

> "That all monies in Savings Account No. 492183 in Wilmington Savings Fund Society in the name of John R. McKinney or Myrtle McKinney or John N. Fortner were solely the funds of the said John R. McKinney and Myrtle M. McKinney and he makes no claim to said funds."

In addition to the aforesaid Stipulation of Facts, the Petitioners filed Affidavits from Myrtle M. McKinney and John N. Fortner with their opening brief stating that the said John N. Fortner was added to said account as joint owner for the convenience of Mr. and Mrs. McKinney and at their request to enable him to withdraw funds for them in the event they should not be able to go to the bank themselves and that said John N. Fortner has received no part of the funds in said account and that he and Mrs. McKinney regard the funds as her property.

The Director of Revenue, Respondent, after auditing the Inheritance Tax Return filed as a result of the death of said John R. McKinney, made an assessment of Inheritance Tax deficiency against the Estate of John R. McKinney as follows:

A.	Additional tax due -	$616.28
B.	Interest	49.30
C.	Total	$665.58

This assessment was based on a determination that a portion of said bank account belonged to said John N. Fortner as a result of the death of said John R. McKinney, and he as a purported beneficiary was taxed. In support of said conclusion, the Respondent argued that a renounciation is not consistent with the application card signed by the McKinneys and Mr. Fortner which in part states:

> "(The McKinneys and Mr. Fortner) do hereby agree with the Wilmington Savings Fund Society that the moneys deposited by us, or either of us, to this account, are for the joint and several use of us both, including the proceeds from any check or draft payable to the the order of either or both of us, irrespective of whether or not such check or draft shall bear the endorsement of either or both of us; is to be drawn upon by each or either of us, and any balance remaining unpaid at the death of either of us, shall belong to the survivor, and the said Society shall be under no liability or responsibility for any such payments to us, or either of us, jointly or severally. We hereby agree to the By-laws, rules and regulations governing Wilmington Savings Fund Society."

The Respondent further contends that Mr. Fortner did not file a disclaimer with the Register of Wills. Accordingly, said assessment was made.

The Petitioner contends that a renounciation or disclaimer is recognized in Delaware and that as a result of said renounciation there was no transfer upon which an inheritance tax could be based. In addition, he argued that consideration must be given to the intent of the parties, since they never intended Mr. Fortner to get any proprietary interest in the bank account.

Under the Delaware scheme of inheritance taxation, a

tax is levied on the transferee or beneficiary of the property and the amount of tax to be paid depends on the value of the property received and the relationship of the transferee or beneficiary to the decedent. 30 Del. C. §1322. It is specifically provided in said section that:

> "A tax computed at the following rates is hereby imposed on the transfer to each beneficiary..." (emphasis added.)

We interpret that to mean that if there is no transfer to the beneficiary then the Respondent may not impose any tax against said beneficiary. The fact that John N. Fortner disclaimed or renounced his right to receive any of the proceeds prior to the time the tax is due will deprive Respondent of its right to impose said tax since there is no transfer and no beneficiary. This is in accordance with the general law which provides that an heir may relinquish his rights by an express waiver or release. 26A C.J.S. Descent & Distribution, §64.

We considered the arguments made by Respondent and concluded that the language on the application card signed by, inter alia, John N. Fortner, with the bank to establish the bank account, may not be used by the State to establish ownership for inheritance tax purposes. Matter of McCall, Del. Ch., 398 A.2d 1210 (1978). Further, the fact that John N. Fortner did not file a disclaimer with the Register of Wills is not material, since the disclaimer was filed with the Respondent and indicated that no transfer was in fact made nor was there any intent that he would be a beneficiary of said account. (Naturally, the other joint tenant who received the proceeds from the account

would be taxed in accordance with the provisions of 30 Del. C. Ch. 13.) The specific statute relating to the taxation of jointly owned property, 30 Del. C. §1305 which was applicable as of the date of death of said John R. McKinney, exempts, inter alia, from the gross estate that property not received by a surviving joint tenant.

For the foregoing reasons we hold that a joint tenant may renounce or disclaim his right to inherit property and upon the act of renounciation or disclaimer the Respondent may not impose an inheritance tax upon the property so renounced or disclaimed. Accordingly, we reverse the decision of the Respondent in assessing additional taxes and interest of any tax being imposed against John N. Fortner as a beneficiary of said bank account.

IT IS SO ORDERED.

Dated: September 12, 1980

SYNOPSIS

DOCKET NO. 708

TAX SEGMENT: INHERITANCE TAX

ISSUE: The question concerns whether the right of an individual whose name was added to a bank account as joint tenant, for convenience only, may renounce or disclaim any interest in said account following the death of one of the joint tenants.

TAB DECISION: The Tax Appeal Board held that a joint tenant, for convenience only, may renounce or disclaim his right to the bank account after the death of one of the joint owners and; therefore, exempts him from the tax and interest so assessed by the Respondent.

DECISION: For Petitioner

DECISION DATE: September 12, 1980