

October 2, 1978 and at the time of her death was a resident of Kent County, Delaware.

2. The Petitioners were appointed Co-Executors of the Estate by the Register of Wills in and for Kent County, Delaware on October 6, 1978.
3. The Petitioners filed the Delaware Inheritance Tax Return (Form 600) with the Division of Revenue, State of Delaware by mail dated June 29, 1979 which return was received by the Division of Revenue on July 2, 1979. When Petitioners filed the above-mentioned return, a check was enclosed in the amount of \$25,000.00 in partial payment of the inheritance tax. The Petitioners sent a check in the amount of \$43,827.33 to the Division of Revenue by letter dated July 6, 1979 which was received by the Division of Revenue on July 9, 1979, which check represented the balance due of the inheritance tax shown on the Delaware Form 600.
4. The Petitioners received a bill from the Division of Revenue on April 14, 1980 for interest from July 2, 1979 to August 2, 1979 in the amount of \$438.25. This bill was paid on May 27, 1980.
5. The Director of Revenue issued a Certificate of Clearance for inheritance taxes to the Petitioners, showing the above-mentioned amount of tax and interest as having been paid, on May 30, 1980.
6. The Internal Revenue Service initiated an examination of the Federal Estate Tax Return (Form 706) on March 4, 1980, and issued a Report of Estate Tax Examination Changes (Form 1273) on September 25, 1980 which resulted in an increase in the taxable estate, for Federal estate tax purposes, in the amount of \$6,964.71. This change resulted in a net estate tax increase in the amount of \$2,298.34. This amount

was paid to the Internal Revenue Service by the estate and a Federal closing letter on the estate was issued by the Internal Revenue Service to the Petitioners on April 1, 1981.

7. The Petitioners final account was approved by the Court of Chancery on September 5, 1980.
8. At the request of the Respondent, Petitioners sent Respondent, on August 6, 1981, the Report of Estate Tax Examination Changes (Form 1273) issued by the Internal Revenue Service.
9. By letter dated January 27, 1982, which letter was received by the attorneys for the estate, the Respondent made an additional assessment of inheritance tax in the amount of \$435.33 and interest in the amount of \$134.95 for a total of \$570.28 against the estate based upon the above-mentioned Federal audit and the increase in the taxable estate which resulted from said audit. The Division of Revenue demanded payment of the above-mentioned sum upon receipt of the above-mentioned additional assessment of inheritance tax.
10. The Petitioners filed a written protest with the Director of Revenue, by letter dated February 4, 1982, which protest was denied by letter of Phillip Berger, Assistant Director, Records and Enforcement Group, of the Division of Revenue, dated March 16, 1982.
11. The Petitioners filed a petition for a redetermination of the deficiency with the Tax Appeal Board of the State of Delaware dated April 14, 1982.
12. By letter dated June 29, 1982,

the Petitioners paid the sum of \$587.69 which represented the above-mentioned additional inheritance tax of \$435.33 plus interest from July 2, 1979 to June 30, 1982 in the amount of \$152.36 to the Division of Revenue. Said letter was sent to John P. Fedele, Esquire, Deputy Attorney General for the Division of Revenue, and the letter sent with the above-mentioned payment constituted a claim for a refund of the enclosed tax and interest.

In addition to the foregoing a Stipulation to Amend the Petition was filed with the Tax Appeal Board (the Board) which amended the petition to the extent that it is a petition for a refund rather than a petition for a redetermination of deficiency since Petitioners paid Respondent the amount of the additional assessment and now seek a refund of said amount.

The Petitioners contend that the issuance of the Certificate of Clearance (Certificate) by Respondent acted as a discharge of all inheritance tax liability and is binding on Respondent. Petitioners further contend that if said Certificate does not so act as a discharge, then an Executor can never be assured that an estate can be closed without the possibility of incurring some personal liability if he closes out the estate and makes final distribution of the assets prior to three years and nine months from the date of death. In support of these contentions the Petitioners argued as follows:

- A. 30 Del. C. §1181(a) requires the Respondent to make any assessments as soon as practicable after the Return is filed and in this case

the assessment was made almost two and one half years later. This period of time is far beyond what is intended by the statute and thus it was not a valid assessment.

- B. The issuance by Respondent of the Certificate states that Petitioners have discharged their liability for Inheritance Tax to the State of Delaware by payment of the tax ascertained to be due and that Petitioners have a right to rely upon it and if the Respondent is not going to be bound by said Certificate prior to the running of the statute for making additional assessments, then the Respondent should not issue the Certificate until three years and nine months from the date of death. To hold otherwise indicates that the Certificate has no meaning.
- C. The Court of Chancery routinely relies upon the Certificate when it is filed with the Register of Wills pursuant to 12 Del. C. §2304. This Certificate is proof of the payment of Inheritance Tax by the estate and if all the other documents required to be filed with the Register of Wills have been filed, the Court of Chancery approves the Final Account and discharges the Executor.

The Respondent contends that the assessment of additional inheritance tax was made pursuant to 30 Del. C. §1351 which incorporates 30 Del. C. §1191(a) therein. 30 Del. C. §1191(a) provides:

"§1191. Limitations on Assessment.
(a) Except as otherwise provided in this Chapter, a notice of a proposed deficiency assessment shall be mailed to the taxpayer within 3 years after the return

was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the 3 year period or period otherwise fixed."

Respondent argues that in this case the Inheritance Tax Return was filed on June 29, 1979 and the Notice of Assessment was mailed on January 27, 1982, which is within the 3 year period. Thus it was a timely and valid assessment. Respondent also argues that Petitioners had a duty to file correct information on their return in the first place and if they had done so, no assessment of additional inheritance tax would have been made.

Respondent further contended that there is no statutory authority that the Certificate discharges all tax liability, including additional assessments based on additional assets reported after the Certificate was issued. The Certificate was based, Respondent argues, solely on information supplied in the Inheritance Tax Return and when the tax was paid based on the information filed, the Certificate was issued.

We conclude that under the Inheritance Tax law of the State of Delaware - 30 Del. C. Chapter 13 - the Respondent's position is correct and that a valid assessment was made by Respondent.

In Delaware, Petitioners were under a duty to "make a return with respect to the inheritance tax imposed" as required pursuant to 30 Del. C. §1341(a). In order to determine the tax imposed, Petitioners had to report the property that was includable in the gross estate as required in 30 Del. C. §1302, less the deductions provided in 30 Del. C. §1323, as stated in

30 Del. C. §1321. Accordingly Petitioners had a duty to include all the assets in the gross estate that were required by law to be included when they filed their return. The tax that is imposed pursuant to 30 Del. C. §1322 is imposed on the gross estate as determined by 30 Del. C. §1321.

The Petitioners filed an initial inheritance tax return timely and paid the tax imposed on the information contained therein. But they did not file a return with respect to the inheritance tax imposed by 30 Del. C. §1341(a), since they did not initially include assets in the gross estate upon which the tax imposed by 30 Del. C. §1322 could be computed and paid. Subsequently, after additional assets were reported as a result of an audit of the Federal Estate Tax Return, an additional assessment of inheritance tax was made by Respondent within the 3 year limit imposed by 30 Del. C. §1191(a). The fact that Respondent issued a Certificate after the initial return was filed and the tax paid but before the additional assets were reported does not act as an estoppel as contended by Petitioners since Petitioners had not fulfilled their legal obligation in properly reporting the assets in the gross estate.

We also conclude that Respondent did not violate the provisions of 30 Del. C. §1181(a) when he made his additional assessment on January 27, 1982 after receiving the information of the additional assets on or about August 6, 1981. The time for the running of the statute to determine whether or not Respondent examined Petitioners' return "as soon as practicable

after the return is filed" must be based on the date the complete return was filed and not the date the initial and incomplete return was filed. Since the Respondent's examination of Petitioners' return was made within 6 months of its filing, said examination is deemed to be within the requirements of 30 Del. C. §1181.

We therefore hold that the Respondent's additional assessment was timely and thus valid and that Petitioners' request for a refund of the additional assessment and interest paid is denied.

IT IS SO ORDERED

Joseph S. Yucht
Eric W. Cain
Walter B. Roberts
Nettie C. Seilly

Dated: January 13, 1984

(James C. Eberly, Sr., Esquire, Vice-Chairman did not participate in this decision.)

SYNOPSIS

DOCKET NO. 777

TAX SEGMENT: INHERITANCE TAX

ISSUE: Has Respondent violated the provisions of 30 Del. C., § 1351 in making an additional assessment of inheritance taxes after the Certificate of Clearance has been issued.

TAB DECISION: The Tax Appeal Board held that Respondent did not violate the provisions of 30 Del. C., § 1181 (a), incorporated in Chapter 13, § 1351, when an additional assessment was made. The Board concluded that the issuance of the Certificate of Clearance after the return was filed and the tax paid did not bar the Respondent from issuing an additional assessment since Petitioners had not fulfilled their legal obligation by not properly reporting the assets of the gross estate. Furthermore, the running of the statute to determine whether or not the Respondent examined Petitioners' return "as soon as practicable after the return was filed" must be based on the date the complete information was reported.

DECISION: For Respondent

DECISION DATE: January 13, 1984