

BEFORE THE TAX APPEAL BOARD OF THE STATE OF DELAWARE

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TAX APPEAL BOARD

WALTER C. BRANDT, EXECUTOR)
 OF THE ESTATE OF MARY L. ROUSE,)
)
 Petitioner,)
)
 v.)
)
 DIRECTOR OF REVENUE,)
)
 Respondent.)

Docket No. 850

Before: Joseph S. Yucht, Esquire, Chairman; John H. Cordrey, Esquire, Vice Chairman; Regina Dudziek, Harry B. Roberts, Jr., and David C. Eppes, Members.

Harry R. Smith, Jr., Esquire of Yost & Smith, P.A., for petitioners.

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

DECISION AND ORDER

David C. Eppes, CPA, Member. The parties have stipulated to the facts of the case as follows:

1. Mary L. Rouse was a blind, retired school teacher, who departed this life at the age of 87 on June 30, 1983, domiciled at the Methodist Manor House, Sussex County, Seaford, Delaware.

2. There came a time when Mary L. Rouse became mentally infirm and unable to care for her property, and the appointment of a guardian became necessary. Walter C. Brandt was appointed as Guardian of the Property of Mary L. Rouse, mentally infirm person, on January 21, 1983.

3. Pursuant to the Last Will and Testament of Mary L. Rouse, Walter C. Brandt was appointed as the Executor of the Estate of Mary L. Rouse, said Estate probated in Sussex County as Estate No. DLN 1717100.

4. The gross amount of the estate was \$188,338.10; the allocable share of deductions was \$11,562.06, leaving a taxable amount of \$176,776.04. Tax in the amount of \$24,784.16 was paid as the total inheritance tax due.

5. The final accounting of the Guardianship of Mary L. Rouse was accepted for record in July of 1984. The inheritance tax return was filed with the Division of Revenue, Wilmington, Delaware on or about July 26, 1984, and the \$24,784.16 inheritance taxes were paid.

6. Notice of penalty assessment (filed with Petition as Exhibit A) was mailed to the Petitioner on October 18, 1984; written protest contesting the proposed assessment was filed by Petitioner on November 8, 1984.

7. Notice of Determination dated September 18, 1985, denying the Petitioner's protest, was received on September 25, 1985 (filed with Petition as Exhibit B). The amount in controversy is penalty in the amount of \$4,956.83 and interest.

8. The Executor of the Estate, Walter C. Brandt, did not file an estate tax return within nine months from date of death as required by 30 Del. C. section 1343.

9. No Federal estate tax return was required, due to the size of the estate.

The petitioner presents two arguments supporting abatement of the penalty.

The first argument revolves on whether the assets of the guardianship transfer to the estate immediately upon the death of its ward. In its briefs and its oral arguments, the respondent raised numerous statutory and case law citations indicating that the guardianship is terminated at the time of the death of the ward and all assets become part of the ward's estate on this date. A return is then required to be filed within nine months from the date of death. The petitioner did not refute these citations. The petitioner's first argument is thereby denied.

In his second argument, the petitioner is asking the Board to abate the penalty based on good cause. He has not, however, shown any good cause in the facts presented. There were no extenuating circumstances and no real cause is shown. The petitioner had a sufficient amount of time to file the return and, if he felt the need, to contact appropriate individuals for guidance. The petitioner has not carried out his burden of demonstrating good cause and this argument is also refuted.

For these reasons, the decision of the Director of Revenue is affirmed.

John C. L.
Harry B. Roberts
Joseph S. Yucht
John H. Godfrey
Regina C. Rudzic