

TAX APPEAL BOARD OF THE STATE OF DELAWARE

WILMINGTON TRUST COMPANY
Executor of the Estate of
Walter S. Carpenter, Jr.,
Petitioner,

v.

DIRECTOR OF REVENUE,
Respondent.

DOCKET NO. 878

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

Thomas P. Sweeney, Esquire (argued), Richard G. Bacon, Esquire, William J. Wade, Esquire, and Charles J. Durante, Esquire, of Richards, Layton & Finger for Petitioners.

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

DECISION AND ORDER

John H. Cordrey, Esquire, Vice Chairman. The Board rendered a decision in the above-captioned matter on March 11, 1988. The parties stipulated to a modification of the Board's decision which was approved by the Board on April 8, 1988. Petitioner also filed a Motion, dated March 24, 1988, seeking an award of interest upon the judgment entered by the Board in favor of Petitioner. This is the Board's decision regarding that Motion.

The facts of this case have been set forth in the prior decision of this Board. The facts important to the present Motion are the Respondent paid the estate tax refund to Petitioner on June 30, 1986, and no interest was paid upon the refund. The Board has ordered Respondent to pay interest upon the refund calculated at the statutory rate from November 29, 1979 until June 30, 1986. Petitioner, by the present motion, seeks interest upon that interest from June 30, 1986 until paid by Respondent.

Petitioner first argues that "[g]enerally, interest is awarded on a claim against the State of Delaware where the State has 'either expressly or by reasonable

construction of a contract or statute, placed itself in a position of liability.' Department of Health and Social Services v. Crossan, Del.Supr. 424 A.2d 3, 4 (1980)." Petitioner's Memorandum at page 2. Although the quoted language is present in Crossan, it is there in the context of a deviation from the general rule, recognized by both the Supreme and Superior Courts, that "...if Delaware follows the general law of sovereign immunity, the State is not obliged to pay interest on the amount of the judgment. Accordingly, some principle or rationale must be found in the pertinent law before a Delaware Court may order the State to pay interest..." Id. at pg. 4.

Petitioner then argues that the State has waived its sovereign immunity by 30 Del.C. Section 1509 and should therefore be required to pay interest upon the interest wrongfully withheld. It is true that the State has waived its sovereign immunity as to interest upon estate tax refunds through 30 Del.C. Section 1509, but "[a] waiver of sovereign immunity extends only to the provisions of the Statute waiving it, and a 'general waiver of immunity will not be implied from a restricted one.'" Id. at pg. 5. Thus the issue is whether Section 1509 provides a waiver of sovereign immunity as to payment of interest upon interest. Section 1509 in pertinent part provides:

When any amount has been erroneously paid as Delaware tax or interest on such tax, the Secretary...may refund...such tax or interest so paid...Interest on such refunds shall be allowed at the rate of 1% per month...

The statute refers to "Delaware tax or interest on such tax" and permits interest upon such "refunds". The phrase "interest on such tax" refers to the interest paid by the taxpayer upon the taxpayer's failure to timely pay the tax due. It does not refer to interest due from the State for its failure to pay a refund timely. The key phrase of the statute is "amount has been erroneously paid", that phrase does not describe the interest due from the State if it fails to timely refund taxes or interest erroneously paid by the taxpayer. The waiver of sovereign immunity is to pay interest upon the amounts erroneously paid, but the waiver does not extend to paying interest upon that interest.

As the statute does not permit interest upon the interest which the State failed to pay, the State has not waived its sovereign immunity as to this claim. The failure of the State through Section 1509 to waive sovereign immunity results in an inability to press this claim.

Petitioner's argument, quoting Moskowitz v. Mayor and Council of Wilmington, Del.Supr., 391 A.2d 209 (1978), that the interest is awarded as a matter of right is applicable only where there are litigants who do not have the rights afforded under the doctrine of sovereign immunity or where those rights have been generally waived. There is not a general waiver as there was by the municipality in Moskowitz, nor is there a specific waiver by statute as was discussed above, therefore the circumstances required under Moskowitz and Crossan to order the State to pay interest upon the interest are present in the instant case.

For the aforesaid reasons, the Motion of Petitioner to modify this Board's prior decision is hereby denied and the prior decision, as modified on April 8, 1988, is affirmed.

IT IS SO ORDERED this 13th day of May, 1988.

Joseph L. Yach

John H. Corday

Regina C. Dondjice

Paul C.

Harold B. Roberts

✓
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MAR 25 1988
TAX APPEAL BOARD

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)	
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v.)	Docket No. 878
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)	
Respondent.)	

JOINT MOTION FOR MODIFICATION OF DECISION

COME NOW the Petitioner and Respondent in accordance with Rule 7d to move that the Tax Appeal Board modify its decision dated March 11, 1988 in order that it accurately reflect the proper amount which, upon entry of a decision in favor of Petitioner, should be entered as the principal amount of the award thereof.

For the reasons set forth in the attached Stipulation of the parties, the amount of the award to Petitioner should be \$185,853.57.

WHEREFORE, Petitioner and Respondent jointly move the Tax Appeal Board to modify its decision dated March 11, 1988, to strike the amount of the award to Petitioner set forth therein, and to substitute in lieu thereof the amount of \$185,853.57.

Date: March 24, 1988



Thomas P. Sweeney
Richard G. Bacon
William J. Wade
Charles J. Durante
Richards, Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
Counsel for Petitioner

Date: 3/25/88



Joseph Patrick Hurley, Jr.
Deputy Attorney General
820 North French Street
Wilmington, Delaware 19801
Counsel for Respondent

TAX APPEAL BOARD OF THE STATE OF DELAWARE

WILMINGTON TRUST COMPANY,)
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STIPULATION

PETITIONER AND RESPONDENT, by their attorneys, stipulate to the veracity of the following facts in connection with their Joint Motion for Modification of Decision of this date before the Tax Appeal Board.

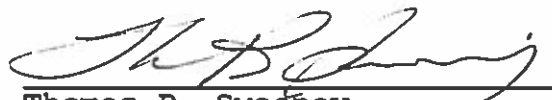
1. For purposes of this proceeding, Petitioner's payment of \$693,093.60, made on November 29, 1979 is composed of two parts: \$361,002.33, the amount which was refunded to Petitioner as of June 30, 1986; and \$332,091.27, which is the amount that was not required to be refunded to Petitioner.

2. The portion of the 1979 payment which was refunded to Petitioner in 1986 represented an overpayment of Delaware estate tax ("overpayment"). The Tax Appeal Board has determined that Respondent should pay interest on the overpayment. The Tax Appeal Board has correctly determined that interest at the statutory rate on the overpayment, calculated from November 29, 1979 to June 30, 1986, is \$288,801.36.

3. The portion of the 1979 payment which was not refunded to Petitioner in 1986 represents an amount which was due Respondent on May 2, 1977, the date on which Petitioner timely filed its estate tax return, but which was not paid until November 29, 1979 (the "underpayment"). Petitioner owes Respondent interest at the statutory rate on the underpayment for the period from May 2, 1977 to November 29, 1979. The amount of this interest is \$102,948.29.

4. The amount of the judgment in favor of Petitioner, of \$288,801.36, should be offset by the interest due Respondent set forth in paragraph 3 hereof, with the result that the amount of the judgment which should result from the decision of the Tax Appeal Board in favor of Petitioner in this action should be \$185,853.57, which was the amount which Petitioner claimed in its petition to the Board of August 28, 1986.

Date: March 24, 1988



Thomas P. Sweeney
Richard G. Bacon
William J. Wade
Charles J. Durante
Richards, Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
Counsel for Petitioner

Date: 3/25/88



Joseph Patrick Hurley, Jr.
Deputy Attorney General
820 North French Street
Wilmington, Delaware 19801
Counsel for Respondent

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v.) Docket No. 878
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DIRECTOR OF REVENUE,)
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Before: Joseph S. Yucht, Esquire, Chairman; John H. Cordrey, Esquire, Vice Chairman; Harry B. Roberts, David Eppes and Regina Dudzic, Members.

Thomas P. Sweeney, Esquire, Richard G. Bacon, Esquire, William J. Wade, Esquire and Charles J. Durante, Esquire of Richards, Layton & Finger for Petitioners.

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

MODIFICATION OF DECISION AND ORDER

HAVING RECEIVED the Joint Motion for Modification of Decision timely filed by Petitioner and Respondent, and the Stipulation attached thereto, and having considered the said Motion, the Board hereby modifies its decision and order of March 11, 1988, to strike the final paragraph thereof, and to substitute in lieu thereof the following:

In the opinion of the Board, the Respondent is required to pay interest upon funds erroneously paid by Petitioner. The decision of the Director of

upon funds erroneously paid by Petitioner. The decision of the Director of Revenue is reversed and judgment is entered against Respondent in the amount of \$185,853.57, which is due Petitioner as interest calculated on the portion of the payment of November 29, 1979, which was refunded to Petitioner, at the statutory rate from November 29, 1979 to June 30, 1986, amounting to \$288,801.86, less the interest due from Respondent on the portion of the payment of November 29, 1979, which was not refunded to Petitioner, at the statutory rate from May 2, 1977 to November 29, 1979, amounting to \$102,948.29. Petitioner is awarded said sum of \$185,853.57, with interest thereon at the rate provided in 15 Del.C. 1509, running from June 30, 1986, to the final day of the month before the award decreed herein is paid by Respondent.

IT IS SO ORDERED, this 8th day of April,

1988.

Joseph S. Yucht
Joseph S. Yucht, Chairman

John H. Cordrey
John H. Cordrey, Vice Chairman

Harry B. Roberts
Harry B. Roberts, Member

David Eppes, Member

Regina C. Dudzic
Regina Dudzic, Member

✓

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

DECISION

John H. Cordrey, Esquire, Vice Chairman. The parties have stipulated to the facts of the case which are contained in the Stipulation of Facts attached hereto as "Exhibit A" and incorporated into this decision by reference. To summarize those facts, Petitioner filed an Estate Tax Return with the Respondent in 1977. In 1979, upon receiving a notice of deficiency from the Commission of Internal Revenue of the United States (hereinafter "IRS"), Petitioner paid to Respondent the additional monies (\$693,093.60) which would be due Respondent if the IRS notice of deficiency were correct. On the same day that Petitioner paid the additional funds (November 29, 1979), Petitioner requested Respondent to return all of the funds paid, claiming the IRS notice of deficiency was in error. On May 14, 1986 the contestation of the IRS notice of deficiency was settled with the IRS, on the same day Petitioner notified Respondent of the settlement, and

requested repayment of the tax incorrectly paid. On June 30, 1986, Respondent paid Petitioner \$361,002.33, representing the taxes erroneously paid, no funds being paid for interest. Petitioner has filed this appeal seeking interest on the funds paid Respondent from the date of payment.

The central issue upon which this case is concerned is the interpretation of 30 Del.C. Section 1509. That statute in pertinent part provides:

When any amount has been erroneously paid as Delaware tax or interest on such tax, the Secretary of Finance, on satisfactory proof of such erroneous payment and upon the recommendation of the Department of Finance, may refund and pay the executor, administrator, trustee or person who has paid any such tax or interest in error the amount of such tax or interest so paid. All applications for the repayment of such tax shall be made within 3 years from the date of payment. In case of the pendency, at the time of payment or at any time during the 3-year period, of litigation with respect to the liability for the federal estate tax or for the Delaware estate tax of the estate on behalf of which such payment for the Delaware estate tax has been made, application for the repayment of such amount erroneously paid as the Delaware estate tax or interest may be made at any time within 6 months after the final determination of such litigation. Interest on such refunds shall be allowed at the rate of 1% per month, or fraction thereof, from the date that the application was received by the Department of Finance; except that no interest shall be allowed if refund is made within 90 days after the date that the application is received by the Department of Finance.

Petitioner claims that the request for refund of the entire amount paid to Respondent constitutes an application for a refund, and, as the refund was paid more than 90 days after the application was made (actually some six years later), Petitioner is entitled to interest upon the refund.

* Both parties state that the time frame to avoid interest is 45 days, but the statute provided 90 days until 65 Del.Laws, c.164 (effective for decedents dying after July 1, 1985) was approved.

Respondent contends that the "application" for a refund is not complete until Respondent also receives "satisfactory proof of such erroneous payment," which did not occur until May 14, 1986. As Respondent made the payment within 90 days of that date, there is no interest due Petitioner.

At the outset, it is agreed by both parties that the words "refund," "proof," and "application" are not defined by statute, therefore, the words will be given their usual and normal meaning. The parties also agree that as conditions precedent to the duty of Respondent to pay the refund to Petitioner, Petitioner must: 1) make timely application for the refund, and 2) provide satisfactory proof of the erroneous payment. It is uncontroverted that these two conditions were not met prior to May 14, 1986, or that the refund was made within 90 days of the satisfaction of these conditions. The central disagreement between the parties is when the "application" was made.

A review of the history of the statute in question is illuminating. 30 Del.C. Section 1509 has evolved from its form in 1935 through the last change material to our inquiry which occurred in 1970. In 1935, there was no provision for interest, merely repayment of the erroneously paid tax. In 1937, the legislature amended the statute to permit the filing of an application for refund after the previous 3-year time limit, if litigation concerning the amount was in process and the application was made within 6 months of the final determination of the litigation. In 1951, the first provision regarding interest was added, allowing interest on the refund "...from the date the payment was made." Finally, in 1970, the present terminology was added mandating interest on the refund "...from the date the application was received..." unless payment was made within 90 days of the receipt of the application.

Respondent contends that the present situation has been specifically contemplated by the statute when it provides that the application "...may be made at any time within six months after the final determination of such litigation." Thus, Respondent argues, the "application" (i.e. satisfactory proof) is to be submitted within six months of the final determination of the litigation. Respondent's argument fails to address the question of how the Legislature specifically provided this section to negate any duty to pay interest when at the time this section was added there was no obligation to pay interest; obviously this is not the case. The section is also permissive (using the word "may") as to the filing date, not prohibiting a filing of an application under the other portion of the statute "...made within 3 years from the date of payment." This portion of the statute does not answer the issue of when the application is made.

Respondent's next contention is that an "application" for a refund must contain or be equated to "satisfactory proof of erroneous payment" as Respondent may not pay the refund without such "proof." As stated previously, the words are not defined by the statute and will therefore be given their ordinary meaning in the context that they are used. "Application" is defined by Black's Law Dictionary, revised Fourth Edition, as: "A putting to, placing before, preferring a request or petition to or before a person. The act of making a request for something." "Proof" is defined by Black's, supra., as: "The effect of evidence; the establishment of a fact by evidence." The two words have different meaning and in the case at bar the words define two events which took place at different times. The "application" or request for refund was made on November 29, 1979, and the "proof" or establishment that the refund was due Petitioner occurred on May 14, 1986.

An additional problem with Respondent's argument that the phrases are either synonymous or subsumed within one another is the general premise that the Legislature in choosing to use different words, especially within the same statute, intended for those words to have different meanings. See, Giuricich v. Emtrol Corp., Del.Supr., 449 A.2d 232 (1982). The Legislature provided that payment of the refund could not occur until receipt of "satisfactory proof of such erroneous payment." In determining if the interest should be paid and from what date it should be computed, the Legislature used the word "application." The Board cannot conclude that the Legislature intended "satisfactory proof of such erroneous payment" and "application" to mean the same event. In the present case, these two events occurred at different times, entitling Petitioner to interest from the date Petitioner's application was received by Respondent.

In the opinion of the Board, the Respondent is required to pay interest upon the funds erroneously paid by Petitioner. The decision of the Director of Revenue is reversed and judgment is entered against Respondent in the amount of \$288,801.86, comprised of the interest at the statutory rate from November 29, 1979 to June 30, 1986.

IT IS SO ORDERED, this 11th day of March, 1988.

Joseph S. Yucht

John H. Cordrey

Regina C. Rudzina

Paul L.

Harold B. Kautsky

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TAX APPEAL BOARD
OF THE STATE OF DELAWARE

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Walter S. Carpenter, Jr.)
)
Petitioner,)
)
v.)
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DIRECTOR OF REVENUE)
)
Respondent.)

Docket No. 878

STIPULATION OF FACTS

IT IS HEREBY STIPULATED AND AGREED, by and between Petitioner, and Respondent, through their respective undersigned attorneys, that the following facts shall be taken as true; provided, however, that this Stipulation does not waive the right of either party to introduce other evidence not in variance with the facts herein stipulated or to object to the introduction into evidence of any such facts on the grounds of immateriality or irrelevancy.

1. Petitioner, a Delaware corporation, is the duly qualified Executor of the Estate of Walter S. Carpenter, Jr., who died February 2, 1976, a resident of New Castle County, Delaware, leaving a Last Will and Testament

which was admitted to probate by the Register of Wills for New Castle County. Letters testamentary were granted to Petitioner on February 3, 1976.

2. On May 2, 1977, Petitioner filed an estate tax return for the Estate of Walter S. Carpenter, Jr. with the Respondent. On the same date, Petitioner made payment to the Respondent of the estate tax shown to be due in the return in the amount of \$1,088,043.28.

3. On October 12, 1979, the Commissioner of Internal Revenue of the United States (the "Commissioner") issued a Statutory Notice of Deficiency ("Notice") which alleged a deficiency in federal estate tax of \$1,800,170.09.

4. The issues raised by the Commissioner's Notice were: (a) the value of certain assets included in the decedent's gross estate; and (b) whether certain gifts made by the decedent during his lifetime were required to be included in his gross estate.

5. On November 29, 1979, Petitioner paid to the Respondent additional estate tax in the amount of \$693,093.60. This payment to the State of Delaware represented amounts subject to credit for state death taxes under Section 2011 of the Internal Revenue Code of 1954, as amended, with respect to the deficiency in federal estate tax that was alleged by the Commissioner.

6. The payment referred to in paragraph 5 was accompanied by a transmittal letter attached hereto and incorporated herein by reference as Exhibit A.

7. Also on November 29, 1979, Petitioner filed a claim with the Respondent for the refund of the additional estate tax paid, asserting such sums to have been illegally, erroneously and/or excessively collected. Petitioner applied for this refund on a Claim for Revision form provided by the Respondent. On November 29, 1979, the Respondent received the completed refund claim, a copy of which is attached hereto as Exhibit B and incorporated herein by reference.

8. On January 31, 1980, Petitioner paid to the Internal Revenue Service a sum representing the deficiency asserted by the Commissioner, less the credit for the amount paid to the State of Delaware. Simultaneously therewith, Petitioner filed a timely claim for refund with the Internal Revenue Service for the entire amount of the additional federal estate tax claimed in the Commissioner's Notice. Petitioner's claim was denied and Petitioner thereafter filed an action for the refund of the entire amount of the assessment in the United States District Court for the District of Delaware.

9. On May 14, 1986, Petitioner's action for refund was settled by agreement with the United States.

Pursuant to the settlement, the Internal Revenue Service issued a refund in the amount of \$691,678.44, plus \$1,056,926.64 in interest.


10. On May 14, 1986, Petitioner, through its attorney, notified the Respondent of the resolution of the litigation by letter, which is Exhibit C attached hereto and incorporated herein by reference. Petitioner, referring to the position it took in Exhibit B, demanded refund of the Delaware estate tax erroneously paid to the Division, reduced to the principal amount of \$361,002.33. Petitioner further demanded interest on its claim, at the rate provided in 30 Del.C. §1509, from the date of payment on November 29, 1979. (A true copy of this letter dated May 14, 1986 is attached hereto as Exhibit C.)

11. Respondent issued a check to Petitioner on June 30, 1986, in the amount of \$361,002.33, which represented a refund of the full amount of erroneously paid estate tax, but which check included none of the interest, for which Petitioner made its demand. Respondent's check was issued within 45 days from the date of Respondent's receipt of Exhibit C.

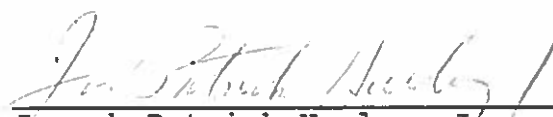
12. By letter dated July 29, 1986, the Director rejected Petitioner's demand for refund of interest on the erroneously paid estate tax.

13. Neither on November 29, 1979, nor at any time since has Respondent published a form which is specifically denoted for use in applications for refund of estate tax.

14. Interest at the rate of 1 percent per month, provided under 30 Del.C. §1509, on \$361,002.33, from November 29, 1979, to June 30, 1986, amounts to \$288,801.86.



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Richard G. Bacon
William J. Wade
Charles J. Durante
Richards, Layton & Finger
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P.O. Box 551
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Counsel for Petitioner



Joseph Patrick Hurley, Jr.
Deputy Attorney General
Division of Revenue
820 French Street
Wilmington, Delaware 19801
Counsel for the Respondent

WILMINGTON TRUST COMPANY
WILMINGTON, DELAWARE

(302) 428-7121

A/C #11615
November 29, 1979

Division of Revenue
Estates and Trusts Unit
20 French Street
Wilmington, Delaware 19801

RE: Estate of Walter S. Carpenter, Jr.
SSN: 221-01-3570

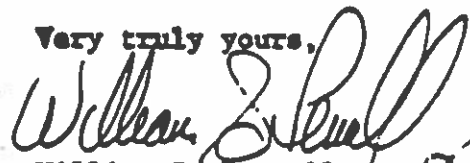
Gentlemen:

We are enclosing herewith an amended Delaware Estate Tax return for the above estate and our Trust Department check to the order of the Division of Revenue in the amount of \$693,093.60 in full payment of the additional Delaware estate tax which we calculate to be due.

Also enclosed is a claim for revision indicating a refund of Delaware estate tax in the amount of \$693,093.60. This claim is being filed due to the fact that the additional Delaware estate tax is attributable to an additional federal state death tax credit which resulted from a proposed federal estate tax deficiency by the Internal Revenue Service, and is now being contested by the executor.

Kindly acknowledge receipt of the enclosures by signing and returning the enclosed copy of this letter of transmittal and the voucher accompanying the check.

Very truly yours,



William S. Pennell
Trust Officer

HSP/cvt

Enclosures

CC: Mr. Thomas T. Sweeney, Esq.
Mr. Lewis B. Hyman, Jr.

RECEIVED
DIVISION OF REVENUE

Receipt of this letter and the contents as listed is hereby acknowledged.

Signature

Date

CLAIM FOR REVISION

(Execute Separate Form for Each Taxable Year)

- () Abatement of Tax Assessed
- XX) Refund or Credit of Taxes Illegally, Erroneously or Excessively Collected**

(TYPE) Estate of Walter S. Carpenter, Jr., Wilmington Trust Company, Executor
(Name of Taxpayer)

(PRINT) Tenth and Market Streets, Wilmington, Delaware 19801
(Street, City or Town, State and Zip Code)

Your E. I. Social Security Number 51-6146761 Decedent's 221-01-3570 Social Security Number 221-01-3570
(If joint return)

1. February 2, 1976 Date of Death November 29, 1979 Date of Payment

2. Kind of Tax Estate 5. Amount to be abated \$ N/A

3. Amount of assessment \$ N/A 6. Amount to be refunded or credited \$ 693,093.60
(if income tax complete computation below)

The claimant believes that this claim should be allowed for the following reasons: (Attach additional sheet if needed)
Claimant previously paid the sum of \$1,088,043.28 in estate tax. The entire additional payment of \$693,093.60 is solely attributable to the allowance of an identical amount as an additional credit under §2011 of the Internal Revenue Code. This increased credit was occasioned by an incorrect assessment of a federal estate tax deficiency by the Internal Revenue Service. Claimant is contesting this federal estate tax deficiency and expects to do so successfully so that there will ultimately be no increase in the credit allowable for state death taxes. Claimant is accordingly entitled to a refund of the Delaware estate tax previously paid by virtue of the increase in said credit.

COMPUTATION OF INCOME TAX REFUND

- 1. Tax withheld \$ _____
- 2. Estimated Tax Paid \$ _____
- 3. Tax paid with original return \$ _____
- 4. Any additional income tax paid \$ _____
- 5. Total tax paid (add lines 1 through 4) \$ _____
- 6. Less: Your computation of correct tax. \$ _____
- 7. Amount of overpayment \$ _____
- 8. Amount previously refunded \$ _____
- 9. Net overpayment (enter in item 6 above) \$ _____

Under penalty of perjury, I/we declare that I/we have examined this claim, including accompanying schedules and statements, and to the best of my/our knowledge and belief, it is true, correct, and complete.

Dated November 29, 1979 Signed: Wilmington Trust Company, Executor

By: [Signature] Taxpayer

Lewis B. Hyman, Jr.
Vice President

RICHARDS, LAYTON & FINGER

ONE RODNEY SQUARE

P O BOX 551

WILMINGTON, DELAWARE 19899

TELEPHONE (302) 658-6541

TELECOPIER (302) 658-6548

May 14, 1986

LOUIS J. FINGER
EDMUND N. CARPENTER, II
JAMES T. MCKINSTRY
E. NORMAN VEASEY
MAX S. BELL, JR.
RICHARD J. ABRAMS
CHARLES F. RICHARDS, JR.
THOMAS P. SWEENEY
PIERRE S. DUPONT IV
ROBT. H. RICHARDS, III
R. FRANKLIN SALOTTI
MARTIN I. LUSAROFF
RICHARD G. ELLIOTT, JR.
WENDELL FENTON
ALLEN M. TERRELL, JR.
GLENN C. KENTON
RICHARD G. BACON
STEPHEN E. HERRMANN
JULIAN H. BAUMANN, JR.
DANIEL L. KLEIN
DONALD A. BUSSARD
WILLIAM J. WADE
THOMAS L. AMBRO

KEVIN G. ABRAMS
PAUL M. ALTMAN
THOMAS A. BECK
C. STEPHEN BIGLER
WILLIAM W. BOWSER
CHARLES M. COCHRAN, III
TERRY D. CRAIN
LORI NOVAK DONATELLI
CHARLES J. DURANTE
JESSE A. FINKELSTEIN
EMILY B. HORTON
ROBERT J. KRAPP
MICHAEL M. LEDYARD
ERIC A. MAZIE
VICTOR H. MELLON
DARRELL J. MINOTT
SAMUEL A. NOLEN
JOHN A. PARKINS, JR.
NATHAN B. PLOENER
GWEN E. POSPISIL
JOHN J. SCHREPPLE, II
ROBERT L. SYMONDS, JR.
GREGORY V. VARALLO
ROBERT W. WHETZEL
GREGORY P. WILLIAMS
HELEN L. WINSLOW

Mr. Robert L. Karshner
Inheritance and Estate Tax Section
Division of Revenue
820 N. French Street
Wilmington, DE 19801

Re: Wilmington Trust Company, Executor of the Estate
of Walter S. Carpenter, Jr. - Claim for Refund
of State of Delaware Estate Tax

Dear Bob:

On November 29, 1979, the Wilmington Trust Company paid the Division of Revenue additional Delaware estate tax on an amended return of \$693,093.60. Contemporaneous with that payment, the Wilmington Trust Company filed a Claim for Revision indicating that the entire amount, plus interest thereon, should be refunded to the Wilmington Trust Company, and that the additional payment was due to an assessment of additional Federal estate tax liability which was being contested.

The Wilmington Trust Company then commenced to file a Claim for Refund of Federal estate tax, which in turn was denied, and filed a refund suit in the United States District Court for the District of Delaware. That case has now been settled with the U.S. Justice Department with a Stipulation of Dismissal in accordance with the settlement being filed either May 13, 1986, or May 14, 1986.

In view of that course of action, the Wilmington Trust Company is now proceeding with the Division of Revenue to collect its refund of taxes erroneously paid pursuant to the provisions of 30 Del. C. §1509, since it is entitled to pursue its rights pursuant to the original Claim for Refund filed on November 29, 1979, and the pursuit of this matter is within six months after the final determination of the Federal estate tax litigation.

Mr. Robert L. Karshner
May 14, 1986
Page Two

The Federal estate tax litigation has been settled on the following basis:

Basis of Settlement of Federal Estate Tax Litigation

(1) The value of Christiana Securities Corporation common stock would be discounted at 11.5 percent.

(2) The Government would concede that the 1973 gifts are not gifts in contemplation of death, with the value of those gifts being \$309,000.

(3) The taxpayer would concede that the value of 60 percent of the gifts made in 1974 were gifts in contemplation of death, and the value of the gifts conceded as being in contemplation of death is approximately \$1,927,620.

(4) The taxpayer would concede that the 1975 gifts valued at \$217,000 were made in contemplation of death.

(5) The Government would concede that the taxpayer is entitled to claim as a deduction an additional \$113,000 as Executor's fees.

(6) The Government would concede that the taxpayer is entitled to claim as attorneys' fees a total of \$150,000, plus disbursements totalling \$1,736.01. Legal fees which have been paid to Richards, Layton & Finger to date, which are deductible for estate tax purposes, are the following:

	<u>Fees</u>	<u>Disbursements</u>
9/21/79	\$12,600.00	\$ 58.45
3/31/82	7,800.00	104.56
6/9/83	7,900.00	22.01
7/30/84	30,000.00	55.95
12/18/84	42,500.00	738.40

The balance of the fees and disbursements are yet to be paid, but have been agreed upon and will be allowed as a deduction in the accounting to be filed by the Wilmington Trust Company with the Register of Wills for New Castle County.

(7) The taxpayer is entitled to deduct an additional Register of Wills fee for New Castle County of approximately \$4,321.

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(8) Collateral Agreements will be signed by the Trustee of the revocable and irrevocable trusts, and the eight donees of the Conoco and U.S. Steel stock fixing the basis of the remaining shares of Du Pont stock, including that received upon conversion of Conoco stock and the U.S. Steel stock.

From the foregoing, you can tell that the new state death tax credit allowable was \$1,420,134.55. A copy of this calculation is attached. The state death tax actually paid was \$1,781,136.88. When \$1,420,134.55 is subtracted from \$1,781,136.88, the result is an overpayment of State of Delaware estate tax of \$361,002.33.

Accordingly, there should be refunded to the Wilmington Trust Company, as Executor of the Estate of Walter S. Carpenter, Jr., \$361,002.33, plus interest thereon from the date of payment, which was the date of the filing of the Claim for Refund, November 29, 1979. As we understand the provisions of 30 Del. C. §1509, interest should be paid at the rate of one percent per month or fraction thereof from the date the application was received by the Division of Revenue, which was, in accordance with the enclosed copy of the original transmittal letter of William S. Pennell, November 29, 1979. Also enclosed is a copy of the original Claim for Revision which was filed in the event you are unable to find the original on file at the Division of Revenue.

In addition, we are enclosing a copy of the original Complaint which was filed in the United States District Court for the District of Delaware on December 8, 1983, a copy of a letter dated January 22, 1986, from Milan D. Karlan, Acting Chief, Office of Review of the Tax Division of the U.S. Justice Department, reflecting the basis upon which the settlement was agreed, and a xerox copy of the Stipulation of Settlement signed by the undersigned and Stuart D. Gibson, the trial attorney from the Tax Division of the Justice Department, which has been submitted to Richard G. Andrews for signature by the U.S. Attorney's Office and filing with the United States District Court for the District of Delaware.

If you have any questions or comments with respect to the foregoing or the enclosed documentation, please do not hesitate to contact the undersigned.

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Please acknowledge receipt of the enclosed documentation
on a copy of this letter attached for that purpose.

Yours sincerely,



Thomas P. Sweeney

TPS/pjf

Enclosures

cc: Edmund N. Carpenter, II, Esquire
Mr. Lewis B. Hyman, Jr.
Mr. William S. Pennell
Richard W. Nenno, Esquire
Richard G. Bacon, Esquire
William J. Wade, Esquire

CERTIFIED MAIL (105200097)
RETURN RECEIPT REQUESTED