STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of RICHARD J. LACKS, SR.,
Deceased.

MARY PATRICIA TEETS, RICHARD J. LACKS, JR., and KURT E. LACKS,

Petitioners-Appellees,

v

DEPARTMENT OF TREASURY,

Respondent-Appellant.

FOR PUBLICATION
March 4, 2003
9:05 a.m.

No. 225414
Kent Probate Court
LC No. 99-167543-IE

Updated Copy
May 9, 2003

Before: Wilder, P.J., and Griffin and Smolenski, JJ.

GRIFFIN, J.

In regard to the estate of Richard J. Lacks, Sr., deceased, respondent Michigan Department of Treasury appeals as of right an order of the probate court holding that the "the state is not entitled to any state estate tax if no estate tax is due the federal government as a result of the federal TPT [tax on prior transfers] credit." We affirm.

I

The decedent died on May 13, 1999, and was survived by his wife. His father, John P. Lacks, had died one month earlier on April 14, 1999. On January 14, 2000, the estate of John P. Lacks (JPL estate) filed federal, state of Michigan, and state of Florida estate tax returns, reflecting a sizeable taxable estate with resulting tax liability payable to the federal government, Florida, and Michigan. After payment of certain specific gifts by the JPL estate, the Richard J. Lacks estate (RJL estate) inherited fifty percent of the remaining assets of the JPL estate. By virtue of the inheritance, the RJL estate was charged with a fifty percent share of the taxes payable in the JPL estate.

The federal, Michigan, and Florida estate tax returns for the RJL estate were due on February 13, 2000. Because of the assets received in the RJL estate from the JPL estate, and because Richard Lacks' widow filed a disclaimer of a portion of the assets of the RJL estate, the RJL estate became subject to federal estate tax.[1] Because John Lacks and Richard Lacks died within two years of each other (indeed only a month apart), and because the federal estate tax liability to the RJL estate was attributable to the assets received from the JPL estate, the RJL estate qualified for a one hundred percent "tax on prior transfers" (TPT) federal tax credit under 26 USC 2013. The TPT credit calculated under § 2013 was greater than the federal tax liability of the RJL estate, and thus eliminated any federal estate tax payable by the RJL estate.

Petitioners, Mary P. Teets, Richard J. Lacks, Jr., and Kurt E. Lacks, brought the present action seeking a declaration that pursuant to the governing provision of the Estate Tax Act, MCL 205.232(1), petitioners were not liable for Michigan estate taxes where the application of the federal TPT credit to the RJL estate eliminated the estate's federal estate tax liability. Respondent argued that the unambiguous language of the statute required payment of the Michigan estate tax, even though the federal tax liability had been eliminated by virtue of the federal TPT credit. After a hearing on the petition, the probate court ruled in favor of petitioners. Respondent now appeals.

II

Petitioners and the amici curiae note that in 1993 the Legislature replaced Michigan's inheritance tax with a new estate tax.[2] Michigan's current estate-tax scheme is commonly described as a "pick up" estate tax. As explained by the amici:

> A pick up estate tax is one that generally does not increase the amount of an estate's combined Federal and state death tax liability over the amount of the estate's Federal estate tax liability, determined without regard to the state death tax credit. Instead, a pick up tax allows the state to take (to "pick up") all or a portion of the Federal estate tax liability that qualifies for the state death tax credit. See, *e.g.*, 42 Am Jur 2d, Inheritance, Estate, and Gift Taxes, § 244, at 452 (1969). . . . In other words, a pick up tax is generally limited to a portion of the

---

[1] The RJL estate plan contained a marital deduction formula which, absent the filing of the disclaimer, would have reduced the federal estate tax liability to zero.

[2] We note that in most respects, the estate tax statutes of Michigan and Florida are similar. In this regard, the amici argue:

> In the days of the Michigan inheritance tax, it cost more to die in Michigan than in Florida. Florida was our principal competitor in the death tax arena for the residency of Michigan citizens. The Michigan estate tax was modeled after the Florida estate tax in order to make Michigan more competitive with Florida.

dollars that would, in the absence of the state estate tax, be paid as Federal estate tax.

In *Estate of Fasken*, 19 Cal 3d 412, 417-418; 563 P2d 832 (1977), the California Supreme Court provided a succinct discussion of the history of the "pick up" tax and its development as a response to the estate-tax provisions of the Internal Revenue Code:

> Since 1916 section 2001 of the Internal Revenue Code has imposed a federal estate tax on all specifically nonexempt (see [IRC] §§ 2011-2014, 2052-2056) property owned by persons residing in the United States at the time of their death. In the early years following enactment of the federal estate tax, a backlash of opposition emerged in Congress as among various other high placed government officials to the very concept of the federal government taxing a person's property at death. Concurrent with this attitude of general resentment for the federal government's incursion into an area providing "a traditional source of revenue to the states" (Turner, *The Gross Estate and the Death Tax Credit* (1971) 28 Wash & Lee L Rev 254, 257 . . .), several states nevertheless repealed long-standing death tax statutes, "this being done to induce wealthy persons to move within their borders." (Cogburn[, *The Credit Allowable Against the Basic Federal Estate Tax for Death Taxes Paid to State Statutes Enacted to Take Advantage Thereof—Constitutional Difficulty & Some Suggested Solutions* (1952) 30 N Car L Rev] 123.)
>
> Congressional response took form in the Revenue Act of 1924 (ch 234, § 301(b), 43 Stat 253, 304) giving birth to what is now commonly referred to as the federal estate credit for state death taxes. ([IRC] § 2011.) Section 2011, subdivision (a) of the Internal Revenue Code permits legal representatives of estates to deduct from the total federal estate tax obligation[5] a limited, scheduled[6] credit for all death taxes actually paid[7] to any state on account of property taxable as part of the gross federal estate.[8] Architects of the credit clearly intended individual states to benefit from its creation, for section 2011 assures states a certain minimum of tax revenue at the expense of the federal treasury.

---

[5] Section 2011, subdivision (a), provides, in relevant part: "The tax imposed by section 2001 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or the District of Columbia, in respect of any property included in the gross estate . . . ." Deduction of the credit for state death taxes under section 2011 represents only one of five credits provided by the code. A decedent's estate may also deduct from the total federal estate tax bill varying amounts for federal gift taxes (§ 2012), estate tax on prior transfers (§ 2013), foreign death taxes (§ 2014), and death taxes on remainders (§ 2015).

[6] See generally section 2011, subdivision (b). Beginning with a taxable estate (gross estate less exemptions and expenses) in excess of $40,000, section 2011, subdivision (b), provides for a credit for state death taxes of 0.8 percent. The largest percentage credit, 16 percent, is reached on a taxable estate totaling more than $10,040,000.

[7] To qualify for a credit under section 2011, subdivision (a), a decedent's estate must actually incur some federal estate tax liability. The allowance of comparatively high federal estate tax exemptions enable relatively small estates to escape a federal tax even though there may be a substantial state death tax. Estates which fall into this category do not qualify for the federal credit and the state cannot access a pick-up tax. (See Maxwell, [Tax Credits and Intergovernmental Fiscal Relations (1962) p 25].)

[8] This limitation means that death taxes paid on property subject to state but not to federal tax fail to qualify for the section 2011, subdivision (b) credit. (Treas Reg § 20.2011-1, subd (a); *Second National Bank of New Haven v United States*, [422 F2d 40 (CA 2, 1970)].)

III

In the present case, petitioners have no federal estate tax liability because of a federal tax credit for a previous federal tax on prior transfers. 26 USC 2013. This federal tax credit is allowed for federal estate taxes paid on a recent transfer of the estate's property. Specifically, 26 USC 2013(a) provides in part:

> The tax imposed by section 2001 shall be credited with all or a part of the amount of the Federal estate tax paid with respect to the transfer of property (including property passing as a result of the exercise or non-exercise of a power of appointment) to the decedent by or from a person (herein designated as a "transferor") who died within 10 years before, or within 2 years after, the decedent's death.

Because the timing of the deaths of Richard J. Lacks, Sr., and his father occurred near in time (John A. Lacks died on April 14, 1999; Richard J. Lacks, Sr., died on May 13, 1999), the estate of Richard J. Lacks, Sr., qualified for a one hundred percent TPT credit. After applying the TPT credit, the net result was that no federal estate tax was owed by the RJL estate.

Respondent contends that Michigan estate tax is owed for an estate that has no federal estate tax liability by application of the TPT federal tax credit. We disagree on the basis of the

plain language of our Michigan estate tax provision.[3] *People v Borchard-Ruhland,* 460 Mich 278, 284-285; 597 NW2d 1 (1999). Further, we review de novo questions of statutory construction. *In re MCI Telecom Complaint,* 460 Mich 396, 413; 596 NW2d 164 (1999).

MCL 205.232(1) provides, in pertinent part:

> [T]ax is imposed upon the transfer of the estate of every person who at the time of death was a resident of this state. *The tax is equal to the maximum allowable federal credit* under the internal revenue code *for* estate, inheritance, legacy, and succession *taxes paid to the states*. [Emphasis added.]

Clearly, it is the *federal credit* allowable for taxes paid to the state that determines the amount owed for Michigan estate tax. However, the federal credit at issue is not a credit for Michigan estate taxes, but a federal tax credit for previous federal estate taxes paid on a recent transfer. 26 USC 2013. Because such a federal credit is unrelated to the allowable federal credit for state estate taxes, it is outside the purview of MCL 205.232(1). Similarly, we conclude other federal credits and deductions unrelated to the state estate tax credit, such as the marital deduction, are also outside the scope of MCL 205.232(1).

We hold that respondent's position that state estate tax should be computed before and independent of federal deductions or credits is clearly contrary to our state and federal estate tax scheme. *Estate of Turner v Dep't of Revenue,* 106 Wash 2d 649, 657; 724 P2d 1013 (1986) ("The present Washington ["pick up"] estate tax scheme, unlike its predecessor statutes, is not intended to operate independently of the federal tax scheme. Rather, we find that Washington's estate-tax scheme is intended to complement the federal scheme."). See also *Dickinson v Maurer,* 229 So2d 247 (Fla, 1969), and *Estate of Fasken, supra* at 417-418 n 7. On this issue, we follow the result reached by both the Supreme Court of Washington and the Supreme Court of Florida.

Affirmed.

/s/ Richard Allen Griffin
/s/ Michael R. Smolenski

---

[3] While we conclude that the probate court erred in finding the statute to be ambiguous, it is well settled that we will not reverse where the lower court reaches the right result for the wrong reason. *In re Jory,* 443 Mich 403, 425; 505 NW2d 228 (1993); *People v Lucas,* 188 Mich App 554, 557; 470 NW2d 460 (1991). The lack of ambiguity in the statute supports petitioners' claim that no state estate tax is owed under these circumstances.