

NOT FOR PUBLICATION WITHOUT APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Patrick DeAlmeida
Presiding Judge



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October 26, 2015

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Re: Joseph Burns v. Director, Division of Taxation
Tax Court Docket No. 009341-2015
Appellate Division Docket No. To Be Assigned

Dear Mr. Orlando, Mr. Burns and DAG Wohlleben:

This letter is issued pursuant to R. 2:5-1(b) to amplify the court's September 2, 2015 bench opinion affirming the final determination of the Director, Division of Taxation denying plaintiff's 2014 homestead property tax reimbursement in the above-referenced matter. The court's decision

was memorialized in a Judgment dated September 3, 2015. Plaintiff filed a Notice of Appeal on or about October 5, 2015.

I. Findings of Fact and Procedural History

This letter opinion sets forth the court's findings of fact and conclusions of law based on the testimony and exhibits entered in the record during the September 2, 2015 trial.

Some background information will assist in understanding the significance of the court's findings of fact. The homestead property tax reimbursement program is designed to assist senior citizens in maintaining their homesteads by providing a partial reimbursement of their local property taxes. Eligibility for the program is based on age, length of residency, income, and the need to make timely application for the benefit. The income requirement is at issue here.

In the first year that a taxpayer qualifies for the program, the amount of local property taxes due on the taxpayer's homestead becomes the "base year taxes" for purposes of the program. In every subsequent year that the taxpayer qualifies for the program, the original base year taxes remain the same and the taxpayer receives from the State a reimbursement of the difference between the base year taxes and the full amount of local property taxes due on the homestead for that year. Thus, the original base year taxes may remain in place for many years, provided that the taxpayer continues to qualify for the program and makes timely application for the benefit. In those circumstances, if the local property taxes on the taxpayer's homestead continue to rise, the reimbursement will increase each year because the original base year taxes on which the reimbursement is calculated will remain the same.

There are statutory income requirements both to maintain the original base year taxes and to qualify for a reimbursement each year. When a taxpayer exceeds the income limitation to maintain the base year taxes, the taxpayer's base year taxes resets to the amount of local property

taxes due on the taxpayer's homestead in the first subsequent year, after a two-year period of ineligibility, that the taxpayer again meets the income requirements for the program.

Plaintiff owns a home in Cherry Hill Township. Prior to tax year 2014, plaintiff qualified for the homestead property tax reimbursement program. His base year taxes were set at \$5,562.

In 2014, plaintiff's sister died after a long illness. At the time of her death, plaintiff was a co-trustee, along with this brother, of a trust established to provide for the care of plaintiff's sister. According to the terms of the Trust, or perhaps the Will of plaintiff's sister (the record on this point is not clear), plaintiff was designated as a beneficiary to receive \$90,000 from his sister's estate. Plaintiff testified that both before and after his sister's death he repeatedly informed his co-trustee that he was not interested in receiving money from his sister's estate. The protestations, apparently, were not taken seriously or were disregarded by plaintiff's co-trustee.

After plaintiff's sister died, the co-trustee informed plaintiff that the Trust was preparing to issue a check in the amount of \$90,000 to plaintiff. According to plaintiff's credible testimony, he initially expressed reluctance at accepting the inheritance. He did not, however, file a written disclaimer of his interest in his sister's estate either in California, where his deceased sister was domiciled, or in New Jersey. In fact, plaintiff ultimately acquiesced in his brother's suggestion that plaintiff accept the inheritance, although plaintiff claims he did so with reservations and with the intention of not keeping the funds. On December 26, 2014, plaintiff deposited the \$90,000 distribution from his sister's estate into his personal checking account.

Shortly thereafter, when reviewing the instructions accompanying the application for his 2014 homestead property tax reimbursement application, plaintiff noticed a line for the reporting of income from an inheritance. Plaintiff acknowledges that he realized for the first time at that

moment that his acceptance of the \$90,000 distribution might negatively affect his eligibility for the reimbursement for tax year 2014.

On March 18, 2015, plaintiff submitted his 2014 homestead property tax reimbursement application. As required by the instructions, plaintiff reported \$90,000 in income from “Inheritances, Bequests and Death Benefits.” The only other income reported by plaintiff for 2014 was \$22,174 in social security benefits, \$7,515 in pension benefits, and \$421 in interest.

Plaintiff formed the impression that if in 2015 he gave away the \$90,000 he received from his sister’s estate, the inheritance would no longer be considered income to him for 2014. To effectuate this course of action, on May 18, 2015, plaintiff issued \$78,000 in checks from his personal account, which he contends constitutes his rejection of his inheritance from his sister. Ten checks in the amount of \$7,000 each were issued by plaintiff to various relatives. These payments were not made in accordance with the terms of plaintiff’s sister’s Will. Plaintiff, instead, decided who would receive a check and the amount of each check. In addition, plaintiff issued two checks in the amount of \$3,000 each and one check in the amount of \$2,000 to employees of the medical facility in which plaintiff’s sister was a patient. Plaintiff issued these checks as a way of thanking those who provided care to his sister before her death. Plaintiff testified that he “took it upon himself” to issue all of the checks because he “thought it was the right thing to do.”

Plaintiff testified that he issued an additional \$9,000 in checks on May 18, 2015, but provided no documentary evidence to support this testimony and did not identify the recipients of those checks. Plaintiff testified that he “held back” either \$2,000 or \$3,000 in the event that he encountered future unexpected expenses related to his sister.

For the 2014 homestead property tax reimbursement program, the income limit to maintain base year taxes is \$85,553 and the income limit to receive a reimbursement is \$70,000. Because

plaintiff's income, when his \$90,000 inheritance is considered, exceeds both income limits, on June 1, 2015, the Director denied plaintiff's application for a 2014 homestead property tax reimbursement. In addition, plaintiff's base year taxes, set when he first qualified for the program, were not maintained. Plaintiff's base year taxes will be reset when, after a two-year hiatus, plaintiff again meets the income requirements for the program and files a timely application.

On June 15, 2015, plaintiff filed a Complaint challenging the final determination.

A trial was held on September 2, 2015.

On or about October 5, 2015, plaintiff filed a Notice of Appeal with the Superior Court, Appellate Division.

II. Conclusions of Law

The court's analysis begins with the familiar principle that the Director's interpretation of tax statutes is entitled to a presumption of validity. "Courts have recognized the Director's expertise in the highly specialized and technical area of taxation." Aetna Burglar & Fire Alarm Co. v. Director, Div. of Taxation, 16 N.J. Tax 584, 589 (Tax 1997) (citing Metromedia, Inc. v. Director, Div. of Taxation, 97 N.J. 313, 327 (1984)). The scope of judicial review of the Director's decision with respect to the imposition of a tax "is limited." Quest Diagnostics, Inc. v. Director, Div. of Taxation, 387 N.J. Super. 104, 109 (App. Div.), certif. denied, 188 N.J. 577 (2006). The Supreme Court has directed the courts to accord "great respect" to the Director's application of tax statutes, "so long as it is not plainly unreasonable." Metromedia, supra, 97 N.J. at 327. See also GE Solid State, Inc. v. Director, Div. of Taxation, 132 N.J. 298, 306 (1993) ("Generally, courts accord substantial deference to the interpretation an agency gives to a statute that the agency is charged with enforcing.")

In addition, the Appellate Division has instructed this court to construe the statutes defining eligibility for homestead rebates narrowly. MacMillan v. Director, Div. of Taxation, 180 N.J. Super. 175, 178 (App. Div. 1981), aff'd, 89 N.J. 216 (1982). “[T]ax preference provisions are strictly construed against those claiming exemption. This is so with regard to local property taxes. It is also true with respect to state taxes.” Ibid. (citations omitted). Where the homestead rebate “statute is outspoken and unambiguous” its terms must be strictly applied. Id. at 179. Accord Fedders Fin. Corp. v. Director, Div. of Taxation, 96 N.J. 376, 384-86 (1984); Vavoulakis v. Director, Div. of Taxation, 12 N.J. Tax 318, 329 (Tax 1992) , aff'd o.b., 13 N.J. Tax 322 (App. Div. 1993).

In 1975, our Constitution was amended to authorize the enactment of laws to allow homeowners and residential tenants “a rebate or a credit of a sum of money related to property taxes paid by or allocable to them at such rates and subject to such limits as may be provided by law.” N.J. Const. (1947) Art. VIII, §1, par. 5. Since that time, the Legislature has enacted a series of homestead rebate programs for resident homeowners and tenants. Vavoulakis v. Director, Div. of Taxation, supra, 12 N.J. Tax at 323-24. Although the programs have had various names and eligibility requirements, the purpose of the programs has consistently been “the beneficent purpose of alleviating the heavy realty tax burden.” Rubin v. Glaser, 83 N.J. 299, 307, app. dis., 449 U.S. 977, 101 S. Ct. 389, 66 L. Ed. 2d 239 (1980).

A homestead property tax reimbursement is available to any person sixty-five or more years of age or who is disabled who meets certain income limits and who, as a “homeowner, has made a long-term contribution to the fabric, social structure and finances of one or more communities in this State, as demonstrated through the payment of property taxes . . . on any homestead . . . used as a principal residence in this State for at least 10 consecutive years at least

three of which as owner of the homestead for which a homestead property tax reimbursement is sought prior to the date that an initial application for a homestead property tax reimbursement is filed.” N.J.S.A. 54:4-8.67. The amount of the reimbursement is the difference between the amount of property tax due in the year for which the reimbursement is claimed and the amount due in the “base year.” Ibid. The “base year” is tax year 1997 or the first year in which a claimant becomes eligible for a reimbursement after December 31, 1997. Ibid.

According to the Appropriations Act for the fiscal year ending June 30, 2016 (the fiscal year in which a 2014 homestead property tax reimbursement would be issued), notwithstanding the provisions of N.J.S.A. 54:4-8.67, “any citizen with an annual income of more than \$70,000 shall not be eligible to receive a property tax reimbursement benefit payment in the current fiscal year.” For 2014, the income limit to maintain the taxpayer’s base year taxes is of \$85,553.

For purpose of the homestead property tax reimbursement statute “[i]ncome’ means income as determined pursuant to P.L. 1975, c. 194 (C.:30:4D-20 et seq.),” the statute establishing the Pharmaceutical Assistance to the Aged (“PAAD”) program. N.J.S.A. 54:4-8.67. The PAAD statute delegates to the Commissioner of the Department of Health and Senior Services (“DHSS”) the authority to adopt regulations regarding income limits for the PAAD program. N.J.S.A. 30:4D-21b.

N.J.A.C. 10:167-2.1, adopted by the DHSS Commissioner, provides that for purposes of the PAAD program, “[a]nnual income’ means all income from whatever source derived, actually received or anticipated.” Another regulation explains, in relevant part, that

[a]ll income, taxable and nontaxable, is to be included. Examples of possible sources of income (gross income amounts unless otherwise noted) are as follows:

* * *

xiii. Bequests and death benefits

[N.J.A.C. 10:167-6.2(c)(1).]

It is quite plain that plaintiff received a \$90,000 bequest during 2014. Although plaintiff credibly testified that he expressed reluctance to accept money from his sister's estate, his reluctance was overcome at the urging of his brother. Plaintiff did not file a written disclaimer of his interest in his sister's estate. The Legislature has enacted a comprehensive statutory procedure for the disclaimer of an inheritance. N.J.S.A. 3B:9-1, et seq. A disclaimer must be in writing, signed and acknowledged, N.J.S.A. 3B:9-3, filed with the Surrogate or Clerk of the Superior Court in which proceeding have been or will be commenced to probate the Will, N.J.S.A. 3B:9-6(a), and served on the estate's fiduciary. N.J.S.A. 3B:9-6(b). A disclaimer cannot be filed and served after receipt of the inheritance. N.J.S.A. 3B:9-9(a)(3). California, the State in which plaintiff's sister resided upon her death, has similar statutory provisions requiring a written disclaimer to be filed with the appropriate authorities prior to acceptance of an inheritance. Cal. Prob. Code §§275-278 (2015).

Plaintiff instead accepted the \$90,000 check from the estate, deposited it in his checking account, and exercised control over the funds during 2014. Those funds were, therefore, income to plaintiff in 2014. The fact that plaintiff elected to give most of those funds away in 2015 does not erase his receipt of the money in 2014. See Murphy v. Director, Div. of Taxation, 26 N.J. Tax 432 (Tax 2012)(plaintiff, who received cash from business transactions in 2005, had income in 2005 even though he disgorged most of the money to federal authorities in 2008 to settle legal actions alleging that the business transactions violated securities laws), aff'd, 27 N.J. Tax 293 (App. Div. 2013). There is no doubt in the court's mind that the Director correctly determined that

plaintiff's 2014 income exceed the both the income limitation to maintain his base year taxes and the income limitation to receive a homestead property tax reimbursement.

Nor can plaintiff's distribution of most of the \$90,000 inheritance been seen as an exercise of his authority as co-trustee of the estate to distribute assets to his sister's beneficiaries. Plaintiff did not follow his sister's Will when issuing checks in 2015. He decided which of his relatives (none of whom were the named beneficiaries in his sister's Will) would receive money. He also decided the amount that those persons would receive. In addition, plaintiff selected three of his sister's unrelated caregivers to receive a \$3,000 or \$2,000 check. Plaintiff's sister's Will did not name non-relatives as beneficiaries. Plaintiff also elected to retain either \$2,000 or \$3,000 for unanticipated expenses associated with his sister's estate, although it is not clear why plaintiff believed he was responsible for any such expenses.

Notably, plaintiff gave away these funds after he completed his application for the 2014 homestead property tax reimbursement on which he reported the \$90,000 inheritance as income. He admitted at trial that he was aware before he wrote the checks in question that his receipt of the \$90,000 would render him ineligible for the 2014 reimbursement. It is not clear why, aware that he would not receive the reimbursement, plaintiff gave away at least \$78,000 (and by plaintiff's account \$87,000), the very money that made him ineligible for the benefit and with which he could have paid the local property taxes on his homestead.

In light of these circumstances, plaintiff's complaint that he needs the 2014 homestead property tax reimbursement to pay the taxes on his home is difficult to view sympathetically. Plaintiff estimates that his 2014 homestead property tax reimbursement would have been \$1,070. He gave away 81 times as much money knowing that he was not eligible for the benefit. In addition, plaintiff argues that he will be harmed for years by the resetting of his base year taxes

when he is once again eligible for the program. Yet, if plaintiff had held on to the \$90,000 he would have been able to pay the entire local property tax bill on his property, not just the lost reimbursement, for at least 11 years, and probably longer. The homestead property tax reimbursement program is designed to assist older residents with limited income in meeting the significant burdens imposed by the local property tax. When one such resident, however, inherits \$90,000, it is entirely reasonable for the Legislature to determine that the State's limited resources should not be available to that resident for a homestead property tax reimbursement.

For reasons that are not explained in the record, plaintiff formed the strong opinion that he did not want to receive funds from this sister's estate. He did not, however, fulfill the statutory requirements to disclaim an inheritance. He instead accepted \$90,000 from his sister's estate, exercised control over those funds, and subsequently gave most of the inheritance away. The court has no doubt that plaintiff acted in good faith to accomplish what he thought was an admirable objective. Plaintiff, however, was ill advised in his belief that he could change his 2014 income by giving away most of his inheritance in 2015. While a taxpayer is free to order his financial affairs in any manner he chooses, he must accept the tax consequences of his decisions, whether those consequences were or were not anticipated. General Trading Co. v. Director, 83 N.J. 122, 136-137 (1980). Plaintiff's misapprehension that he could, in effect, erase his 2014 acceptance of a \$90,000 inheritance by giving most of those funds away the following year does not change the fact that plaintiff's 2014 income exceeded the income limitations for the homestead property tax reimbursement program. The Director's final determination, therefore, is affirmed.

Very truly yours,

/s/Hon. Patrick DeAlmeida, P.J.T.C.