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ESTATE OF RUTH M. OBERG, PLAINTIFF, v. DIRECTOR, DIVISION OF TAXATION, DEFENDANT.	TAX COURT OF NEW JERSEY DOCKET NO. 000240-2015

Approved for Publication
In the New Jersey
Tax Court Reports

Decided: October 24, 2017

Andrew DeMaio for plaintiff (Neff Aguilar, LLC, attorneys).

Heather Lynn Anderson for defendant (Christopher S. Porrino, Attorney General of New Jersey, attorney).

NUGENT, J.T.C.

This opinion resolves cross-motions for summary judgment filed by the parties, Estate of Ruth M. Oberg ("Estate") and the Director, Division of Taxation ("Taxation"), on the underlying complaint challenging New Jersey estate tax assessed pursuant to N.J.S.A. 54:38-1. Procedurally, Taxation seeks judgment dismissing the complaint for lack of subject matter jurisdiction that the court denies for the reasons set forth herein. Substantively, the motions present the following issues: 1) is Taxation bound by an IRS determination that contradicts established federal precedent, and 2) can the New Jersey estate tax exceed the amount of the federal death tax allowance as reported on federal form 706 where the federal tax return was accepted by the Internal Revenue Service ("IRS") as filed. The court finds Taxation is not bound by an IRS determination that results from federal principles incorrectly applied, and further, that Taxation is authorized to assess

New Jersey estate tax in excess of the state death tax allowance granted on the federal estate tax return accepted by the IRS, in accordance with federal law. The assessment is affirmed.

FACTS

Ruth M. Oberg, a resident and domiciliary of Monmouth County, New Jersey, died testate on June 20, 2008 ("decedent"). Decedent left her entire estate to her daughter, Sherry Oberg ("Oberg") by her Last Will and Testament. A granddaughter of the decedent filed a Caveat against the will, resulting in litigation before the Superior Court of New Jersey that concluded in October 2012 with an order dismissing that complaint. Oberg was appointed executor of decedent's estate and the Surrogate issued letters testamentary on November 15, 2012 when the litigation concluded.

On the federal and New Jersey estate tax filings, the assets comprising the gross estate of decedent at her date of death were valued at $3,151,251. As reported on the returns, the assets had a value of $2,621,580 six months later, as of December 20, 2008 ("alternate valuation date").

In 2000, decedent, via oral agreement, loaned Oberg and her husband $450,000 ("borrowers") for the purchase of an apartment in France. The total loan amount included $300,000 lent to borrowers from a trust of decedent's late husband. Decedent personally lent borrowers $150,000. Borrowers agreed to pay seven percent interest on the entire loan during decedent's lifetime. Decedent, described as "healthy and active in 2000," desired to "be part of the acquisition process." Under the agreement decedent could "visit and live in the apartment in France whenever she wished rent free." Provided all interest payments were made, at decedent's death borrowers were required to repay the Edgar C. Oberg Trust, however the "$150,000 principal of the personal loan would be forgiven." Borrowers certify monthly interest payments were made to both the trust and to decedent over the following eight years until decedent's death in June 2008.

There is no indication that decedent would obtain an ownership interest in the apartment. The agreement was never reduced to writing and the terms referenced herein were provided in an affidavit submitted by Oberg to the court.

The value of the estate exceeded the amount that could transfer free of federal and New Jersey estate tax. Estate paid estimated federal estate taxes on a date or dates unstated, then filed federal estate tax return form 706 ("form 706") on February 19, 2013 seeking a refund. The IRS first denied Estate's refund claim as untimely. The letter disallowing the claim dated June 18, 2013, reads: "WHY WE CANNOT ALLOW YOUR CLAIM [:] You filed your original tax return more than 3 years after the due date." Thereafter, the IRS reversed its decision. By letter to Estate dated October 25, 2013, an IRS Appeals Team Manager advised "I am returning your case to the service with my determination that the 2008 return received by the service on February 19, 2013 was filed timely and with a recommendation that they make a determination as to whether to accept the return as filed, examine the return, or disallow it based on the information attached to the return." Thereafter, the form 706 was accepted for filing, without change. On the form 706, Estate elected to value the assets as of the alternate valuation date, six months after decedent's death, and included two interest payments but did not include the principal amount of the $150,000 loan in the value of the gross estate. A November 29, 2013 IRS closing letter confirmed net tax due for federal purposes of $110,841, with a New Jersey state death tax credit of $128,810, as reported by the estate on form 706.[1]

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[1] In their submissions to the court the parties refer to the New Jersey estate tax by use of the term state death tax "credit" rather than "deduction." In this case, both the IRS Estate Tax Closing letter and Estate's federal form 706 (at part 2, line 3b) identify the federal allowance for New Jersey estate tax as a "State Death Tax Credit/Deduction" since the federal allowance was treated as a deduction rather than a credit during the relevant timeframe. The "deduction" applies to

Estate paid estimated New Jersey estate tax of $150,000 on April 8, 2009. Nearly four years later, on February 21, 2013, it filed a New Jersey estate tax return ("IT return"), elected to value the assets of the gross estate as of the alternate valuation date, and excluded the $150,000 loan principal, consistent with its reporting on the form 706. The IT return calculated $128,810 New Jersey estate tax, and sought a refund for overpayment of $21,190. Taxation audited the return and issued a notice of assessment for a deficiency of $54,407.35 as of August 15, 2013. A determination letter outlining Taxation's changes to the reported estate resulting from audit accompanied the August notice of assessment. The determination letter explained that Taxation "disallowed the alternative valuation per I.R.C. 20.2032" and "included the $150,000 federal forgiveness of loan," resulting in the deficiency assessment.

Estate paid $47,758.34 toward the tax deficiency by letter dated September 23, 2013, and contends a notice of protest accompanied the letter. As interest accrued on the balance due additional notices of assessment were issued. A final notice, dated September 30, 2014, advised Estate of a zero balance against total New Jersey estate tax paid of $205,031.42.

DISCUSSION

Summary Judgment Standard

Under New Jersey law, a motion for summary judgment should be granted when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the

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estates of decedents dying after December 31, 2004. 107 Pub. L. No. 16, §532, 115 Stat. 73 (2001) (entitled "Credit for State Death Taxes Replaced with Deduction for Such Taxes."). As discussed infra, despite New Jersey's decoupling from the federal estate tax scheme in 2001, I.R.C. § 2011, "Credit for State Death Taxes," remains the source for calculation of the federal allowance. The court will identify the federal allowance as a "credit" throughout the opinion for consistency's sake.

affidavits, if any, show that [1] there is no genuine issue as to any material fact challenged and that [2] the moving party is entitled to a judgment or order as matter of law." R. 4:46-2. The basic inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 536 (1995) (citation omitted.) In resolving the procedural issue that necessarily precedes consideration of the substantive claims, the court conducted a hearing to assess the veracity of the parties' positions regarding the claim of untimely filing. Based on the evidence, the court finds the complaint was timely filed. In considering the substantive claims, this matter is ripe for summary judgment.

Subject Matter Jurisdiction

As our Supreme Court recently reiterated, the "Tax Court is vested with limited jurisdiction" defined by statute. McMahon v. City of Newark, 195 N.J. 526, 546 (2008). The statutory scheme establishing this court's jurisdiction is one through "which continuing strict and unerring compliance must be observed . . . ." Id. at 543. Adherence to statutory filing deadlines is of particular concern in tax matters, given "the exigencies of taxation and the administration of . . . government." F.M.C. Stores v. Borough of Morris Plains, 100 N.J. 418, 425 (1985) (citation omitted); see also Bonanno v. Director, Div. of Taxation, 12 N.J. Tax 552, 556 (Tax 1992). A failure to file a timely complaint divests this court of jurisdiction even in the absence of harm to the taxing authority. Lawrenceville Garden Apartments v. Township of Lawrence, 14 N.J. Tax 285 (App. Div. 1994). "Failure to file a timely appeal is a fatal jurisdictional defect." F.M.C. Stores, supra, 100 N.J. at 425. A complaint that is even one day late must be dismissed for lack of jurisdiction. Mayfair Holding Corp. v. Township of N. Bergen, 4 N.J. Tax 38 (Tax 1982); Prospect Hill Apartments v. Borough of Flemington, 172 N.J. Super. 245, 1 N.J. Tax 224 (Tax 1979). These

rules allow for the effective administration of the state's finances by removing doubt as to the validity of fixed and final tax assessments. Once the filing deadline has passed, the Director is entitled to assume that his determination is final and no longer subject to review. Commercial Refrigeration & Fixture Co. v. Director, Div. of Taxation, 184 N.J. Super. 387, 391, 2 N.J. Tax 415, 419 (Tax 1981).

To support dismissal on procedural grounds, Taxation argues the notice of assessment advising Estate of a zero balance as of September 30, 2014 set a 90-day deadline of December 29, 2014 to file an appeal with Taxation under N.J.S.A. 54:49-18 or to the tax court under R. 8:4-1(b) and N.J.S.A. 54:51A-14. On February 11, 2015, the within tax court complaint challenging the assessment was filed.

In opposing dismissal, Estate submits alternative arguments. It contends the complaint itself represents a timely refund claim when filed within three years of the September 23, 2013 estate tax payment, in reliance on N.J.A.C. 18:26-3A.12(a)[2], and on Estate of Ehringer v. Director, Div. of Taxation, 24 N.J. Tax 599 (Tax 2008), aff'd, 412 N.J. Super. 316 (App. Div. 2010). Further, the statute of limitations might properly be extended to four years after the estate tax payment pursuant to N.J.S.A. 54:49-14(a). In the alternative, Estate contends it filed a valid protest within 90 days of the August 15, 2013 notice of assessment.

The court finds Estate's contention that the complaint constitutes a timely "refund claim" to be unavailing where the law requires an application for a refund of taxes to be filed with "the Director". See N.J.A.C. 18:26-3A.12(a) ("[a]ll applications for the refund of estate taxes claimed to have been excessively or erroneously paid must be filed with the Director within three years

2 N.J.A.C. 18:26-1 et. seq., expired June 25, 2015.

from the date of payment.");[3] Ehringer, supra, 24 N.J. Tax at 608-17 (the estate's request for additional refund denied by tax court because the application was submitted to the Director more than three years from date the tax was paid); N.J.S.A. 54:49-14(a) ("[a]ny taxpayer, at any time within four years after the payment of any original or additional tax assessed against him, unless a shorter limit is fixed by the law imposing the tax, may file with the director a claim under oath for refund, in such form as the director may prescribe . . . ."). That statute further cautions that "no claim for refund shall be required or permitted to be filed . . . after protest has been filed with the director or after proceedings on appeal have been commenced . . . ." Ibid. Fittingly, N.J.S.A. 54:38-10, entitled "Jurisdiction of tax court; claim for refund," echoes the same prohibition at (b) which reads, "[a]ny aggrieved taxpayer that has neither protested or appealed from an additional assessment of tax may, pursuant to subsection (b) of R.S. 54:49-14, file a claim for refund of the assessment paid." N.J.S.A. 54:38-10(b).

The proper statute of limitations for a refund claim is set forth in the law on which Estate relies, however, it has no application to a complaint filed in tax court. Viewed as a refund claim, the complaint asserts a claim over which jurisdiction is lacking. Here, Estate paid estimated New Jersey estate tax and filed an IT return in February 2013 that was subject to audit. After audit, Taxation issued a deficiency assessment with notice of determination to advise that additional taxes had been assessed. Once issued, the August 2013 Notice of Assessment was open to challenge to be initiated within 90 days through a notice of protest filed with Taxation, or through

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[3] N.J.A.C. 18:26-3A.12(a) implements the process in place for a refund claim authorized by N.J.S.A. 54:38-3 when on review of form 706 the federal agency adjusts the federal tax downward. In that event, the taxpayer notifies the Director of the federal changes, triggering a reduction in the New Jersey estate tax liability. The state tax due "shall be reduced accordingly upon satisfactory proof submitted to the [state by the taxpayer]." Id.

a complaint filed with the tax court to appeal Taxation's decision. N.J.S.A. 54:49-18; R. 8:4-1(b); N.J.S.A. 54:51A-14.

In its alternative argument, Estate contends the court may assert jurisdiction under N.J.S.A. 54:49-18 alleging it filed a notice of protest within 90 days of the August 15, 2013 notice of assessment by the September 23, 2013 letter to Taxation. The statute reads in relevant part, "any taxpayer . . . aggrieved by any finding or assessment of the director . . . within 90 days after the giving of the notice of assessment or finding, [may] file a protest in writing . . . which shall set forth the reason[s] . . . and may request a hearing." N.J.S.A. 54:49-18(a). While Taxation's receipt of the $47,758.35 tax payment is uncontroverted, Taxation disputes the assertion that the September 23, 2013 letter and notice of protest accompanied the payment. Neither the letter nor the protest were made part of Estate's discovery responses. Taxation purports it viewed the documents for first time as part of the motion papers. Along with a witness list and additional documents, Estate's court submission also contained a second Notice of Protest and letter addressed to the Chief Individual Tax Audit Branch of the Division of Taxation, dated October 4, 2013, also unfamiliar to Taxation.[4]

The September mailing advised Taxation that an attorney Trust Account check in the amount of $37,758.35 together with a copy of Estate's $10,000 check previously sent "on account" accompanied the letter. Therein, Estate requested that Taxation "view this as a Protest of the disallowance of the alternate valuation date for valuing the assets" and also find enclosed a formal notice of protest. The letter further advised that Estate's form 706 was under review by the IRS.

[4] Estate contends the September protest addressed the disallowance of the alternate valuation date followed by the second notice of protest and letter sent to Taxation regarding inclusion of the $150,000 self-cancelling installment note.

Taxation disputes the authenticity of the September 2013 letter; arguing in the alternative that it was never sent. Moreover, it would be uncharacteristic of a taxpayer to continue to pay the balance of a disputed tax assessment in the face of a filed protest, Taxation contends. After argument of the motion, focused particularly on the first notice, Taxation acknowledged that dismissal of the complaint would be unwarranted should a hearing reveal that a timely protest had been filed. At the hearing the court heard testimony from Robert J. Gaughran, Esq.; his secretary, Lynne Sanfilippo; Maryanne Dolci, technical assistant in the Inheritance and Estate Tax section of the Division of Taxation; Michael Rubino, supervising auditor for the Division of Taxation; and Frank Custode, auditor for the Division of Taxation.

Gaugrahn testified he personally drafted the September 23, 2013 letter, and prepared a notice of protest to accompany the letter. Gaugrahn instructed his long-time secretary Lynne Sanfilippo to mail the letter and notice via United Parcel Service ("UPS") mail, per his office practice because the letter contained checks. Dropping the mail is part of Sanfilppo's daily routine. Gaugrahn recalled that he sent the letter, notice and check together. He never received notification of a problem with delivery of the UPS package (or with secretary sending). Subsequently he received and authorized payment of a UPS invoice containing the same tracking number as the UPS packing slip which confirmed to him there was no problem with the mailing. The September 23, 2013 letter submitted into evidence was a copy taken from Gaughran's personal file. For that reason, the letter did not contain a "received" date stamp from the Individual Tax Audit Branch, the letter's addressee. Copies of the checks, purportedly sent with the September 23, 2013 letter, were date stamped by the Individual Tax Audit Branch, and the checks had been negotiated. Gaughran testified his office followed the same process with respect to the second letter and notice of protest, except he mailed the October letter via regular mail because it contained no checks. On

cross-examination, the witness acknowledged that having sent the protests, he thereafter sent some additional correspondence to Taxation and to the auditor in which he made no mention of the protests. In fact, in one letter to the auditor Gaughran mentioned that his client might opt to file a challenge in tax court, without seeking an update on the status of the protests filed on his client's behalf.

Lynne Sanfilippo testified that she typed the letters based on the drafts written by Gaughran and she prepared the notices of protest. It is her obligation to pick up and drop off the office mail daily. With regard to the September 23, 2013 letter, she placed both the letter and the checks in a UPS envelope, sealed the envelope and put it into a UPS drop box at a location in close proximity to the office. Gaughran had addressed the letter to the "Chief Individual Tax Audit Branch" affixed with the Trenton Taxation address and included the UPS receipt in the motion exhibits filed with the court. With regard to the October 4, 2013 letter, Sanfilippo testified she mailed the letter via regular mail by dropping the envelope in a United States Postal Service collection box on her way home from work. Both letters contained the same mailing address.

Maryanne Dolci testified she is responsible for bookkeeping, mail, and processing checks received by Taxation's Inheritance and Estate Tax section and explained how employees handle mail received there. The post office delivers the mail to Taxation's main mailroom where employees sort by post office box address printed on the envelope. Dolci and two to three others open the mail delivered by the main mailroom to the Inheritance and Estate Tax section. On average, the section daily handles upward of 1,500 pieces of mail. Dolci processes payments and handles checks only. The witness testified that she had handled Estate's September 23, 2013 mailing to Taxation. She was certain that she processed the enclosed checks since she recognized her initials handwritten on the face of each check. She was unsure whether the mailing envelope

had been opened before it reached her, and was unaware of the envelope's entire contents. She explained that when she opens a piece of mail she determines where to direct the envelope; whether to place the envelope in a "mail tub" for later review, to the auditor if the envelope contains "pertinent information," or to the individual named on the envelope. The witness acknowledged that mail "could be missed" when letters are separated from any enclosed checks on receipt by Taxation.[5]

Auditor Frank Custode testified when he receives notice of a taxpayer protest, he acknowledges the receipt via correspondence to the estate representative. Once he notifies the estate representative, he stops work on the audit. At that point, there would be no further communication between him and the taxpayer via notices of assessment or otherwise. The witness had no recollection of this particular matter.

Michael Rubino testified that he handled Conference and Appeals for the Inheritance and Estate section at the time of this matter. As part of his duties, he received protests for handling and further assignment. He was unaware of a protest in this matter.

The court finds all of the witness testimony to be credible. While both Gaughran and Sanfillippo each recall having prepared the notices of protest, the court attributes the contradiction to the passage of three years from the time the documents were prepared to the time of testimony. Regarding receipt of the notice, a presumption arises that mail properly addressed, stamped, and

[5] The documents produced in this case identify the relevant Taxation section in various ways. The assessments instruct taxpayer to include a check payable to "NJ Inheritance Tax." The invoice on the same document directs taxpayer to mail payment to "Division of Taxation." The letterhead on the determination letter addressed to plaintiff reads "Division of Taxation, Transfer Inheritance and Estate Tax," and the sender is Frank Custode, Auditor "Individual Tax Audit Branch." However, each document lists the same post office box number: P.O. Box 249. Gaughran addressed the September 23, 2013 and October 4, 2013 letters to P.O. Box 249, according to the motion exhibits.

posted was received by the party to whom it was addressed. SSI Med. Servs., Inc. v. State, Dept. of Human Servs., 146 N.J. 614, 621 (1996). "The conditions that must be shown to invoke the presumption are (1) that the mailing was correctly addressed; (2) that proper postage was affixed; (3) that the return address was correct; and (4) that the mailing was deposited in a proper mail receptacle or at the post office." Ibid. (citation omitted). "In all cases, courts should evaluate the nature and worth of the corroborative evidence offered to determine whether it meets the preponderance of the evidence standard and raises a presumption of mailing and receipt." Id. at 624 n.1.

Sanfilippo's testimony meets the preponderance of the evidence standard required to establish presumption of receipt, however, the court must consider any evidence produced to rebut the presumption. Here, candid testimony from employee Dolci about the process of separating mail containing both a check and correspondence serves as credible support of the September 23, 2013 protest received, but unacknowledged by Taxation, and then likely misplaced. As well, the court finds it unreasonable to believe a taxpayer would send checks to Taxation without an enclosure letter identifying the name of the taxpayer and the purpose of the payment. On that basis, the court concludes Taxation received the September 23, 2013 letter and notice of protest.[6] Estate's substantive claims are governed by federal law which the court will next analyze.

[6] Estate purports it sent the October 2013 protest (challenging Taxation's decision to include the loan in the gross estate), but the court finds the record lacks sufficient evidence to conclude it was received by the agency. Despite this, the court finds receipt of the September 2013 letter and protest provided Taxation with adequate notice of a challenge to the assessment. On that basis the court asserts jurisdiction over all issues raised.

Election of Alternate Valuation Date

A decedent's gross estate includes all property valued as of the time of death. I.R.C. § 2031. Pertinent to the claim at issue, Congress enacted a code provision to provide tax relief to an estate where subsequent to decedent's death the value of the assets decrease. I.R.C. § 2032. In that event, an alternative method may be used to value the assets. On the estate tax return the estate must select the option to value the assets on an "alternate valuation date" to trigger the election.

An alternate valuation date may be elected by an estate if: (1) elected "by the executor," (2) "on the return of the [federal estate] tax imposed by this chapter," and (3) provided the "return is filed [no] more than 1 year after the time prescribed by law (including extensions)." I.R.C. § 2032(d)(1)-(2). New Jersey honors the federal election though no parallel state statute exists. "The policy of the Division has been and continues to be that if an election to use the alternate valuation date could have been made under the provisions of the 2001 Internal Revenue Code, that election may be made for New Jersey estate tax Purposes." Alternate Valuation Date, N.J. ST. TAX NEWS (Div. of Taxation, Trenton, N.J.), Summer 2009, at 3-4. This policy is in accordance with N.J.A.C. 18:26-3A.8(d), which states: "[i]n those cases where a taxpayer makes an election for Federal estate tax purposes, a like election must be made for New Jersey estate tax purposes." The federal statutory restrictions for election of an alternate valuation date are mirrored by the applicable regulation which requires that the election must be made on the tax return "filed by the executor on or before the due date of the return (including extensions of time to file actually granted) or, if a timely return is not filed, the first estate tax return filed by the executor after the due date, provided the return is filed no later than 1 year after the due date . . . ." 26 C.F.R. § 20.2032-1(b)(1).

Pursuant to I.R.C. § 6075, the estate tax return "shall be filed within 9 months after the date of decedent's death." A "reasonable extension" of time to file the return is allowed. I.R.C. § 6081. "Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months." Ibid. As explained, the estate may value the assets on a date other than the date of death where the election is made on an estate tax return filed a year after the due date, as extended, per I.R.C. § 2032. Taxation argues Estate's election was untimely since the form 706 was filed fifty-five months after decedent's death. To the contrary, Estate contends the election was timely based on the filing extensions requested from the IRS.

Estate filed federal form 4768 in February 2009 to obtain an extension of time to file the estate return. Gaughran certified that between decedent's date of death in 2008 and February 2013, "[p]laintiff, through counsel, communicated repeatedly with the IRS and requested additional extensions of time" to file the return. "In those communications, the plaintiff explained that an estate tax return could not be filed because no executor or other fiduciary had been appointed with the authority to sign and file such a return."

Any estate may receive one, six-month extension to file the estate tax return. I.R.C. § 6081; 26 C.F.R. § 20.6081-1(b)-(c). The extension is obtained by filing form 4768. Additional time is permitted in only one circumstance, where form 4768 is filed "[by] an executor out of the country applying for an extension of time to file in excess of 6 months." Dep't of the Treasury, Internal Revenue Serv., Form 4768, Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes, (August 2012). The record is void of any communication granting any extension of time to file the tax return. The record does not contain a copy of form 4678, albeit the court accepts Gaughrahn's testimony that the form was filed on Estate's behalf, and by law the extension is automatic. On that basis the court finds the deadline

to file the return was extended six-months. There is no evidence that by filing form 4768 Estate sought to extend the filing deadline to allow additional time for an executor abroad. The evidence contradicts such a finding since no executor or estate representative was in place in 2009, at the time form 4768 was filed. The executor was named in late 2012 only once the litigation over the will concluded. Under these facts, Estate would have been afforded the automatic six-month extension, only.

In calculating the time to make a valid election, the return was due nine months after decedent's death, plus the six-month automatic extension, plus one year. I.R.C. § 2032. Given those strictures, Estate was permitted 27 months from the date of decedent's death (or until approximately August 20, 2010) to file the return and make a valid election. Estate urges that the court disregard the evidence and find the election was timely made based on the "actual wording" of the IRS Appeals Manager who returned the case to the IRS "with my determination that the 2008 return received by the service on February 19, 2013 was filed timely[]" despite the time line formed by the record.

The essence of the dispute arising from the facts becomes readily apparent. Estate argues the election is timely since the IRS deemed the refund claim "timely filed." There is no evidence in the record to document the stated reason why the IRS reversed its decision and accepted the late return. Certainly, there is no support in the record for the suggestion that the timing of the election was considered by the IRS. Based on the record, the IRS' only concern on review of the return was whether it constituted a timely refund claim, which may explain the seemingly dichotomous result. At issue are two separate filing deadlines- one for election of the alternate valuation date and one for filing a refund claim and they differ considerably. The IRS initially disallowed the

refund claim as untimely since it was filed more than three years after the due date. The deadline to file the refund claim extended beyond the 27 months allotted for the election.

Timeliness of the claim for refund is not at issue in this matter. What is at issue here is the deadline for election of the alternate valuation date. Estate's attempt to value the assets as of the alternate valuation date fails where elected beyond the time permitted by law. The IRS' determination contravenes federal law where it accepted the return as filed and acquiesced to the election made on a tax return filed beyond the time set by law. According to federal law, neither administrative bodies nor the courts have discretion to extend the deadline.

In Flinchbaugh v. Comm'r, 1 T.C. 653, 655 (1943) the Tax Court found the taxpayer's failure to timely file the return "under oath" in accordance with the statute was a complete bar to the alternate valuation option despite taxpayer's amended (untimely) filing to correct the deficiency. The court there relied on J. E. Riley Inv. Co. v. Comm'r, 311 U.S. 55 (1940), to disallow the election. In Riley, the taxpayer mined gold. The United States Supreme Court considered a provision of the Revenue Act permitting taxpayer a tax deduction for the depletion of natural resources on a percentage basis. The taxpayer was required to elect the percentage depletion method on its initial income tax return, timely filed. The Court agreed that the election could be made on an amended return, but affirmed denial of the election made on an amended return filed beyond the statutory timeframe.

> That opportunity was afforded as a matter of legislative grace; the election had to be made in the manner and in the time prescribed by Congress. The offer was liberal. But the method of its acceptance was restricted . . . . No other time limitation would have statutory sanction [but that provided by the Act.] To extend the time beyond the limits prescribed in the Act is a legislative, not a judicial function.
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> [Id. at 58-59.]

In Riley, the taxpayer argued on equitable grounds that the denial worked a hardship, and the statutory provision was new and unfamiliar to the taxpayer. While sympathetic to its plight, the Court found that strict statutory compliance was required. Responding to the equitable argument the Court wrote, "[t]hat may be the basis for an appeal to Congress in amelioration of the strictness of that section. But it is no ground for relief by the courts from the rigors of the statutory choice which Congress had provided." Id. at 59. See also Estate of Eddy v. Comm'r, 115 T.C. 135 (2000) (tax court rejected the taxpayer's election of an alternate valuation date where the tax return was filed beyond the extended period due to the estate's delay in obtaining an appraisal to value the estate's principal asset.)

Because the taxpayer's challenge in Riley involved an income tax rather than estate tax election Estate contends the case is distinguishable. This court is not persuaded. In Riley the Court expressed broad principles applicable to code provisions that confer beneficial tax treatment as a matter of "legislative grace" not limited to I.R.C. § 2032. Those principles were first espoused in Pac. Nat'l Co. v. Welch, 304 U.S. 191 (1938), a decision "often regarded as the fundamental authority for . . . a large body of case law upholding the binding effect of elections made under [various] provisions of the Code." Estate of Samos v. Comm'r, 55 T.C. 468, 473 (1970). Under these rules, the IRS was not permitted to allow the alternate valuation date election regardless of Estate's reason for the late filing.

As for the remaining cases cited by Taxation in its moving papers, Estate argues they offer no support since they can be distinguished on the facts. Estate argues that in each case the taxpayer elected the alternate valuation date on a return untimely filed. Yet here, "the one-year time period referred to in [I.R.C. §IRC 2032(d(2)] never started to run in light of the timely filing of the return." That position overlooks Estate's obligation to prove compliance with the statutory requirements.

An alternate valuation date election is valid only where the return is either filed timely, or filed within one year of the return's due date. I.R.C. § 2032; 26 C.F.R. § 20.2032-1(b)(1). This court has found no federal case where the court permitted a taxpayer's alternate valuation date election on an estate tax return filed after the period permitted by law.[7]

In the final analysis, to find a valid election based on the IRS' acceptance of Estate's refund claim, timely or not, is akin to bootstrapping which the court will not condone. Decedent died on June 20, 2008, but the alternate valuation date was elected on a return filed more than four years later on February 15, 2013. The time period well exceeds the maximum time prescribed by law, which bars the election made. The fact that the IRS' closing letter accepted the return "as filed" is insufficient to overcome an error in the application of the law.

Loan proceeds

The issue presented for determination by the court is whether the $150,000 loan represents a bona fide debt satisfied at decedent's death through a valid self-cancelling installment note, or an interest of the decedent includable in the estate. Under federal law "[t]he value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death." I.R.C. § 2033. In the context of estate tax, when properly comprised, the

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[7] Taxation cites language from Estate of Ryan v. Comm'r, 62 T.C. 4 (1974) and Fleming v. United States, 648 F.2d 1122 (7th Cir. 1981) in support of the premise that a taxpayer's untimely election will not be excused even for reasonable cause. That standard has no application to the facts of this case. The reasonableness standard applies where the taxpayer challenges a penalty assessed by the IRS based on a late filing under I.R.C. § 6651. ("In the case of a failure to file a return of tax . . . within 60 days of the date prescribed . . . unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax . . . shall not be the lesser of . . . .") There is no such provision contained in I.R.C. § 2032. Notably, in Fleming the court's consideration of the reasonable cause standard was proper since the taxpayer challenged a late-filing penalty, unlike in Ryan where the taxpayer challenged only the IRS' rejection of the taxpayer's late election and no late filing penalty had been assessed.

self-cancelling installment note ("SCIN") functions most efficiently to remove from the estate the property that is the subject of the installment note leaving no taxable asset in its place.

An installment note reflects an agreement related to an installment sale. As defined by the code, "'installment sale' means a disposition of property where at least 1 payment is to be received after the close of the taxable year in which the disposition occurs." I.R.C. § 453(b)(1). As further refined, a self-cancelling installment note represents "[a] debt obligation that is automatically extinguished at the creditor's death. Any remaining balance on the note becomes uncollectible. Self-cancelling notes are typically used in estate planning." BLACK'S LAW DICTIONARY, 1163 (9th ed. 2009). The United States Tax Court established the validity of a SCIN as a note which leaves "[no] interest remaining in [a] decedent at his death . . . ." Estate of Moss v. Comm'r, 74 T.C. 1239, 1247 (1980). See also Estate of Costanza v. Comm'r, 320 F.3d 595, 597 (6th Cir. 2003) (where appellate court affirmed the validity of a SCIN as a device that removes asset from decedent's gross estate.)

In Moss, prior to his death the decedent offered to sell 231 shares of corporate stock and real property to the employer-corporation in exchange for promissory notes. 74 T.C. at 1240. The sale was considered to be a "bona fide sale for adequate and full consideration." Ibid. The promissory notes "provided for 4 percent interest and equal monthly payments" over the course of nine years and seven months. Id. at 1240-41. At 72 years of age decedent was in average health. The court found "[t]here was nothing to indicate that his life expectancy would be shorter than the approximate 10 years of life expectancy which was indicated by generally accepted mortality tables." Id. at 1241. Nearly ten months later the decedent was diagnosed with terminal cancer for which he underwent treatment. The installment note by which the decedent sold the stock and property to the corporation contained a cancellation clause: "unless sooner paid, all sums, whether

principal or interest, shall be deemed cancelled and extinguished as though paid upon death . . . ." Ibid. The decedent received timely payments under the notes until the date of his death. According to the executor the unpaid balances of the notes had no value at decedent's death. To the contrary, the IRS determined the outstanding balance of the promissory notes should be included in the decedent's estate for federal estate tax purposes. The court held that decedent's promissory notes containing a cancellation clause on the decedent's death were not includable in the gross estate because on decedent's death any remaining interest he held in them had been extinguished, and likened the notes to an annuity or life estate limited to the decedent's life.

The Moss court distinguished the installment notes in that case from the debt agreement between father and son evidenced by a promissory note in Estate of Buckwalter v. Comm'r, 46 T.C. 805 (1966). In Buckwalter, the bank held a mortgage note against the son payable at four and one half percent interest. The father agreed to immediately pay off the mortgage note for the son and hold a note in the same amount payable by his son at two and one-half percent interest. The father kept the terms of the debt in a sealed envelope in his lockbox and instructed the son to keep the terms of the debt secret. It was agreed the son was to destroy the envelope on the father's death to avoid taxation. The father recognized that he likely would die before the son finished paying the loan and stated the "son was to be entirely free of any obligation to [the] estate." Buckwalter, 46 T.C. at 815. Upon the father's death, the IRS included the unpaid balance of the loan in the father's gross estate.

Estate here argues the loan obligation is a valid self-cancelling installment note ("SCIN") extinguished at decedent's death pursuant to the agreement between borrowers and decedent. In accepting the federal form 706 as filed, Estate contends the IRS determined the gross estate properly excluded the loan principal and Taxation erred by including the loan proceeds in the gross

estate. In support of the assessment Taxation contends the loan constitutes a gift of money conferred on the borrowers at decedent's date of death, the equivalent of a testamentary disposition. Taxation argues this court should look to standards established by the New Jersey inheritance tax statute and the interpretive case law, and extend that law to this case. Specifically, Taxation argues that a disposition presumptively constitutes a gift in contemplation of death subject to inheritance tax when made within three years of decedent's death. It contends the SCIN represents evidence of a debt extinguished at decedent's death. In an effort to comply with the inheritance tax standard Taxation lists "objective evidence" designed to establish that decedent made a transfer in contemplation of death. "As such, [the SCIN] is a transfer in contemplation of death, subject to estate tax" and state law principles "harmonize[ ] with similar rulings from the federal court system." On that basis Taxation urges that the Buckwalter case should guide the result here. This court rejects Taxation's reliance on principles of New Jersey inheritance tax where Taxation assessed estate rather than inheritance tax, and finds no basis to extend that law to this matter. Moreover, Taxation's position disregards federal precedent that recognizes the SCIN as a valid device for the avoidance of federal estate tax. The court is guided by federal precedent where the issue before this court is governed by federal law. In that regard the court finds application of the court's rationale in Buckwalter to be compelling.

In seeking relief from the assessment, Estate argues the loan between borrowers and decedent is "valid, completely enforceable as a bona fide transaction" and analogous to Moss. In the most basic analysis, it seeks to cloak the borrowers' agreement with the incidents of an installment note. A promissory note is defined as a "promise or engagement, in writing, to pay a specified sum at a time therein limited . . . ." BLACK'S LAW DICTIONARY, 1093 (5th ed. 1979). Defined as a type of promissory note, an installment note is "[o]ne of a series of notes payable at

regular intervals or a single note calling for payment in installments at fixed periods of time." BLACK'S LAW DICTIONARY, 956 (5th ed. 1979). In this matter the parties never memorialized their agreement in writing. Estate contends Oberg outlined the loan terms in a sworn affidavit (Borrowers' Affidavit in Support of Debt Forgiveness submitted with the IT return) on which it relies to establish the validity of the transaction. The absence of a writing poses significant hurdles and leaves in doubt the terms of the parties' agreement. Estate alleges that proof of the agreement is met by an amalgam of documents that reflect borrower's performance of the loan agreement. The documents reflect interest payments made by borrowers during decedent's lifetime and reported on decedent's income tax returns and in the accounting for the Edgar C. Oberg Trust approved by the Monmouth Surrogate.[8]

In the affidavit Oberg contends decedent was healthy and active at the time the parties entered into the agreement. In return for the loan decedent had the right to "visit and live in the apartment in France whenever she wished rent free; borrowers would pay 7% on the entire loan amount. Provided borrowers paid the interest, the $150,000 principal of the personal loan would be forgiven." Even accepting Oberg's testimony regarding the terms of the loan, Estate has not met its burden of proof that the agreement constitutes a qualifying SCIN transaction pursuant to the requirements set forth in Moss. The transaction must be bona fide; for full and adequate consideration; the seller must not retain control over the property; the cancellation provision must be bargained-for consideration; and the terms of the alleged note must not exceed the seller's life

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[8] Oberg states in the affidavit "a copy of the 2007 Schedule B is attached showing the reporting of the twelve $875 per month payments and also showing that [borrowers] were the payers." Regarding the Edgar C. Oberg Trust, there were no further details supplied regarding the $300,000 loan, such as the manner by which the trust was formed, whether decedent was a Trustee, or the interest decedent may have had in the trust.

expectancy. In addition, the seller must receive a risk premium as consideration for the cancellation clause since it may prevent seller from receipt of the full purchase price. The risk premium is generally reflected as an increased purchase price or interest rate. Douglas K. Freeman, Planning for Large Estates, § 4.12 Matthew Bender & Company Inc. (2017) ("To obtain benefit [of a SCIN, a] premium is required to be paid . . . . A premium must be paid by the buyer to ensure that no gift arises from the cancellation provision."); Journal of Small Business Finance, Vol 4: Iss. 2, pp. 129-142 (1995), "Financing Internal Buyouts of Private Companies: SCIN Attractive if Valuation Issues Can Be Resolved," Crain, Terry and Hamill, James.

"[A] SCIN signed by family members is presumed to be a gift and not a bona fide transaction." Estate of Costanza, supra, 320 F.3d at 597 (citation omitted.) One who shows a real expectation of repayment and intent to enforce the collection of indebtedness may rebut the presumption. As an intra-family transaction, Estate has the burden to prove that "there existed at the time of the transaction a real expectation of repayment and intent to enforce the collection of indebtedness." Ibid. Here, the evidence is clear there was no obligation that borrowers repay the loan.

More to the point, the loan agreement lacks even the basic elements required of a valid SCIN. No sale occurred and the terms of the loan were never reduced to writing. The court finds dubious Estate's contention that the transaction is a bona fide SCIN supported by adequate consideration where the only payment required was 7% interest on the loan. The records lack proof that the right to use the apartment and the interest payments represent adequate and full consideration for the cancellation provision where evidence of fair market value of the right received by decedent (and of market interest rates) has not been provided. Borrowers were also under no obligation to repay the principal of the loan. Estate has not proven that the transaction

was bona fide, and for full and adequate consideration; or that the cancellation provision was bargained-for consideration. In the affidavit, Oberg did not even allege that the loan reflected a risk premium. The terms of the loan could not have been intended to exceed decedent's lifetime since no loan term was established. Without more, the record contains insufficient evidence to prove the existence of full and adequate consideration for a bona fide loan obligation satisfied at decedent's death.

The court finds the present facts are analogous to Buckwalter to the extent that both decedents retained an interest in the loan at death. In substance, the transaction at issue was an interest-only loan from decedent to borrowers; decedent's daughter and son-in-law. Accepting the loan terms as set forth by Oberg, decedent transferred the sum of $150,000 during her lifetime with the loan to be forgiven on decedent's death. Decedent retained the right to receive a stream of income, terminating at her death, with no repayment of the loan proceeds required.

In Buckwalter, the decedent's interest in the unamortized portion of the loan was set forth as follows:

> We are satisfied that there was a genuine, albeit secret, debt running from son to father that was being paid off in 30-day installments. To be sure, the decedent recognized that he might not be alive at maturity, and he wanted his son to be relieved of further obligation when he died. This could have been achieved by a bequest to his son of the unpaid principal amount of the loan, in which case that amount would plainly have been included in the decedent's gross estate as property owned by him at the time of his death. Instead, the decedent sought to achieve the same result by keeping the transaction secret; by arranging for the details of complete amortization of the loan to be set forth in a schedule contained in a sealed envelope in *his own* lock box, such envelope being identified in the son's handwriting as belonging to the son. The obvious purpose of this wily scheme was to enable the son to remove all evidence of the loan at the time of decedent's death, thereby concealing its prior existence and at the same time relieving him of any obligation to make any further payments on the loan. It was in

> this manner that the decedent gave to his son the unamortized portion of the loan when he died. We hold that he had an interest in the loan at the time of his death and that such interest was properly included in his gross estate pursuant to section 2033.
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> [Id. at 816-17 (Emphasis in original).]

The Moss court distinguished Buckwalter. The SCIN in Moss contained a bargained-for cancellation clause, considered to be "an integral provision of the note," while in Buckwalter decedent "retained control of the entire debt until his death." Moss, supra, 74 T.C. at 1246-7. "The [Buckwalter] son was not relieved of the debt until he removed the evidence of the loan after the decedent's death." Ibid. Where in Buckwalter the decedent's interest in the loan terminated only upon his death, in Moss, "all interest that decedent had in the notes lapsed at his death." Ibid. The court here finds the loan represents an interest of the decedent held at the time of death properly includable in the gross estate pursuant to I.R.C. § 2033. As such, Taxation's determination to include the loan proceeds in the gross estate was in accord with federal precedent.

Defendant's Propriety in Examining the IRS Allowances

New Jersey amended its estate tax statute in July 2002. L. 2002, c. 31. Under the statute, an estate tax is imposed on the "transfer of the estate of every resident decedent dying after December 31, 2001 . . . which would have been subject to an estate tax payable to the United States under the provisions of the federal Internal Revenue Code of 1986 [hereinafter "I.R.C."] in effect on December 31, 2001 . . . ." N.J.S.A. 54:38-1(a)(2)(a). The amount imposed is "the maximum credit that would have been allowable under the provisions of that federal Internal Revenue Code in effect on that date . . . on account of taxes paid to any state or territory of the United States or the District of Columbia . . . ." Id.[9]

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[9] The statute provides for an alternate tax computation not relevant to this court's decision.

The statutory amendment was prompted by congressional code changes enacted in 2001. Due to the integrated nature of the two estate tax schemes the legislature anticipated that federal code changes would affect the level of New Jersey estate tax revenue. In particular, the congressional election to increase the unified credit (and to phase-out the state death tax credit) prompted the legislature to act. The unified credit represents the dollar amount of the estate eligible for transfer free of federal estate tax. I.R.C.§ 2001. As a corollary, under the state death tax credit provision, New Jersey could collect as its own, taxes otherwise payable to the U.S. Treasury. I.R.C. § 2011. To clarify, Congress' decision allowing larger estates to transfer tax free (increase in the unified credit) had a corresponding affect (expected decrease) on calculation of the state death tax credit which serves as the source of the New Jersey estate tax revenue.

New Jersey amended the statute to decouple from the federal law. "To avoid the loss of revenue due to the federal changes, in July 2002, the Legislature amended N.J.S.A. 54:38-1 to provide that the New Jersey estate tax would not follow the federal amendments, but would continue to be computed in accordance with the federal estate tax credit in effect on December 31, 2001." Oberhand v. Director, Div. of Taxation, 193 N.J. 558, 562 (2008). The amendment was intended to "preserve[] the New Jersey estate tax as it existed up to the point at which the changes in federal law took effect. . . ." Oberhand v. Director, Div. of Taxation, 22 N.J. Tax 55, 60 (Tax 2005) (citing Statement to Senate Bill No. 1378 (March 25, 2002)).

Under the federal code, decedent's gross estate "shall be determined by including . . . the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated." I.R.C. § 2031. The parties agree that federal estate tax law as of December 31, 2001 controls for New Jersey estate tax purposes even under the law as decoupled. The discord arises over Taxation's authority to "discount conclusions" of the IRS on the two items at issue – (1)

acceptance of the alternate valuation date, and (2) inclusion of the loan obligation in the taxable estate, since Taxation's actions result in an assessment in excess of the state death tax credit.

In its challenge to the assessment, Estate contends that since the tax imposed by N.J.S.A. 54:38-1 "shall be the maximum credit" allowed under federal law, where the IRS accepts a federal return without change New Jersey estate tax is limited to the exact amount of the state death tax credit as it appears on form 706. Estate cites other provisions of the statute to support the argument that, as plainly written, the statute "limits" the circumstances under which New Jersey estate tax may vary from the amount calculated as the state death tax credit to those set forth at N.J.S.A. 54:38-2 and -3. Under section 2, a federal estate tax increase resulting from IRS review triggers an increase in New Jersey estate tax liability. Correspondingly, a federal tax reduction triggers reduction in New Jersey estate tax liability. N.J.S.A. 54:38-3. The statute as amended saved those provisions from repeal, and they remain unchanged. N.J.S.A. 54:38-7 continues to require that a taxpayer file with the Director "a copy of the federal estate tax return . . . and a copy of any communication from the federal government making any final changes in said return . . . ." On that basis Estate portends that Taxation may increase or decrease New Jersey estate tax only where IRS changes after federal review of form 706 occur, but not on these facts where the IRS accepted form 706 as filed, with no adjustments. Estate thereby concludes, although the New Jersey decoupled from the federal code, that action had no effect on the link between the federal and state estate tax schemes.

Estate argues the Director is bound by IRS determinations that are based on federal tax law which the agency is responsible to administer. Therefore, the IRS estate tax closing letter binds Taxation. A contrary interpretation of the New Jersey statute would allow Taxation to engage in its own, independent "analysis" of federal estate tax law, absent the statutory authority to do so.

Estate argues that Taxation's actions "improperly interpret" New Jersey estate tax law, "impermissibly seek to expand existing judicial precedent," and are arbitrary and capricious. Taxation argues that as decoupled, the New Jersey estate tax is an independent tax that follows federal principles and no longer a "sponge" tax simply designed to "soak up" the federal credit. For the reasons set forth, the court finds Estate's arguments prevail only by ascribing a narrow reading to the relevant statutes and by excluding statutory provisions necessary to a full analysis of the issues.

The court's review begins with the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq. ("SUTPL"). The Director's responsibility to review tax returns filed with the state and assess taxes where required by law is clearly set forth in N.J.S.A. 54:49-6, entitled, "Examination of return, report; assessment of additional tax." The language states:

> After a return or report is filed under the provisions of any State tax law, the director shall cause the same to be examined and may make such further audit or investigation as he may deem necessary, and if therefrom he shall determine that there is a deficiency with respect to the payment of any tax due under such law, he shall assess the additional taxes, penalties, if any, pursuant to any State tax law or pursuant to this subtitle . . . .
>
> [N.J.S.A. 54:49-6(a).]

The estate tax statute at N.J.S.A. 54:38-13, entitled "Purpose of chapter; liberal construction," provides Taxation with broad authority to collect the estate tax based on the credit allowed through the federal code:

> It is the intent and purpose of this chapter to obtain for this state the benefit of the credit allowed under the provisions of section three hundred and one, subsection "b" of the federal revenue act of one thousand nine hundred and twenty-six, the amendments thereof and supplements thereto and any subsequent modifications thereof. The provisions of this chapter shall be interpreted and construed liberally in order to accomplish the purpose thereof and the state tax

> commissioner shall have, in addition to his other powers and those in this chapter specified, all additional, implied and incidental powers which shall be proper and necessary to effect and carry out the expressed intent and purpose of this chapter.
>
> [N.J.S.A. 54:38-13.]

Further support for Taxation's authority to undertake a comprehensive review of taxpayer returns is found at N.J.S.A. 54:38-7. The statute provides the Director with the statutory authority to direct the review of estate returns and to investigate the basis for the information supplied by the taxpayer. The entity liable for the tax "shall file any other evidence, information or data that the Director of the Division of Taxation shall in the director's discretion deem necessary" in addition to the copy of the federal return. N.J.S.A. 54:38-7.

The scope of judicial review of the Director's decisions "is limited." Quest Diagnostics, Inc. v. Director, Div. of Taxation, 23 N.J. Tax 278, 283 (App. Div. 2006). Courts should accord "great respect" to the Director's application of tax statutes, "so long as it is not plainly unreasonable." Metromedia, Inc. v. Director, Div. of Taxation, 97 N.J. 313, 327 (1984). 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.") Moreover, as a matter of statutory interpretation, "[a] statute should be interpreted in accordance with its plain meaning if it is clear and unambiguous on its face and admits of only one interpretation." New Cingular Wireless PCS, LLC v. Director, Div. of Taxation, 28 N.J. Tax 1, 14 (Tax 2014) (citation omitted.) "The duty of . . . this court is to give meaning to the wording of the statute and, where the words used are unambiguous, apply its plain meaning in the absence of a legislative intent to the contrary." Id.

Based on clear language of SUTPL and estate statute provisions cited, the court finds Taxation has the authority, indeed the obligation, to review the entirety of the information reported,

including the state tax credit, to determine whether the tax has been correctly calculated. The Director's responsibility under the decoupled statute is "simply to determine estate distributions under the law in effect on the date of death and apply to those distributions the federal estate tax law in effect on December 31, 2001." Oberhand, supra, 193 N.J. at 569 (quoting Oberhand, supra, 22 N.J. Tax at 60.) In applying federal law to the determination of estate distributions the responsibility to apply federal principles correctly is axiomatic.

While calculation of the state death tax credit continues to serve as the source of New Jersey's estate tax, the tax shall be the "maximum credit that would have been allowable under [I.R.C. sec. 2011]," rather than the "credit determined by the federal agency" the words Estate imputes to the statute. N.J.S.A. 54:38-1(a)(2)(a)(i). Estate's interpretation would otherwise reduce Taxation's role to that of a mere collection agency bound by the federal estate as reported, including IRS errors. That role would require the state revenue agency to accept calculations and allowances passed down from the IRS, without further examination or audit, despite an IRS audit determination that appears incorrect or unclear. Integration between the estate tax schemes compels the result reached by this court. A contrary conclusion would conflict with the intent of the statute and constitute an unreasonable application of its terms. Courts "should strive to avoid statutory interpretations that 'lead to absurd or unreasonable results.'" Oberhand, supra, 193 N.J. at 568 (citation omitted). In this matter, Taxation presents a reasonable basis in fact and law that the IRS' application of federal law was contrary to established federal precedent regarding the alternate valuation date and exclusion of the loan proceeds from the gross estate.

This court's opinion regarding Taxation's authority to review the return and to assess tax in excess of the state death tax credit finds support in prior decisions of the tax court. Estate of Booth v. Director, Div. of Taxation, 27 N.J Tax. 600 (Tax 2014); Estate of Stevenson v. Director,

Div. of Taxation, 23 N.J. Tax 583, 591 (Tax 2008). Cf. Forbes v. Director, Div. of Taxation, 14 N.J. Tax 257 (Tax 1994). In Booth, Taxation disregarded IRS determinations in computing New Jersey estate tax, including the federally allowed marital deduction. The IRS had accepted the estate's claim that a common-law marriage between decedent and her life-time companion qualified for the marital deduction and issued a closing letter to that effect. The tax court found where the federal computation of the state death tax credit implicates a question of state law as to the common-law marital status of a claimant, the Division of Taxation "should not be irrevocably bound by the IRS' allowance of a marital deduction if that allowance is not in accordance with New Jersey law as to common-law marriages in the absence of a court's finding or recognition of such a status." 27 N.J. Tax at 622. While the state death tax credit remains the source of New Jersey estate tax "[that] tie-in [did] not bar [the Division of] Taxation from examining [and disregarding] the federally allowed marital deduction" the court concluded. Id. at 603-04. As Taxation relies on Booth, so Estate seeks to distinguish the decision as one which turns on the question of marriage, an area "uniquely rooted in state law," with the present matter, which is controlled by federal estate tax law principles. The court is not persuaded. The court finds the succinct rationale in Booth to be compelling under these facts where the court there recognized, "[t]he amount of the federal State death tax credit is impacted by the amount of the federally allowed marital deduction . . ." Id. at 604.

In Stevenson the tax court re-examined the marital deduction as reported by the estate, though there was no IRS determination at issue. The Director had altered the estate distributions and effectively reduced the amount of the martial deduction based on federal taxes not assessable at the date of death, but chargeable as of December 31, 2001. Stevenson, 23 N.J. Tax at 587. The court found the Director's actions to be "expressly authorized by or obviously inferable from the

specific language of the enabling statute." Id. at 592 (citation omitted). The court likewise rejected plaintiff's arguments similar to those raised here regarding the state's authority to vary from the state death tax credit in calculating New Jersey estate tax due.[10]

New Jersey courts recognize "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) (internal citation omitted). Tax assessments and final determinations issued by the Director are "presumptively correct"; the taxpayer has the burden of proving to the contrary with evidence that is "definite, positive, and certain in quality and quantity." Quest Diagnostics v. Director, Div. of Taxation, 21 N.J. Tax 484, 490 (Tax 2004), aff'd, 23 N.J. Tax 278 (App. Div. 2006), certif. denied, 188 N.J. 577 (2006); Yilmaz, Inc. v. Director, Div. of Taxation, 22 N.J. Tax 204 (Tax 2005), aff'd, 390 N.J. Super. 435 (App. Div.), certif. denied, 192 N.J. 69 (2007).

Here, the parties disagree on application of the presumption. In summary, Estate argues the presumption applies to the determination of the IRS rather than to Taxation's assessment, claiming the decision of the IRS is at issue. Taxation both opposes that position, and contends the law supports the assessment without resort to reliance on the presumption of correctness afforded

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[10] Taxation also relies on Schaevitz Trust v. Director, Div. of Taxation, 15 N.J. Tax 296, 308 (Tax 1995), where the federal tax basis for New Jersey income tax purposes under state statute was at issue. The tax court held "[a] state taxing authority may examine and adjust state taxes that are to be construed in conformity with federal tax law, and such adjustments can be made to conform with federal tax principles correctly applied, notwithstanding the federal government's own failure to do so . . . . " Because the matter involved a challenge to a gross income tax assessment, Estate argues the case is not analogous since integration between the New Jersey and federal tax law is absent. This court agrees that the case is less compelling, however, the court finds the case provides support for its rationale herein given New Jersey's reliance on the federal income tax statute to determine basis.

to it. The court finds the presumption of correctness applies to the decision of the Director since the Tax Court is conferred jurisdiction to review decisions of the State agency, and the State agency's review of federal law. Estate has failed to present competent evidence to rebut the presumption that attaches to the assessment, and support for the legal challenge is lacking.

CONCLUSION

The court finds Taxation is not bound by a federal determination that results from federal estate tax principles incorrectly applied. Estate was permitted to elect an alternative value date fifty-five months after decedent's date of death, an action contrary to established federal precedent that such election must be made within one year of the time prescribed by law to file the return, or twenty-seven months after decedent's death in this case. Likewise, federal precedent supports this court's holding that Taxation properly included the $150,000 loan proceeds in the calculation of the gross estate since decedent held an interest in loan proceeds at the date of death. The court further finds that Taxation is authorized by statute to assess tax in excess of the state death tax allowance in accordance with federal law correctly applied, as of December 31, 2001.

Orders as to both motions, granting and denying relief, in part, will be entered in accordance with this opinion.