

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

ANSEL J. GIUSTINA, TRUSTEE OF)	
ANSELMO GIUSTINA ESTATE,)	
)	
Plaintiff,)	TC-MD 041088B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

A case management conference was held on January 24, 2005. Ansel J. Giustina, Attorney, represented Plaintiff. Douglas M. Adair, Assistant Attorney General, represented Defendant. The parties will be referred to as “taxpayer” and “the department.”

At the request of the parties, the matter was submitted for decision with the filing of a stipulation of facts¹ and cross motions for summary judgment.

The record closed June 13, 2005.

I. STATEMENT OF FACTS

The parties have stipulated to the following facts. An Oregon inheritance tax return for the Estate of Anselmo Giustina was received by the department on September 14, 1994. Concurrently, taxpayer timely elected to make payments on the federal estate tax due in installments pursuant to IRC section 6166.² Each subsequent year through 2002, taxpayer filed for a refund with the department on the basis of that election. In August 2003, the Internal

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¹ Filed March 31, 2005.

² References to the Internal Revenue Code (IRC) are to 1994, unless otherwise noted.

Revenue Service (IRS) provided taxpayer with a Statement of Account and Billing Notice (Billing Notice) showing a corrected state death tax credit \$12,991 in excess of the credit amount used by taxpayer as the basis for the claim for refund filed in 2002. Taxpayer correctly determined that the increase in the state death tax credit caused a corresponding increase in Oregon inheritance tax; therefore, when taxpayer filed a tenth amended Oregon inheritance tax return on August 29, 2003, taxpayer included payment of \$12,991. The department acknowledged the payment on April 22, 2004, and claimed interest due on the amount from September 6, 1994.

II. ISSUE

Is the interest on the undisputed \$12,991 tax payment to be calculated from September 6, 1994, the date on which the original inheritance tax return was filed, or from September 2, 2003, the date on which the tenth amended Oregon return was received?

III. ANALYSIS

A. Interest should be calculated from the date the original inheritance tax return was filed.

Interest accrues on all tax imposed by ORS 118.005 to 118.840 that is not paid in full as of the due date. ORS 118.260(5)(a).³ The interest is accrued “for each month or fraction thereof from the time when the tax became due and payable.” *Id.* There is no question that some amount of interest is due on the tax paid by taxpayer; however, whether the interest must be calculated from 1994 or 2003, under the statute, depends upon when the federal estate tax became “due and payable.”

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³ All references to the Oregon Revised Statutes (ORS) are to 2003.

In analyzing the statute, the court must first consider the text and context of ORS 118.260(5)(a). *PGE v. Bureau of Labor and Industries*, 317 Or 606 (1993), 859 P2d 1143. If the meaning is clear from the text and context, further analysis is unnecessary. *Id.* at 611. The context includes other provisions of the same statute as well as related statutes. *Id.* The text of ORS 118.260(5)(a) states that interest on past due inheritance tax “shall be charged and collected * * * from the time when the tax became due and payable.” The general rule is that inheritance tax is “due and payable on the date the decedent’s federal estate tax is due and payable.” ORS 118.220. The federal statute and regulations, restated in the Oregon Administrative Rules, state that a decedent’s federal estate tax is to be paid on the date “fixed for filing the return.” IRC § 6151(a); OAR 150-118.100(1).⁴ The “fixed date” is nine months after the date of the decedent’s death. IRC § 6075(a); OAR 150-118.100(1). The decedent died December 5, 1993, which makes the due date September 6, 1994. The tax in this case would, therefore, be payable as of the time of that filing, September 6, 1994.

Taxpayer maintains that the federal estate tax installment payment remained “payable” through September 5, 2003, and, therefore, the interest should not begin accruing until that time. The installment payments made by taxpayer were made pursuant to IRC section 6166, a federal extension that is set up as a 10-year installment plan. The OAR provides that such an approved federal extension will not prevent the accrual of interest during the extension period. OAR 150-118.160-(B)(3).⁵ The interest accruing on state tax owed by taxpayer is calculated

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⁴ All references to the Oregon Administrative Rules (OAR) are to 2003.

⁵ OAR 150-118.160-(B)(3) states: “[T]he Department will consider that an extension of time to file an Oregon inheritance tax return has been granted if the executor has obtained from the Internal Revenue Service an extension of time to file the federal estate tax return. * * * [I]nterest shall accrue during the extension period.”

without regard to the section 6166 installment plan and, therefore, is calculated from the date of the original return.

B. *ORS 118.100(1) and (2).*

Taxpayer and the department both rely on ORS 118.100(1) and (2); however, those provisions do not fully resolve the issue. ORS 118.100(1)⁶ sets out the procedure the department is to use when interest payments on federal tax installments cause a decrease in the state death tax credit and a corresponding overpayment of Oregon tax, which then requires a refund with interest to be issued by the department. That is the situation for the inheritance tax returns filed by taxpayer through 2002. The tenth amended return filed September 2, 2003, that is at issue in this case is the result of an increase in the state death tax credit, not a decrease.

ORS 118.100(2)⁷ requires the taxpayer to report to the department if the amount of federal estate tax is “changed or corrected” by the IRS. The Billing Notice received by taxpayer

⁶ ORS 118.100(1) provides, in pertinent part:

“The [inheritance] tax * * * shall be paid to the Department of Revenue on the date the federal estate tax is payable. If interest is paid on federal estate tax installments resulting in a reduction of the federal estate tax, and the department determines, pursuant to an amended return or refund claim, that the amount of tax imposed by ORS 118.010 is less than the amount theretofore paid, the excess tax shall be refunded by the department with interest at the rate established by ORS 305.220 for each month or fraction thereof during a period beginning on the date the amended return or refund claim is filed to the time the refund is made.”

⁷ ORS 118.100(2) provides, in pertinent part:

“If the amount of federal estate tax reported on a United States estate tax return is changed or corrected by the Internal Revenue Service or other competent authority, resulting in a change in the maximum state death tax credit allowable under the federal estate tax law, the executor shall report the change or correction in federal estate tax to the department. If the federal change or correction results in a reduction of the allowable state death tax credit, the report of the change or correction shall be treated by the department as a claim for refund pursuant to ORS 305.270 and, notwithstanding the limitations of ORS 305.270, shall be deemed timely if filed with the department within two years after the federal correction was made. If the change or correction results in an increase in the state death tax credit allowable on the federal estate tax return, the department may issue a notice of deficiency within two years after the federal change or correction was made or within two years after receiving a report of the federal change or correction, whichever is the later.”

reported a change in the form of an increase in the state death tax credit, and taxpayer duly reported that change on the tenth amended return received September 2, 2003. The statute also sets forth procedures under which the department must issue a refund in the case of overpayment due to a decrease of the state death tax credit or may issue a notice of deficiency in the case of underpayment due to an increase of the state death tax credit. Here, there was no decrease of the state death tax credit and, though there was an increase in the state death tax credit, no Notice of Deficiency was issued by the department. In light of the foregoing, ORS 118.100 is not determinative in resolving the dispute.

C. ORS 118.009.

Taxpayer also relies on the policy statement contained in ORS 118.009, in which the legislature declared that “ORS 118.007 and section 3, chapter 806, Oregon Laws 2003, and the amendments to ORS 118.010, 118.160 and 118.230 * * * are needed to ensure that the level of tax compliance with the Oregon inheritance tax is at the level that Oregonians expect from a fair and balanced tax system,” None of the amendments, however, enacted during the 2003 legislative session pursuant to that policy statement are at issue here. 2003 Or Laws ch 806. Even if that policy statement did apply to the provisions at issue, ORS 118.260 and 118.220 clearly state the date when interest is to begin accruing.

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IV. CONCLUSION

Interest accrues on inheritance tax due but not paid from the time it becomes due and payable. Oregon inheritance tax is due and payable on the date federal tax is due and payable; therefore, interest is to be calculated from the due date of the original return. Now, therefore,

IT IS THE DECISION OF THIS COURT that the appeal is denied.

Dated this _____ day of October 2005.

JEFF MATTSON
MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within 60 days after the date of the Decision or this Decision becomes final and cannot be changed.

This document was signed by Magistrate Jeff Mattson October 12, 2005. The Court filed and entered this document October 12, 2005.