

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
ELEANOR SOLOVAY AS THE EXECUTRIX :
OF THE ESTATE OF CLAIRE SHAPIRO : DETERMINATION
for Redetermination of a Deficiency or for Refund : DTA NO. 829194
of Estate Tax under Article 26 of the Tax Law. :

Petitioner, Eleanor Solovay, as the Executrix of the Estate of Claire Shapiro, filed a petition for the redetermination of a deficiency or for refund of estate tax under article 26 of the Tax Law.

On December 11, 2019, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, by Amanda Hiller, Esq. (Hannelore Smith, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing by Novick & Associates, PC (Michael J. Sullivan Esq.), did not submit a response by January 10, 2019, which date triggered the 90-day deadline for issuance of this determination. After due consideration of the documents submitted, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, renders the following determination.

FINDINGS OF FACT

1. Petitioner, Eleanor Solovay, as the Executrix of the Estate of Claire Shapiro, filed a petition with that was received by the Division of Tax Appeals on February 12, 2019. The

petition challenges a refund denial of estate tax issued by the Division of Taxation (Division) on March 30, 2016 under article 26 of the Tax Law (refund denial).

2. The petition included a copy a conciliation order, CMS No. 000302229, issued to petitioner by the Department of Taxation and Finance on November 16, 2018. The conciliation order sustained the refund denial.

3. The petition challenges the conciliation order and refund denial. Although the refund sought was that of estate tax, petitioner alleges that the denial was arbitrary, not reasonable, and should be reversed pursuant to Tax Law § 697 (d).

4. On December 11, 2019, the Division of Tax Appeals issued to petitioner and the petitioner's representative a notice of intent to dismiss petition. The notice stated, in sum, that as the petition had been filed in protest of a conciliation order for estate tax under article 26 of the Tax Law, it appeared that the Division of Tax Appeals lacked jurisdiction of the subject matter of the petition. Further, the notice stated that Tax Law § 697 (d) only applied to income tax under article 22 and not estate tax under article 26.

5. In response to the notice of intent to dismiss petition, the Division's representative submitted a letter on January 3, 2020 stating that the Division agreed that the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition pursuant to 20 NYCRR § 3000.9 (a) (4) because jurisdiction of the petition in this matter is with the Surrogate's Court.

6. The petitioner did not submit a response to the notice of intent to dismiss the petition.

CONCLUSIONS OF LAW

A. The Division of Tax Appeals is a forum of limited jurisdiction (Tax Law § 2008; *Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom New York State Department of Taxation and Fin. v Tax Appeals Tribunal*, 151 Misc 2d 326 [Sup Ct, Albany County 1991, Keniry, J.]). Its power to adjudicate disputes is exclusively statutory (*id.*). Accordingly, absent legislative action, this forum cannot extend its authority to disputes that have not been specifically delegated to it (*see Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

B. A proceeding in the Division of Tax Appeals is commenced by filing a petition “protesting any written notice of the Division of Taxation which has advised the petitioner of a tax deficiency, a determination of tax due, a denial of a refund . . . or any other notice which gives a person the right to a hearing in the division of tax appeals” (Tax Law § 2008 [1]) .

C. Surrogate’s Court Procedure Act (SCP) § 201 confers upon the surrogate’s court:

“full and complete general [subject matter] jurisdiction in law and in equity to administer justice in all matters relating to the affairs of decedents . . . to try and determine all questions, legal or equitable, arising between any or all of the parties to any action or proceeding. . . as to any and all matters necessary to be determined in order to make a full, equitable and complete disposition of the matter . . .” (SCP § 201 [3]).

D. Tax Law § 998 provides taxpayers with both the right and the means to protest a notice of deficiency or a notice of disallowance of a claim for refund issued by the Division with respect to estate taxes. The surrogate’s court is granted exclusive jurisdiction over proceedings concerning deficiencies or refunds under this section (*see* Tax Law § 998 [h]). As a result, the

Division of Tax Appeals is without jurisdiction to hear this matter.

E. Petitioner's argument that the refund denial should be reversed pursuant to Tax Law § 697 (d) is unsustainable. Tax Law § 697 (d) is specifically limited by its own language to taxes paid pursuant to article 22. Thus, it cannot be applied to estate taxes paid under article 26.

F. IT IS ORDERED, on the supervising administrative law judge's own motion, that the petition be, and it is hereby, dismissed with prejudice as of this date.

DATED: Albany, New York
July 09, 2020

/s/ Herbert M. Friedman, Jr.
SUPERVISING ADMINISTRATIVE LAW JUDGE