NO. CV 136020308

ALFRED TERRELL	:	SUPERIOR COURT
	:	TAX SESSION
v.	:	JUDICIAL DISTRICT OF
	:	NEW BRITAIN
KEVIN SULLIVAN, COMMISSIONER OF REVENUE SERVICES	:	APRIL 29, 2015

MEMORANDUM OF DECISION ON
CROSS MOTIONS FOR SUMMARY JUDGMENT

The plaintiff, Alfred T. Terrell, (Terrell) executor of the estate of Catherine M. Van Doren (Catherine) brings this action, pursuant to General Statutes § 12-554,[1] against the commissioner of the Department of Revenue Services (DRS) seeking a refund of an estate tax levied by the commissioner on the estate.

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General Statutes § 12-554 provides, in relevant part, as follows: "Any taxpayer aggrieved because of any order, decision, determination or disallowance of the Commissioner of Revenue Services under the provisions of this chapter may, within one month after service upon the taxpayer of notice of such order, decision, determination or disallowance, take an appeal therefrom to the superior court for the judicial district of New Britain . . . ."

General Statutes § 12-395 (a) (1) recites that "[t]he provisions of sections 12-548 and 12-550 to 12-554, inclusive, shall apply to the provisions of this chapter in the same manner and with the same force and effect as if the language of said sections 12-548 and 12-550 to 12-554, inclusive, had been incorporated in full into this chapter and had expressly referred to the tax imposed under this chapter, except to the extent that any such provision is inconsistent with a provision of this chapter."

Catherine died a resident of the state of Connecticut on October 13, 2008. Her husband, A. Reading Van Doren (Mr. Van Doren), died a resident of Connecticut on March 12, 1999.

The issues in this case deal with the subject of death taxes i.e., an estate or transfer tax and an inheritance or succession tax. As noted in Tax Commissioner v. Estate of Bissell, 173 Conn. 232, 238, 377 A.2d 305 (1977), "[a]n estate or transfer tax, such as the federal estate tax, is a tax imposed on the privilege of transmitting property at death. . . . 'If a testamentary transfer be likened to pitching and catching a ball, an estate or transfer tax would be a tax upon the privilege of pitching the ball, and an inheritance or succession tax would be a tax upon the privilege of catching the ball.'" (Citations omitted.)

The Connecticut estate tax begins with and incorporates the federal gross taxable estate. See General Statutes § 12-391 (c) (3), where the "'[g]ross estate'" means the "gross estate, for federal tax purposes."

The federal gross taxable estate is made up of the gross estate less allowable deductions. See Internal Revenue Code (IRC) § 2051. One of the deductions from the gross estate is the marital deduction which allows the first-to-die spouse's estate to deduct the value of any interest in property that passes from the decedent to the surviving spouse.

IRC § 2056 (a). This deduction is limited by IRC § 2056 (b) which provides that a "terminable interest" such as a life estate does not qualify for a marital deduction.[2]

However, since January 1, 1982, federal law has allowed for an exception to IRC § 2056 (b) by providing for a category of terminable interest property known as "qualified terminable interest property," or "QTIP." IRC § 2044 provides that any property designated as a QTIP property by the estate of the predeceased spouse is a taxable transfer at the death of the surviving spouse.

In a husband-wife relationship, the creation of a QTIP trust is key to avoiding an estate tax in the husband's estate. Under ordinary circumstances, when the husband dies, assets transferred to the wife with a terminable interest, such as a life use, are taxable in the husband's estate. However, the assets of the husband pass tax-free when the wife has full control of the assets. IRC § 2056 (a). However, when the wife dies, the wife's estate holding the assets of the husband's estate that passed to her tax- free, are subject to the estate tax at the time of the wife's death. See Estate of Morgens v. Commissioner, 133

[2] The marital deduction, § 2056 (a) of the IRC, "provides that an estate may deduct the value of any interest in property passing from the decedent to his or her surviving spouse . . . to the extent such interest is included in determining the value of the gross estate. The policy behind the marital deduction is that property passes untaxed from a predeceasing spouse to a surviving spouse, but is then included in the estate of the surviving spouse. . . . Thus, as a general rule, the marital deduction does not eliminate the estate tax on marital assets, but merely permits a deferral of tax until the death of the surviving spouse." (Citation omitted.) Estate of Kite v. Commissioner, T.C. Memo. 2013-43 (2013), p. 31.

T.C. 402, 409-410 (2009). The QTIP trust protects the wife by providing an income for life as well as protecting the interest of the husband's children from the wife invading the trust assets to the children's detriment.

Catherine was the beneficiary of a QTIP trust that was created pursuant to the Will of her predeceased husband who died a resident of Connecticut in 1999. See joint stipulation of facts (Stip.), Entry No. 104, ¶ 12.

At the time of Mr. Van Doren's death, Connecticut had both a succession tax and an estate tax. Stip., ¶ 13. "Between the death of the Husband in 1999 and the death of decedent in 2008, Connecticut enacted a new estate tax to replace its succession tax and its previous estate tax." Stip., ¶ 16.

When Mr. Van Doren died, Connecticut imposed a succession tax on the remaindermen's interest in the trust contained in his estate. DRS determined that the remaindermen's interest had a 75% value of the trust which amounted to a succession tax of $163,447.23 plus interest of $130,586.87. This amount was attributable to the remainder interest in the trust for the benefit of Mr. Van Doren's children. The amount of $32,860.36 was attributable to the remainder interest in the unified credit shelter trust. See Stip., ¶ 13. The succession tax was a tax on the remaindermen for "catching the ball" upon the death of Mr. Van Doren. See Tax Commissioner v. Estate of Bissell, supra, 173 Conn. 238.

Upon Catherine's death in 2008, the trust assets of the marital deduction trust were included in her federal gross estate, as reported on her federal estate tax return. See Stip., ¶ 14. The total value of the gross estate reported on Catherine's federal estate tax return was $3,527,423. See Stip., ¶ 17.

The plaintiff, Terrell, as executor, filed a Connecticut estate tax return on behalf of Catherine's estate reporting the total value of the gross estate to be $1,707,157, substantially below the amount of $3,527,423 reported by him on the federal estate tax return. See Stip., ¶ 18. Since the reported amount was below the $2,000,000 threshold for the imposition of the Connecticut estate tax at the time of Catherine's death, the plaintiff claims that no estate tax was due and the estate was entitled to a refund of the $200,000 previously paid to the commissioner. See Stip., ¶¶ 19-20.

The commissioner denied the request for a refund and issued an additional assessment in the amount of $1,995.94, plus interest. See Stip., ¶ 21.

The plaintiff raises four issues in this case:

1) whether the remaindermen's interest in the QTIP trust, previously subjected to a succession tax in Mr. Van Doren's estate and taxed again in Catherine's estate, amounted to a double taxation of the same assets.

2) whether the value of Catherine's life use of the QTIP trust assets should have been excluded from her gross estate for the purposes of the Connecticut estate tax because the assets of the QTIP trust were never owned by her.

3) that the husband's estate made no state election to treat the trust as a QTIP trust.

4) whether the court should prohibit the so-called double taxation of the remaindermen's interest in the trust based on equitable grounds.

As to the issue of double taxation: Prior to 2005, estates in Connecticut were subject to both a succession tax and an estate tax based upon the amount of federal credit for death taxes paid to a state. In 2005, the Connecticut estate tax was substantially revised by P.A. 05-251, eliminating the succession tax.

Section 12-391 (a) provides, in relevant part, as follows: "With respect to estates of decedents who die prior to January 1, 2005 . . . a tax is imposed upon the transfer of the estate of each person who at the time of death was a resident of this state." Section 12-391 (d) (1) (A) provided that "[w]ith respect to the estates of decedents who die on or after January 1, 2005, but prior to January 1, 2010, a tax is imposed upon the transfer of the estate of each person who at the time of death was a resident of this state."

A substantial difference between the pre-2005 estate tax and the post-2005 estate tax was the inclusion by the legislature of a state marital deduction provision post-2005. When Mr. Van Doren died in 1999, he could not defer any Connecticut estate tax on his assets devised or bequeathed to his wife because no marital deduction existed on the state level. However, on the federal level, a marital deduction existed for the benefit of Mr. Van Doren. IRC § 2056 (a).

As noted in G. Wilhelm, Death Taxes in Connecticut 4th, § 6:15, "[w]hile federal estate tax law permits a 'marital deduction' for property left in trust for a surviving spouse . . . Connecticut did not offer a marital deduction in computing the succession tax." With Connecticut not having a marital deduction to postpone the collection of taxes until the surviving wife died, the husband's estate became taxable upon his death. Presumably, this is why the commissioner imposed a succession tax on the remaindermen's portion of the QTIP trust contained in Mr. Van Doren's estate.

Since January 1, 1982, federal law has allowed a marital deduction (if an appropriate election is filed) for certain trusts even though the surviving spouse only has life use in the trust assets. See Estate of Morgens v. Commissioner, supra, 133 T.C. 409-410 (referring to the Economic Recovery Tax Act of 1981).

Although the plaintiff claims that the remaindermen's interest was taxed twice, the remaindermen's interest was actually taxed in two different estates, first the husband's then the wife's. It should be noted that the succession tax was not carried over by the legislature when changes were made in 2005. In addition, the legislature made no provision in P.A. 05-251 for any credit to be given for estate taxes paid by estates prior to January 1, 2005. The plaintiff argues that "the legislature . . . failed to recognize this problem" and "should have explicitly either granted an exemption of such property from its new tax or given a credit to estates created on or after January 1, 2005 . . . ." (Plaintiff's 3/13/14 memorandum of law (MOL), p. 12.)

Of particular significance on this issue is the court's decision in Dubno v. Falsey, 10 Conn. App. 95, 101-102, 521 A.2d 1044, cert. denied, 204 Conn. 801, 525 A.2d 964 (1987), where the court held that the same remainder interest in the marital trust in the donor's estate and in the donee's estate were taxable.

As a fall-back argument, the plaintiff claims that § 12-554 empowers the court to grant equitable relief. The plaintiff contends that the "[d]efendant's determination is both erroneous and inequitable and that the Court has the authority under . . . § 12-554 to reverse [d]efendant's determination as a mater of law and in the interests of justice. As a matter of equity[,] Connecticut should be prevented from sucking back into a later [estate's] assets which it had previously taxed, merely because it changed its law. Simply put, Connecticut may have one bite of the apple, not two." (Plaintiff's 3/14/14 MOL, p. 14.)

The plaintiff's claim for equitable relief seeks to have the court rectify what he claims to be a legislative error in not providing for tax relief resulting from repealing the pre-2005 estate tax law and the passage of the post-2005 estate tax law.

It is axiomatic that the legislature acts with knowledge of existing statutes. Financial Consulting, LLC v. Commissioner of Insurance, 315 Conn. 196, 212, 105 A.3d

210 (2014). Where legislative action is needed to correct deficiencies in the statutes, it is a well settled principle of statutory construction that the legislature knows how to do so in expressing its intent. See Gould v. Freedom of Information Commission, 314 Conn. 802, 818, 104 A.3d 727 (2014). Contrary to the plaintiff's wishes, the court is powerless to use the equitable powers given to it by the legislature in order to overcome what the plaintiff perceives is a legislative mistake.

The plaintiff further argues that the QTIP property, created by Mr. Van Doren, was never owned nor possessed by Catherine since she only had life use of the QTIP assets. On the one hand, federal estate tax law requires a QTIP trust created in a predeceased spouse's estate to be included in the surviving spouse's estate for federal estate tax purposes even though the property contained in the surviving spouse's estate is only for life use. It is the plaintiff's position that a life use on the state level is not ownership but an interest in property that expires upon the death of the life tenant. Given this position, the plaintiff argues that upon Catherine's death, her life estate terminated, and therefore, there was nothing left to tax in her estate pertaining to the QTIP trust.

In claiming that Catherine only had life use in the QTIP trust, the plaintiff seeks to ignore the provisions of § 12-391 that incorporate the federal gross estate in the Connecticut gross estate for tax purposes, which would include Catherine's's life estate in the QTIP trust.

The issue of ownership arises because "[t]he word 'owner' has no fixed meaning but must be interpreted in its context and according to the circumstances in which it is used." (Internal quotation marks omitted.) Bauer v. Pounds, 61 Conn. App. 29, 43, 762 A.2d 499 (2000). As noted in Heffernan v. Freedman, 177 Conn. 476, 478, 418 A.2d 895 (1979), "[§] 12-340 . . . imposes a tax on transfers, in trust or otherwise, from a resident of this state, of real property situated in the state, tangible personal property not having an actual situs outside the state, and all intangible personal property."

Section 12-391 (f) (2) provides as follows: "An election under said [§] 2056 (b) (7) may be made for state estate tax purposes regardless of whether any such election is made for federal estate tax purposes. The value of the gross estate shall include the value of any property in which the decedent had a qualifying income interest for life for which an election was made under this subsection."

Section 12-391 (f) (2), by reference to IRC § 2056 (b) (7), requires that in order for a QTIP trust to be effective on the federal level and state level, an election must be independently made for each level. However, when the QTIP trust was created by Mr. Van Doren, the choice of whether to elect to qualify the QTIP property as a deduction was made only on the federal level because Connecticut did not have a provision for a marital deduction prior to 2005. When Mr. Van Doren died in 1999, there was no election to be made on the state level to qualify the trust as a QTIP trust.

Recognizing that Connecticut did not provide for a QTIP trust on the state level, as compared to the federal level prior to 2005, it does not appear to make any difference whether or not an election to qualify the assets in Mr. Van Doren's estate as a QTIP trust would have made a difference on the state level.[3] As previously noted, § 12-391 (c) (3) defines "gross estate" in Connecticut to mean the "gross estate, for federal estate tax purposes."

On the federal level, "the 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." (Internal quotation marks omitted.) Estate of Turner v. Commissioner, 138 T.C. 306, 318 (2012). "The rationality of the estate and gift tax regimes regarding the marital deduction is . . . illustrated in [§§] 2056 (b) (7), 2044 and 2519. Section 2056 (b) (7) provides an exception to the general rule that a marital deduction is not allowed for terminable interest property passing from a decedent to his or her surviving spouse. See [§] 2056 (b). Section 2056 (b) (7) provides an exception to the terminable interest rule for . . . [QTIP]. It allows a marital deduction for QTIP to the estate of the first spouse to die although the surviving spouse receives only an income interest and not the remainder and has no

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See G. Wilhem, Death Taxes in Connecticut 4th, § 2.9: "[DRS] has taken the public position that if a QTIP election is made for purposes of the federal estate tax, it must also be made for purposes of the Connecticut estate tax. However, if no federal QTIP election is made, then a state-only QTIP election may be made in Connecticut. There seems to be no justification in the statute or its legislative history for this position." (Emphasis omitted.)

control over the disposition of the remainder. After the death of the surviving spouse, [§] 2044 requires that the value of his or her gross estate include the value of [the] QTIP." Id., 318-19.

Considering the plaintiff's argument that the provisions of § 12-391 should be ignored, it is necessary to look at 1) the legislative history and legislative policy of the statute it was designed to implement, 2) the circumstances surrounding its enactment and 3) its relationship to existing legislation and the common law involved in the same subject matter. Kupersmith v. Kupersmith, 146 Conn. App. 79, 87, 78 A.3d 860 (2013). It is also a well settled principle of construction that specific terms will prevail over general language in a statute and if still unreconcilable, the most recent expression of legislative intent will prevail. Id., 87-88.

As discussed above, in 2013, the legislature enacted P.A. 13-247, amending § 12-391, as follows: (deleted language in brackets, new language underlined):

"Subsections (d) and (e) of section 12-391 of the general statutes are repealed and the following is substituted in lieu thereof (Effective from passage and applicable to estates of decedents dying on or after January 1, 2013):

"[Property of a resident estate over which this state has jurisdiction for estate tax purposes includes] For a resident estate, the state shall have the power to levy the estate tax upon real property situated in this state, tangible personal property having an actual situs in this state and intangible personal property [owned by] included in the gross estate of the decedent, regardless of where it is located. The state is permitted to calculate the estate tax and levy said tax to the fullest extent permitted by the Constitution of the United States."

The significant change in § 120 of P.A. 13-247 is the elimination of the phrase "intangible personal property owned by" in favor of the language "intangible personal property included in the gross estate of the decedent, regardless of where it is located. . . ." This change is consistent with the definition of "gross estate" for federal estate tax purposes, as expressed in § 12-391 (c) (3).

It is also significant that although the legislature excluded the term "owned by" it did not change its original definition of "gross estate" which is the gross estate for federal estate tax purposes that includes a QTIP trust when so elected. In other words, if Mr. Van Doren's estate contained intangible personal property, such as cash, bonds and stocks, these items of intangible personal property, included in his federal estate tax, must be, by definition, included in the Connecticut gross estate.

Of further significance is the insertion of the term "to the fullest extent permitted by the Constitution of the United States," that did not appear in the statute's prior language. The legislature's reference to the U.S. Constitution appears to be made in the context of describing what assets in an estate were taxable by Connecticut based on the concept of situs.

It is difficult to ignore the reason for the legislative change in the language of § 12-391 (d) replacing the phrase “intangible personal property owned by the decedent” with “intangible personal property included in the gross estate of the decedent.”

The succession tax imposed by the state of Connecticut on the remaindermen’s interest in the QTIP trust was a tax on the transfer from Mr. Van Buren’s estate. In other words, the succession tax on the remainder interest of Mr. Van Doren’s estate was a tax on the transfer from his estate to the children who were catching the ball.

As noted in Dubno v. Colby, 38 Conn. Sup. 54, 458 A.2d 396 (1982): “The basis of the succession . . . tax is the right of possession or enjoyment of property . . . . The taxable incident is the shifting of the enjoyment of property - the economic benefits thereof or economic interest therein.” (Internal quotation marks omitted.)

When Mr. Van Doren died, there was no federal estate tax paid on his estate because, in part, under the IRC, the federal estate tax based upon the valuation of the assets contained in the QTIP trust were deferred until Catherine’s death because the executor of Mr. Van Doren’s estate elected to treat the QTIP trust as a marital deduction.[4]

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[4] See Exhibit B Form CT-706/709 (Connecticut Estate and Gift Tax Return) filed by Catherine’s estate in which the executor replied “yes” to the following question:

8. Does the gross estate contain any § 2044 property (QTIP from a prior gift or

The consequence of the executor's action was that the federal tax on Mr. Van Doren's estate was deferred to the time that Catherine died and the QTIP trust property was included in her estate. On the state level, because no election was made by the executor, Connecticut imposed a succession tax on the remaindermen's interest in the QTIP trust.

The commissioner points out that there is no statutory basis that would allow the commissioner to credit Catherine's estate for the succession taxes imposed on the estate of Mr. Van Doren. When the legislature wants to provide for a credit, it certainly knows how to do it. See P.A. 14-155 that provides for tax credits with respect to taxes paid to Connecticut by a decedent or the decedent's estate for taxable gifts made on or after January 1, 2005.

Although the plaintiff contends that Catherine did not own the assets in the QTIP trust because she only had life use in the assets of the trust, the plaintiff cannot ignore the fact that the Connecticut estate tax in Catherine's estate began with the value of a gross estate which was the gross estate for federal estate tax purposes. Since the court concludes that the assets of the QTIP trust should be included in Catherine's estate, the starting point for the filing of the Connecticut estate tax return should have been $3,527,423.

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estate).
On Schedule C:
7. Does the decedent's gross estate, for federal estate tax purposes, contain any IRC § 2044 property (QTIP from a prior gift or estate)?" Answer was "Yes."

For the above stated reasons, the commissioner's motion for summary judgment is granted and the plaintiff's motion for summary judgment is denied. No costs are awarded to any party.

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Arnold W. Aronson
Judge Trial Referee