

ESTATE OF ROSE B. POSNER

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6/29/06  
IN THE

vs.

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MARYLAND TAX COURT

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COMPTROLLER OF THE TREASURY

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No. 05-EI-OO-0097

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### **MEMORANDUM OF GROUNDS FOR DECISION**

The Petitioner, Estate of Rose B. Posner, has filed an appeal to this Court of a decision of the Respondent, Comptroller of the Treasury, denying a claim for interest to be paid on an estate tax refund in the principal amount of \$1,168,314.00 granted to the Petitioner by the Respondent.

The Respondent denied the claim for interest by letter dated February 10, 2005 from Janet A. Mann, Manager, Estate Tax.

The facts are not in dispute. Rose B. Posner died in Baltimore County on October 28, 1996. In 1997, the Personal Representative paid both the federal and estate tax on the value of the marital trust assets. The Personal Representative initially paid the Respondent a million dollars in estimated tax on July 28, 1997, which amount was increased by an additional estate tax payment of \$513,850 on July 20, 1998. Litigation ensued among the beneficiaries of the Estate regarding a power of appointment over a marital trust created by Nathan Posner, the husband and Personal Representative of Rose B. Posner. As a result of State appellate court decisions, it was established as a matter of law that Ms. Posner did not hold a power of appointment over the marital trust assets and,

thus, the marital trust should not have been included on the respective federal and Maryland estate tax returns.

On July 12, 2000, the Petitioner filed a claim for an estate tax refund in the amount of \$2,909,000 with the Internal Revenue Service, together with a refund claim with the Respondent. Respondent acknowledged by at least four separate letters that the Petitioner's state tax refund claim was pending and being held in abeyance until the conclusion of the federal proceedings.

The Internal Revenue Service disallowed the federal refund claim, and the IRS decision was appealed to the United States Tax Court. On May 10, 2004, the United States Tax Court issued a published opinion in the Petitioner's favor granting the refund. The IRS acknowledged that estate interest on the refund was due from the date of payment of tax, and the agreed upon computation was approved by the United States Tax Court on September 13, 2004. And on February 3, 2005, the Internal Revenue Service issued the Petitioner a refund check, which included accrued interest from July 28, 1997, the date the Petitioner paid the federal tax.

The Petitioner advised the Respondent of the United States Tax Court decision, and on July 31, 2005, the Respondent agreed that a state estate tax refund was due and owing to the Petitioner. However, the Respondent refused to pay interest on said refund, although it granted a refund in the principal amount of \$1,168,314.00. It should be noted that the Respondent did refund interest on a late payment that had been previously assessed and paid, but denied the claim for interest on the tax.

The Respondent contends that the interest is denied because until the federal estate tax liability was fixed, there could be no claim for refund and no interest would accrue.

The Maryland statutes authorize interest to be paid on tax refunds under Section 13-603 of the Tax-General Article of the Annotated Code of Maryland. The statute states as follows:

“(a) Except as otherwise provided in this section, if a claim for refund under Section 13-901(a)(1) or (2) or (d)(1)(i) or (2) of this title is approved, the tax collector shall pay interest on the refund from the 45<sup>th</sup> day after the claim is filed in the manner required in subtitle 9 of this title to the date on which the refund is paid.”

The statute establishes two requirements for interest: First, the interest does not begin to accrue until 45 days after the claim is filed, and the claim must be filed in the manner required in subtitle 9. Section 13-901(d) establishes a particular requirement for refunds of Maryland estate tax. A claim may be filed “if: (1) the Maryland estate tax is decreased as a result of (i) a decrease in the federal estate tax on the Estate . . .” The statute does not allow interest on a refund from the date the taxes were paid. If a claim does not meet the requirements of subtitle 9, no interest is payable until those requirements are met. In fact, a claim may be filed only if the federal estate taxes actually decreased. The Respondent is not allowed to anticipate what the federal determination of any proposed decrease of federal estate tax may be. There must be a definitive determination by a court case or a Closing Agreement which finally determines the actual decrease of federal estate tax. Until a final determination is made, any claim would be an estimated amount and there could be no final determination of whether the federal estate tax was actually decreased. The Maryland tax liability is dependent upon the actual federal

determination of federal liability. If the federal liability is increased, the Estate is required to file an amended return that increases its Maryland liability. A right of refund of tax previously paid to the Respondent does not exist until there is an actual “decrease in the federal estate tax” that can be used to calculate the amount of the refund. This has been a consistently followed administrative practice for determining the Maryland tax liability by the Respondent. Accordingly, until there is an actual decrease of federal estate tax, there can be no “claim” and no right to interest.

The Court understands the Petitioner’s reluctance to accept the Respondent’s determination based on the grounds of fairness and equity. However, the Maryland courts have consistently ruled that interest can only be paid after a proper claim is filed in accordance with the statutory requirements. The expressed language in Sections 13-603 and 13-901(d) imposed those requirements which must be followed prior to the payment of interest on tax refunds.

Accordingly, the Court denies the Petitioner’s claim for refund of interest.