

ESTATE OF ROBERT MALCOLM  
WATKINS, JR.

vs.

COMPTROLLER OF MARYLAND

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IN THE

MARYLAND TAX COURT

No. 21-EI-OO-0456

**ORDER**

The above entitled case having come on for hearing, testimony having been taken and the matter considered, it is this 14<sup>th</sup> day of July, 2022, by the Maryland Tax Court ORDERED, that the estate tax in the amount of \$232,467 is hereby **AFFIRMED**, the penalty is abated, and the interest shall accrue from May 29, 2019 until the tax is paid.

cc: Carlton M. Green, Esq.  
Brian L. Oliner, Esq.

**CERTIFIED TRUE COPY**  
**TEST:** John T. Hearn, Clerk

**NOTICE:** You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.

ESTATE OF ROBERT MALCOLM  
WATKINS, JR., by SHANNON WATKINS  
PERSONAL REPRESENTATIVE

Petitioner,

v.

COMPTROLLER OF MARYLAND

Respondent.

\* IN THE  
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\* MARYLAND TAX COURT  
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\* APPEAL NO. 21-EI-OO-0456  
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**MEMORANDUM OF GROUNDS FOR DECISION**

The Estate of Robert Malcolm Watkins, Jr., Petitioner, appeals the assessment of the Maryland Estate taxes by the Comptroller of Maryland, Respondent. The amount in controversy is tax due in the amount of \$232,467.00, penalty in the amount of \$23,246.70, and interest from May 30, 2015 until the tax is paid.

The decedent, Malcolm Watkins, Jr. ("Decedent"), died on August 30, 2014, and his will was probated in Prince George's County, Maryland on September 24, 2014. Shannon Watkins, his daughter, was appointed the personal representative of Robert Malcolm Watkins, Jr.'s estate on September 25, 2014. A Maryland estate tax return for the estate of the Decedent was filed on or about November 28, 2020. The estate tax return did not include certain Maryland real properties and excluded Florida real property from the calculations. The Comptroller issued a Notice of Assessment on July 30, 2021, assessing the Petitioner for additional tax, interest and penalty in the amount of \$962,540.56.

A revised assessment in the amount of \$512,230.91 was issued on September 2, 2021, in which the Comptroller excluded the Decedent's Florida real estate which was erroneously included

in the initial assessment. The revised assessment did not allow certain mortgage and deed of trust reductions due to the failure of the Petitioner to properly document balances owed as of the date of the Decedent's death. Finally, on May 5, 2022, Petitioner furnished documented deductions in the amount of \$1,031,136, which correctly reflected the Maryland estate tax due in the amount of \$229,994.

The Comptroller's final assessment included five pieces of real estate located in Prince George's County, Maryland, namely, 4502 Beechwood Road, 6923 Carolton Terrace, 4504-4508 Fordham Lane, 7007, 7009, 7013, 7015, 7017 Fordham Lane and 7101-7103 Baltimore Avenue (sometimes, the "Prince George's Properties") which were included in the Decedent's gross estate for estate tax purposes. The central issue before the Court is the treatment of the five properties which were transferred by deed as gifts within three (3) years of the Decedent's death, and whether the values of the properties in the deeds should be included in the gross estate for Maryland estate tax purposes.

The Decedent's daughter, Shannon Watkins, exercised her authority under the power of attorney for her father to transfer the five properties on October 12, 2012, less than two (2) years prior to the death of the Decedent. Ms. Watkins was concerned about the well being of her father, the Decedent, in part because of the recent death of his wife, as well as his new relationship with Emeline Wilson, who would soon become his wife. Ms. Watkins transferred the Prince George's Properties owned by the Decedent into her name, with the Decedent retaining a life estate without powers in the properties. Ms. Watkins testified that the Decedent, as he did prior to the transfers, received all rental income earned from these properties and that the day-to-day management of the properties remained unchanged.

Ms. Watkins also testified that after the death of her father there was lengthy litigation with the woman to whom he was married at the time of his death, Emeline Wilson Watkins. Emeline Wilson Watkins asserted certain claims in the estate proceedings, including an objection to the appointment of Shannon Watkins as personal representative, the issue of domicile of the Decedent and the right to an elective share. All issues were resolved in the Court of Special Appeals, *In the Matter of Watkins*, 241 Md. App. 56 (2019) in favor of Shannon Watkins and the Estate of Robert Malcolm Watkins, Jr. on May 29, 2019. Petitioner claims that no accurate Maryland estate tax return could be filed with the Maryland Comptroller until the widow's attempt to set aside the deed, the widow's claim to an elective share, and the issue of Decedent's domicile in Florida or Maryland, were decided.

The Petitioner's estate tax return excluded the net value of the Prince George's Properties from the gross estate on the theory that the October 18, 2012 transfers were "completed irrevocable gifts" thus divesting Robert Malcolm Watkins, Jr. of any ownership interest in the properties for purposes of the estate tax. Petitioner also claimed that the October 2012 deeds constitute a disclaimer under Subtitle 2, Title 9 of the Estates & Trust Article. However, the Petitioner presented no evidence at trial that the Decedent actually did disclaim any interest in the Prince George's Properties. Moreover, Petitioner argues that Maryland's estate tax is unconstitutional on the premise that there is no express provision in Maryland's estate tax statutes, or by the General Assembly, that the estate tax statute is "repealing" the common law principal that life estate deeds constitute irrevocable completed gifts.

Maryland's estate tax is directly linked to the federal estate tax. To simplify the process, Maryland's estate tax statute incorporates the estate tax provisions of the Internal Revenue Code.

The Maryland estate subject to the Maryland estate tax is the federal gross estate as determined under the Internal Revenue Code plus any property not otherwise in the federal gross estate that is required to be included under Maryland law. There is no basis provided by the Petitioner which supports any argument that the Maryland estate tax is unconstitutional.

The Court also concludes that the five (5) life estate deeds were property included in the gross estate for Maryland estate tax purposes. All interest in those properties were owned by the Decedent until Shannon Watkins transferred them on October 18, 2012. This transfer occurred less than 24 months before the Decedent died on August 30, 2014. Upon that transfer, the Decedent retained a life estate without powers. Nonetheless, as testified to by Ms. Watkins, the Decedent continued to receive the income generated by these properties for his own personal use.

Internal Revenue Code ("IRC") Sections 2035 and 2036 support the Court's conclusion that the Prince George's Properties should be included in the Decedent's gross estate for the sole purpose of measuring the amount of estate tax due. IRC § 2035(a) requires that the value of the gross estate shall include the value of the property (or interest therein) which would have been included in the gross estate if the decedent made a transfer of an interest in that property or relinquished a power with respect to the property without adequate and full consideration during the 3-year period ending on the date of the decedent's death. Petitioner presented no evidence that this was a bona fide sale for adequate and full consideration, and the deed recited that the consideration was "Five Dollars (\$5.00), the actual consideration being none."

Finally, a more serious question for the Court to decide is whether the Petitioner has presented sufficient affirmative evidence of reasonable cause to waive interest and penalties. Petitioner argues that until the decision *In the Matter of Robert M. Watkins, Jr.*, 241 Md. App. 56

(2019) became final, and the Orphans' Court allowed attorney fees, no actual Maryland estate tax return could be filed. The facts as set forth in the reported opinion demonstrate that the litigation was necessary in order to properly file an estate tax return. If the Decedent's wife would have been successful in any of her claims regarding domicile or a spousal statutory share, the estate tax would have been dramatically different. Nevertheless, the marital rights of Emeline D. Watkins were resolved on May 29, 2019, and interest should accrue from that date until paid. In addition, given the underlying family turmoil and legal fees paid by the Petitioner in the litigation which were finally resolved at the Court of Special Appeals, the Court finds reasonable cause to waive any penalty.

The Petitioner also made other arguments regarding the actions of the Comptroller which the Court determines lack merit and are not relevant in determining the amount of estate tax owed. In addition, the Petitioner's claims of the deeds being construed as irrevocable trusts or disclaimers are frivolous.

Accordingly, the Maryland Tax Court shall pass an Order affirming in part and reversing in part the Comptroller's assessment to reflect that the estate tax in the amount of \$232,477 is affirmed, the penalty is abated, and interest shall accrue from May 29, 2019 until the tax is paid.