

KELLY MITCHELL,
Petitioner,
v.
REGISTER OF WILLS FOR
HOWARD COUNTY,
Respondent.

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IN THE MARYLAND
TAX COURT
24-IR-OO-0584

MEMORANDUM AND ORDER

This case comes before the Court on a matter of will writing and inheritance tax on non-probate assets. Petitioner argues that the Estate should cover all taxes, including inheritance taxes related to non-probate assets. For the following reasons the Register of Wills' assessment is reversed.

In 2023, decedent, Elizabeth May Anderson, a cousin of the Petitioner, died. Petitioner instantly received by transfer two investment accounts. These accounts listed the Petitioner as transfer-on-death. Petitioner received no other property from the decedent. At first, the Register of Wills assessed the Estate (using the incorrect tax rate). The second and final third assessments were assessed to the Petitioner as opposed to the Estate. Petitioner timely paid the third assessment to avoid penalties and/or interest. The Petitioner then filed a refund request with the Respondent, which was denied. Petitioner then timely appealed to this Court.

Under MD. CODE ANN., TAX-GEN. § 7-216 (2023), inheritance tax must be paid by the distributor of the property, unless the decedent specified a source to pay the tax, such as the Estate. Further, the recipient of the inheritance shall pay the tax if the distributor fails to pay the tax, or the property passes to the inheritor without distribution. *Id.* at (b).

In the instant case, the Petitioner contends that the decedent intended for the Estate to pay the inheritance tax at issue as written in the decedent's will. The expressed intent of the will is gathered from its four corners. The words in the will are to be given their plain meaning and

importance. *Pfeufer v. Cyphers*, 397 Md. 643, 649 (Md. 2007) (internal citations omitted).

“When recognized legal terms are used, the testator is presumed to have used such terms with the knowledge of their technical meaning, and with the purpose of employing that meaning in the disposition of his property.” *Patchell v. Groom*, 185 Md. 10, 15 (Md. 1945).

It is not debated that the language used by the drafting attorney of the will could have been clearer in Item 3 of the will. That section reads:

I direct that all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part hereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), or on any insurance upon my life or on any property held jointly by me with another or on any transfer made by me during my lifetime or on any other property or interests in property included in my estate for such tax purpose be paid out of my residuary estate and shall not be charged to or against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

This Item 3 states that the inheritance tax on any property included in the Estate should be paid from the residuary of the Estate. This appears to include property passed outside of the Estate, which can be assessed inheritance tax. The intent therefore is expressed, not inferred. The Estate includes the total property of an individual prior to distribution. As such, any property, even property distributed outside of the probate process, would be covered under the above tax clause. While Petitioner’s inheritance was not probated as it was inherited at the moment of death independent of the estate distribution, the inheritance was mentioned within the will. See Pet’r’s Ex. E, Item Seventh. Therefore, the decedent did acknowledge that there was property outside the Estate that was to be disbursed. *Id.* This acknowledgement lends credence to the Petitioner’s position that the taxes should be covered by the Estate and not by the Petitioner.

Petitioner has a right to request a refund under MD. TAX-GEN. § 13-901(a)(2)(2023). Petitioner would be entitled to the refund interest as under MD. TAX-GEN. § 13-603(a) and (b)(2023). First, the tax was wrongfully collected as discussed above. Second, the error is attributed to the Register of Wills, a unit of State government, and not the Petitioner. Therefore, the request for interest is granted.

Accordingly, it is this 20th day of March 2025, by the Maryland Tax Court **ORDERED** that the decision made by Register of Wills in the above-captioned case be and hereby is **REVERSED** and interest shall be paid with the refunded tax.

CC: Thomas Fleckenstein, Esq.

Mark Weisner, Esq.

CERTIFIED TRUE COPY
TEST: Andrew Berg, 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.