

OLHA BERNARD

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IN THE MARYLAND

PETITIONER

*

TAX COURT

v.

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25-IR-OO-0471

REGISTER OF WILLS FOR
ANNE ARUNDEL
COUNTY

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RESPONDENT

MEMORANDUM AND ORDER

This matter comes before the Maryland Tax Court on appeal from a determination by the Register of Wills for Anne Arundel County (the "Respondent") assessing Maryland inheritance tax against the Estate of Terrance J. Bernard (the "Estate") with respect to two payable-on-death ("POD") bank accounts. The Petitioner, Olah Bernard, as Personal Representative of the Estate, contends that the tax should be borne by the POD beneficiaries pursuant to Maryland law. MD. CODE ANN., TAX-GEN. ("TG") § 7-216(b). The Respondent maintains that Item 2 of the Decedent's Last Will and Testament ("Will") directs payment of such taxes from the residuary estate, overriding the statutory default rule. For the reasons set forth below, the Court reverses the Respondent's determination.

Terrance J. Bernard (the "Decedent") died testate on April 3, 2024. His Will was admitted to probate in the Orphans' Court for Anne Arundel County. Item 2 of the Will provides:

All estate, inheritance, succession, transfer and legacy taxes payable by reason of my death under the laws of the United States or of any state district or territory thereof with respect to any property included in my gross estate subject to such taxes, together with interest charges on such taxes, shall be paid from the residue of my Estate, before distribution to any legatee, charitable or otherwise, and I hereby waive on behalf of my Estate any right to recover from any person, including any beneficiary or beneficiaries of insurance of my life, all or any part of the taxes, or interest on such taxes, so paid.

The Decedent owned two bank accounts designated as POD to individuals who are not exempt from Maryland inheritance tax under TG § 7-203. These accounts did not pass through probate but transferred directly to the beneficiaries upon the Decedent's death. The Respondent assessed inheritance tax on these accounts against the Estate, relying on the directive in Item 2 of the Will. The Petitioner appealed, arguing that TG § 7-216(b) mandates payment by the recipients since the property passed without distribution.

The following facts are not in dispute:

1. The Decedent died a resident of Anne Arundel County, Maryland.
2. The Will contains the tax payment directive quoted above in Item 2.
3. The POD beneficiaries are not lineal descendants or otherwise exempt from inheritance tax.
4. The POD accounts passed directly to the beneficiaries outside of probate.

Maryland imposes an inheritance tax on the transfer of property from a decedent to non-exempt beneficiaries at a rate of 10%. TG § 7-204(b). This tax applies to both probate and non-probate assets, including POD accounts, as they are included in the "gross estate" for inheritance tax purposes. See TG § 7-201(d) (defining property subject to tax). Under TG § 7-216(a), inheritance tax on property passing through distribution (i.e., probate) is generally paid by the distributor before distribution. However, for property passing without distribution, such as POD accounts, § 7-216(b) provides: "The inheritance tax on property that passes from a decedent shall be paid by the recipient if . . . the property passes from the decedent to the recipient without distribution."

The issue here is whether Decedent's Will overrides this statutory allocation. The Court of Appeals in *Pfeufer v. Cyphers*, 397 Md. 643 (2007) held that a testator may clearly and

unambiguously direct the payment of inheritance taxes from the residuary estate, ignoring statutory apportionment rules if that is the testator's intent. In *Pfeuffer*, the will directed that inheritance taxes be paid from the residue "without apportionment," even though some residuary beneficiaries were exempt under TG § 7-203(b). The court emphasized that the paramount concern is the testator's expressed intent, and a clear directive to pay taxes from the residue as a cost of administration overrides exemptions or default payment rules. *Id.* at 651 (quoting *Johnson v. Hall*, 283 Md. 644, 652 (1978): "[A] statute directing apportionment will . . . be ignored if the testator clearly and unambiguously indicates that to be his intention[.]").

The Respondent relies on *Pfeuffer* to argue that the Will's broad language extends to the POD accounts. However, *Pfeuffer* is distinguishable and does not control this case. In *Pfeuffer*, the dispute involved apportionment of inheritance tax among named residuary legatees—all of whom were beneficiaries under the will and received their interests through probate distribution. The court's holding was limited to the context of probate assets, where the will directly governs the distribution and can bind the legatees to its terms, including tax directives. By contrast, the POD accounts here are non-probate assets that pass outside the Will by operation of law, directly to recipients who are not legatees named in the Will. These beneficiaries are not bound by the Will's provisions in the same manner as probate distributees. The issue is not intra-probate apportionment among will beneficiaries (as in *Pfeuffer*), but whether a will can unilaterally shift the tax burden from non-probate recipients to the probate residue, effectively apportioning between probate and non-probate interests. Maryland law treats inheritance tax as a tax on the recipient's privilege to receive, not on the estate itself, and TG § 7-216(b) explicitly assigns payment responsibility to the recipient for non-distributed property.

While Item 2 of the Will refers to taxes on "any property included in my gross estate" and waives recovery from "any person, including any beneficiary or beneficiaries of insurance of my life," this language, though broad, does not unambiguously override the statutory default for non-probate assets like POD accounts, which are governed strictly by TG § 7-216(b). Absent explicit statutory authority or case law extending *Pfeufer* to non-probate scenarios—and none exists—the Will cannot bind third-party recipients who receive property independently of probate. To extend *Pfeufer* as the Respondent urges would undermine the legislative intent behind TG § 7-216(b), which protects the estate from bearing taxes on assets it does not control or distribute. It could also lead to absurd results, such as depleting the residuary estate for the benefit of non-legatees without their consent or involvement in the probate process. Maryland courts have not applied *Pfeufer's* intent principle to override payment rules for non-probate assets, and doing so here would require clearer evidence of legislative or judicial endorsement. Accordingly, TG § 7-216(b) governs, and the inheritance tax on the POD accounts must be paid by the recipients, not the Estate.

Therefore, it is this 22nd day of October 2025, by the Maryland Tax Court **ORDERED** that the decision of the Register of Wills in the above-captioned case be and hereby is **REVERSED** and the inheritance tax shall be paid by the POD beneficiaries as required by TG § 7-216(b).

CC: Olha Bernard

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.