

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

JEFFREY DINKLAGE, Personal)
Representative of the Estate)
of HERMAN DINKLAGE, Deceased,)
)
Plaintiff,)
)
vs.)
)
M. BERRI BALKA, TAX)
COMMISSIONER OF THE STATE OF)
NEBRASKA, AND THE STATE OF)
NEBRASKA DEPARTMENT OF)
REVENUE,)
)
Defendants.)

Docket 492

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ORDER

On April 14, 1994, a hearing was held on the Motions for Summary Judgment filed respectively by the plaintiff and the defendants.

The parties agree, and the court finds, that there are no genuine issues of material fact in this case. The sole issue is a question of law, that is, whether the plaintiff is entitled to interest on an overpayment of state estate taxes for a period prior to July 15, 1992, the effective date of L.B. 1004, 1992 Neb. Laws.

The plaintiff's decedent died on June 16, 1986 and on June 16, 1987 an estimated estate tax of \$110,000.00 was paid to the State of Nebraska. Following an audit of the Federal Estate Tax Return by the Internal Revenue Service, the federal liability was reduced substantially. This resulted in a reduction of the Nebraska estate tax after credit for inheritance tax of \$79,016.92 which was refunded on January 13, 1993.

Prior to 1992, Nebraska laws made no specific provision for the payment of interest by the state on overpayments of Nebraska estate taxes. L.B. 1004, which became effective July 15, 1992, amended Section 77-2106.01 to provide:

When any amount of transfer tax in excess of that legally due has been paid to the State Treasurer, the party making such overpayment or his or her successors or assigns shall be entitled to refund of such overpayment plus interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature. (Emphasis added).

Nothing was said as to whether such interest provision was retroactive.

The Tax Commissioner determined that it was not retroactive and has paid interest from the effective date of the amendment, July 15, 1992 to the date of payment, January 13, 1993. The plaintiff claims that the amendment should be applied retroactively, and, therefore, he is entitled to interest on the overpayment from the date such sum was paid, that is, June 16, 1987.

The taxpayer argues that Neb. Rev. Stat. §§ 77-1777 through 77-1782 must be read in pari materia with Neb. Rev. Stat. §§ 77-2106.01, and when so read, require interest to be paid on overpayments of Nebraska estate taxes. Section 77-1777 provides:

Sections 77-1778 to 77-1782 shall apply to any tax, except property taxes, collected by the Tax Commissioner to the extent that specific refund provisions have not been previously enacted. If there is any conflict between any previously enacted refund statutes and the provisions of sections 77-1778 to 77-1782, the previously enacted statutes shall control. (Emphasis added).

Unfortunately for the taxpayer, there are specific refund provisions for Nebraska estate taxes, namely Section 77-2106.01. Further, Section 77-2106.01 became effective in 1949 whereas Sections 77-1777 to 77-1782 were enacted in 1987. The plain language of Section 77-1777 provides that the prior law prevails.

The motion of the State of Nebraska should be sustained and the motion of the plaintiff should be denied. In Nebraska, interest on claims against the state is allowable only when authorized by statute and unless the interest and purpose of a legislative act show that it is to be applied retroactively, it applies prospectively only. Here, there is nothing to indicate that L.B. 1004 was to operate retroactively. Further, the generally refund provisions found in Sections 77-1777 to 77-1782 are inapplicable to refunds of Nebraska estate tax.

IT IS ORDERED that the Motion for Summary Judgment of the defendants be sustained and that judgment be entered for the defendants and the plaintiff's petition be dismissed at plaintiff's cost. The Motion for Summary Judgment of the plaintiff is denied.

Dated May 4, 1994.

BY THE COURT:



District Judge