

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE:

ORPHANS' COURT DIVISION

ESTATE OF JOSEPH CALAHAN,
Deceased

No. 0024 of 2021

memorandum and opinion
and
ORDER OF COURT

BY: Lawrence J. O'Toole, A.J.

COPIES SENT TO:

Elizabeth A. Lodovico, Esquire
Lynch Law Group
375 Southpointe Blvd, Suite 100
Canonsburg, PA 15317

Todd T. Jordan, Esquire
WILLIAMS COULSON
One Gateway Center, 16th Floor
420 Fort Duquesne Blvd.
Pittsburgh, PA 15222

FILED

2023 NOV -8 AM 11:21

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

IN RE: ESTATE OF JOSEPH CALIHAN,
Deceased

No. 0024 of 2021

MEMORANDUM OPINION AND ORDER OF COURT

Background

The Decedent died testate on May 21, 2020. His Will was not admitted to probate as Decedent had no probate assets to administer. On December 15, 2020, the Pennsylvania Inheritance Tax Return (REV-1500) was timely filed.

During his lifetime, the Decedent was listed as the "Participant" on ten (10) 529 Plan Accounts for the benefit of the Decedent's grandchildren. These accounts are listed as items 2 through 11 on Schedule G of the Tax Return (as filed on January 6, 2021). Prior to his death, the Decedent transferred control of Accounts listed as items 6 through 11 to a Successor Participant. Thus, at the time of his death, the Decedent was listed as the Participant only on the Accounts listed as items 2 through 5, into which he had made a portion of the contributions. On May 6, 2021, the Department of Revenue issued its Notice of Inheritance Tax Appraisement, Allowance, or Disallowance of Deductions and

Assessment of Tax, wherein the Department assessed inheritance tax on the full value of all ten (10) of the 529 Plan Accounts, resulting in a tax liability of \$176,308.56 on these Accounts. The Explanation of Change states as follows: "the 529 Accounts are fully taxable since the Decedent is the account participant and retained control of the account and retained the ability to change the beneficiary".

On July 1, 2021, the Estate timely filed a Protest Letter with the Department of Revenue. On November 29, 2022, the Board of Appeals issued a Decision and Order disallowing the calculation as set forth on the Inheritance Tax Return and including the full value of the 529 Plans as subject to Pennsylvania Inheritance Tax, less a \$3,000 deduction for each of the six (6) Accounts that had been transferred prior to the Decedent's death, which upheld the additional tax assessment as set forth on the Notice.

The matter came before this Court on a Petition and Amended Petition to Overturn a Determination of the Board of Appeals of the Pennsylvania Department of Revenue filed by Matthew J. Calihan, as Personal Representative of the Estate of his late Father, on January 30, 2023. The Petitioner's position is that only the portions of the 529 Plan Accounts that are attributable to the Decedent's contributions are taxable in the Decedent's estate. The portions of the Accounts that were contributed by persons other than the Decedent are not taxable in the Decedent's estate. The Respondent's (PA Department of Revenue) response is that the accounts were held with Fidelity Investments and not with the "Pennsylvania Treasury 529 Pennsylvania College Savings Program"; as such, they do not qualify for a tax exemption under 24 P.S. §6901.316.

After a conference with the Court, Briefs were filed by both parties and oral argument was heard on September 28, 2023.

Discussion

The Personal Representative presents three arguments in favor of the position of the Estate that all of the funds in the 529 Plans should not be included as an asset of the Decedent for inheritance tax purposes.

First, the Estate argues that the statute, 24 P.S. §6901.316, exempting only Pennsylvania 529 Plans (i.e, Tuition Account Program Contracts), and not 529 Plans established in other states, from Pennsylvania Inheritance Tax is unconstitutional. The Court agrees for the following reasons: First, the policy, as stated by the Legislature, is to promote savings for higher education. The policy, as set forth in 24 P.S. §6901.301, does not contain any geographic limitations. Second, the 529 Plans established in each of the states are very similar and all of them are exempt from Federal estate inheritance tax. Third, the Pennsylvania Constitution provides for the uniformity of all taxes. The statute violates this uniformity clause in that it imposes inheritance tax on out-of-state created 529 Plans, but not on in-state created 529 Plans. Fourth, there is no legitimate distinction between the class of persons who create out-of-state 529 Plans and the persons who create in-state 529m Plans; and thus, imposing a tax burden on those persons creating out-of-state 529 Plans, but not on those persons creating in-person 529 Plans results in an unconstitutional tax.

Second, the Estate equates the 529 Plans to retirement plans, which are not taxable under Pennsylvania Inheritance Tax laws. This argument is rejected, as the Court does not agree with the correlation between the two types of accounts.

Third, the Estate argues that the Decedent held the funds as a constructive trust for the persons who actually deposited the funds into the 529 Plans. The Court also rejects this argument.

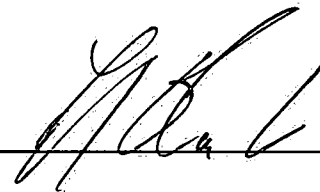
Based on the foregoing, the Court issues the following Order:

ORDER OF COURT

AND NOW, to wit, this 7th day of November, 2023, it is hereby ORDERED as follows:

- (1) The decision of the Pennsylvania Department of Revenue including the full value of the ten (10) 529 Plans on which the Decedent was named as the Participant is overturned and the imposition of additional inheritance tax is vacated; and
- (2) Pennsylvania Statute 20 P.S. §6901.316 is unconstitutional.

BY THE COURT:


_____ A.J.