IN THE IOWA SUPREME COURT

No. 16-1974

BEVERLY GARDINER NANCE
Petitioner-Appellant

v.

IOWA DEPARTMENT OF REVENUE,
Defendant-Appellee

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HON. MICHAEL D. HUPPERT, JUDGE

APPELLANT'S FINAL REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Administrative Rules

STATEMENT OF ISSUES PRESENTED FOR REVIEW

THE FAMILY SETTLEMENT AGREEMENT IS A TAXABLE EVENT FOR INHERITANCE TAX PURPOSES

Cases

Administrative Rules

ROUTING STATEMENT

This case should be retained by the Supreme Court as this is a case involving substantial issues of first impression as to when a settlement agreement entered into between a taxpayer and a third party should be binding on the Iowa Department of Revenue. Although the issue of whether a family settlement *can* control tax consequences has been affirmatively resolved by *In Estate of Van Duzer*, 369 N.W.2d 407 (Iowa 1985), the question of the circumstances that require the Department to abide by family settlement agreements remains open.

ARGUMENT

THE FAMILY SETTLEMENT AGREEMENT IS A TAXABLE EVENT FOR INHERITANCE TAX PURPOSES

Taxpayer accepts the findings of fact of the District Court. The District Court got the law wrong. The District Court's opinion can be overturned if its interpretation of the law is erroneous. *Renda v. Iowa Civil Rights* Commission, 784 N.W.2d 8 (Iowa 2010); *Sherwin-Williams Co. v. Dept. of Revenue,* 789 N.W.2d 417, 423 (Iowa 2010).

The District Court ruled that, "a post-mortem settlement agreement entered into to resolve competing disputes involving an estate is not to be considered when calculating the inheritance tax . . .." Ruling on Petition, p. 9 (App. 104). This is wrong. It is wrong for two reasons: (1) the case upon which the District relies, *In the Matter of the Estate of Bliven*, 236 N.W.2d 366 (Iowa 1975), does not hold that family settlement agreements are always invalid in determining tax consequences, and (2) a subsequent case, *Estate of Van Duzer*, 369 N.W.2d 407 (Iowa 1985), held that a family settlement agreement did control tax consequences.

The Department in its brief conveniently leaves out one important fact from the *Bliven* case: all the parties (charities and family) agreed that the will of the decedent had been revoked leaving all the assets to pass to the family pursuant to intestate succession. *Bliven* at 368. In order for a family settlement agreement to control tax consequences, the competing parties must have some enforceable state law right as its basis for the agreement. In *Bliven*, the charities had no enforceable state law right as their basis for the family settlement agreement. The charities could have asserted mental incapacity of the

testator to revoke her will, but they did not. Instead, the charities stipulated in the family settlement agreement that the decedent died without a will. *Id.* In other words, the charities stipulated away their "enforceable state law right." The *Bliven* court then had an easy resolution to the matter concluding that title to the assets "passed" first to the family, then from the family to the charities. *Bliven* at 370.

Alternatively, in *Van Duzer*, the enforceable state law right that taxpayer relied upon was the validity or invalidity of the decedent's revocable trust. *Van Duzer* at 410. The *Van Duzer* Court acknowledged the existence of the enforceable state law right, but did not require a full and final district court adjudication. *Van Duzer* at 410. The *Van Duzer* Court held that the family settlement agreement determined the inheritance tax consequences over the objections of the Department. *Id.* Therefore, the Department, and the District Court, cannot claim that family settlement agreements cannot control tax consequences.

The Department in its brief tries to claim that the decedent's surviving spouse in *Van Duzer* technically received the proceeds from the estate and therefore the family settlement agreement had no bearing on the Court's decision. This position completely ignores the fact that the family settlement agreement proceeds funded the estate that flowed out to the surviving spouse. If not for the family settlement agreement approved by the Iowa Supreme Court, the estate would not have been funded and the surviving spouse would not have received the proceeds.

The Department relies upon its Rule 701-86.14(2) (2010) (App. 112), however, such rule only applies to estates and not to transfer on death securities as is the situation in this matter.

The Department asserts that the Taxpayer concedes that the *Van Duzer* case does not control this matter because the Taxpayer cites to examples of Federal law that allow family settlement agreements to dictate tax consequences. The Taxpayer does not concede *Van Duzer*. However, one issue remains open for the Court to determine: under what circumstances should a family settlement dictate tax consequences. A nice four-part test was provided in Taxpayer's brief as a suggestion and a model for this Court to use if it wishes.

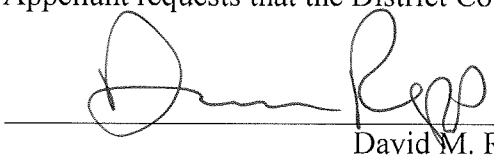
CONCLUSION

The District Court erred by ruling that a post-mortem family settlement agreement can never dictate Iowa inheritance consequences. The Iowa Supreme Court in *In Estate of Van Duzer*, 369 N.W.2d 407 (Iowa 1985) clearly states that a post-mortem family settlement agreement can dictate inheritance tax consequences.

The District Court erred by ruling that the Decedent's estate (essentially, the Decedent's lineal descendants) did not have an enforceable legal right to the Accounts. In fact, Iowa case law is clear that the Decedent's estate had a very strong mental incapacity cause of action against the Taxpayer.

The Iowa Supreme Court should adopt the standards espoused by Estate of *Hubert v. Commissioner*, 101 T.C. 314, 319 (1993) in determining when post-mortem family settlement agreements should dictate inheritance tax consequences.

For these reasons, Appellant requests that the District Court be reversed.



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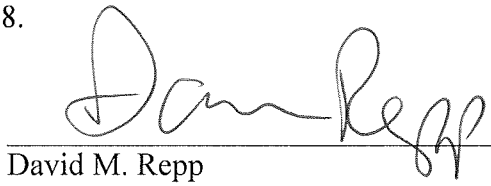
CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Brief and Argument complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e). This Final Reply Brief and Argument has been prepared in a proportionally spaced typeface and created in font Times New Roman 12. The number of words is 1,338.



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CERTIFICATE OF SERVICE AND FILING

I hereby certify that on March 14, 2017, I electronically filed the foregoing document with the Clerk of the Supreme Court by using the Iowa Judicial Branch Appellate Courts electronic filing system which will send a notice of electronic filing to the following:

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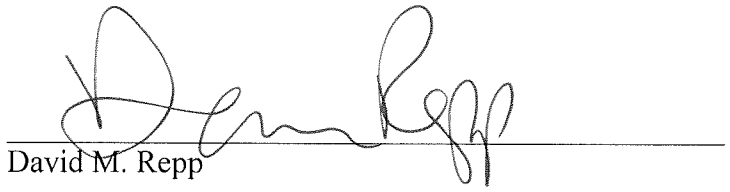

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