ELECTRONICALLY FILED OCT 13, 2017 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

Supreme Court No. 16–1974

BEVERLY GARDINER NANCE
Petitioner-Appellant

v.

IOWA DEPARTMENT OF REVENUE
Defendant-Appellee

APPELLANT'S RESISTANCE TO APPLICATION FOR FURTHER REVIEW OF IOWA COURT OF APPEALS DECISION FILED SEPTEMBER 13, 2017

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ATTORNEYS FOR APPELLANT

TABLE OF AUTHORITIES

Page(s)

Cases

In the Matter of the Estate of Bliven, 236 N.W.2d 366, 369 (Iowa 1975).. 3, 4, 5
In Estate of Van Duzer, 369 N.W.2d 407 (Iowa 1985) 3, 4, 5
Estate of Hubert v. Commissioner, 101 T.C. 314, 319 (1993) 5
Estate of Brandon, 828 F.2d 493 (8th Cir. 1987) 5
Estate of Bosch, 387 U.S. 456, 467 (1967) 5

Statutes

Treas. Reg. § 20.2056(e)-2(d)(2); 26 CFR 20.2056(e)-2(d)(2) 6

STATEMENT OF THE FACTS

The Taxpayer agrees with the Department's Statement of the Facts except to the extent such Statement of the Facts suggest that Lester Gardiner, Sr. (the "Decedent") was deemed competent to execute a transfer on death beneficiary designation by the presiding administrative law judge or the district court. Although the competency of the Decedent to execute a transfer on death beneficiary designation of a brokerage account was clearly at issue, neither the administrative law judge nor the district court made a finding of fact that the Decedent was competent.

ARGUMENT

The Department defends this matter to protect its stringent policy of no family settlement agreements in any matter and in any event. Such strict policy is easy to enforce; no subjective analysis ever needs to be performed. The Department believes that the Court of Appeals decision in this matter upheaved such policy. It did not. The Iowa Supreme Court decision in *Van Duzer* upheaved the Department's policy many years ago in 1985.

The two seminal cases in this matter are *In re Estate of Bliven*, 236, N.W.2d 371 (Iowa 1975) and *In re Estate of Van Duzer*, 269 N.W.2d 407 (Iowa 1985). The Department spends considerable effort parsing the facts of each case, confusing issues and drawing unfair comparisons. In *Bliven*, the

family settlement agreement did not control tax consequences; in *Van Duzer* it did. The determining factor that controlled the outcome of these two cases, and cases like them, is the existence of a bona fide dispute between the parties based on an enforceable state or federal law cause of action. In *Bliven*, the state law cause of action was the enforceability of the decedent's will.[1] Unfortunately, the adverse parties all agreed that the will was not enforceable. In other words, there was no bona fide dispute in *Bliven*.

In *Van Duzer*, the state law cause of action was the enforceability of the decedent's revocable trust. Unlike *Bliven*, the parties in *Van Duzer* did not stipulate to the enforceability, or not, of the revocable trust. The adverse parties in *Van Duzer* instead entered into a family settlement agreement to resolve their differences in light of their relative risks of litigation. This Court honored such family settlement agreement and required the Department to give it credence.

Unfortunately, this Court in *Van Duzer* did not specifically express the standards to be used in determining which family settlement agreements control for tax purposes which do not. The Department takes the harsh

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[1] In *Bliven*, the decedent tore up her will prior to death. Several charities were beneficiaries in the will and initiated a claim for benefits under the will using a mental incapacity cause of action. *Bliven* at 368. The charities and the heirs entered into a settlement agreement whereby the charities and the heirs split the assets. Id. The charities and the heirs stipulated that the will had been revoked. Id. In other words, the charities dropped their incapacity claim and cause of action.

position that no standards exist; that all family settlement agreements are void as to tax consequences.[2] The Taxpayer in the present matter advocated for a four-part test.[3] The Court of Appeals adopted a two-part test.[4]

The problem with the Department's position is that it creates costly, unfair and absurd results. The Department's position is costly to taxpayers because taxpayers must fully litigate every legal cause of action in district court to conclusion even though it makes no economic sense for the parties to do so. The Department's position is unfair to taxpayers because it requires them to pay taxes on assets they never receive. The Department's position is absurd because it would apply even in circumstances forgery, fraud or criminal circumstances. Had the Taxpayer held a gun to Lester Gardiner, Sr.'s head forcing him to sign the TOD beneficiary designation, the Department would say the TOD was valid. Had the Taxpayer forged Lester Gardiner, Sr.'s name on the TOD, the Department would say the TOD was valid unless there was a full district court determination on the merits. If at any time a prosecuting attorney or the adverse parties come to

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[2] This Court in *Van Duzer* held the family settlement agreement controlled for tax purposes so clearly the Department's strict policy is not as strict as it may think it is.

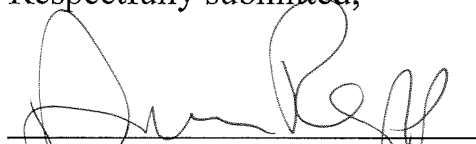
[3] (1) the underlying claim was based on enforceable legal rights of the claimant, (2) the parties to the agreement were truly adversarial, (3) the agreement entered was into in good faith as the result of arm's-length negotiations, and (4) no evidence exists suggesting the agreement was entered into for post mortem tax planning purposes. *Estate of Hubert v. Commissioner*, 101 T.C. 314, 319 (1993), aff'd, 63 F.3d 1083 (11th Cir.1995); see also *Estate of Brandon*, 828 F.2d 493 (8th Cir. 1987); *Estate of Bosch*, 387 U.S. 456, 467 (1967).

[4] (1) no evidence of a scheme to avoid taxes, and (2) settlement agreement entered into in good faith.

an agreement before the full determination by the district court, the Department would say it is not bound by the outcome. Such is not the law in Iowa nor should it be.

The Department complains of an unworkable standard that shifts the burden to the Department to prove that each settlement agreement was either not entered into in good faith or engaged in a scheme to evade tax. The Court of Appeals decision did no such thing. The burden of proof can remain with the taxpayer to show the elements required by the Court of Appeals decision. The Internal Revenue Service makes this standard work.[5] The Department can too.

Respectfully submitted,



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[5] See Treas. Reg. § 20.2056(e)-2(d)(2) and cases cited in footnote 3, supra.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 13 day of October, 2017, I electronically filed the foregoing document with the Clerk of the Supreme Court by using the Iowa Judicial Branch electronic filing system which will send a notice of electronic filing to the following:

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I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

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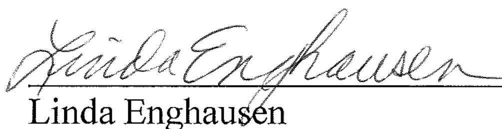

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