

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION

**FILED**

CHARLOTTE A. HANKIN, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
DISTRICT OF COLUMBIA, )  
 )  
Respondent. )

**MAY 18 1972**

DOCKET NO. 2157

Superior Court of the  
District of Columbia  
Tax Division

OPINION

Before the Court is the petition of Charlotte A. Hankin for a refund of inheritance taxes in the amount of \$1,914.40 assessed by the District of Columbia against the estate of her late husband, Gregory Hankin, of which she is the sole heir. The answer of the Respondent, District of Columbia, denies that any such refund is due. The case was tried without a jury on April 12, 1972.

STATEMENT OF THE CASE

Petitioner Charlotte Hankin and her late husband, Gregory Hankin, both residents of the District of Columbia, acquired during their lifetimes monies which they invested in securities and some real property. Both during their married life were employed as attorneys, Mrs. Hankin with the National Labor Relations Board, and Gregory Hankin at one time as a member of the Public Service Commission of the District of Columbia, later in the private practice of law. Although each could have established an independent estate, they decided to pool their earnings. As a result, all the property they acquired during their marriage they hold as tenants by the entirety. From their marriage in 1920 until their retirement in 1963, each contributed approximately the same amount as the other into their common family fund. By prudent investment their

savings grew and all their property (except some jewelry which Mrs. Hankin inherited from her family) was held jointly. They had joint bank accounts out of which they met all their household expenses, including the premiums on Gregory's life insurance policy in which Mrs. Hankin was named beneficiary.

Gregory Hankin personally drafted a will which he signed on October 31, 1967. The will provided that in the event Mr. Hankin predeceased his wife, Charlotte, she was to receive all of his disposable interest in the property held by them jointly or individually. The will further provided for the distribution of Mr. Hankin's estate in the event that both husband and wife died as a result of a common disaster, or if Charlotte Hankin predeceased Gregory Hankin.

On December 20, 1967, the Hankins agreed in writing to contribute \$150,000.00 to Harvard College for the purpose of establishing a student aid fund. The money was to be paid in the following proportions, quote:

"(a) Approximately 30% of their 'total income' (as the term is used in Line 9, page 1 Federal Income Tax Form 1040) in 1967 upon acceptance of this offer by the University.

(b) A similar contribution annually during the life of the surviving Donor.

(c) The remainder upon the death of the surviving Donor."

The Petitioner has contributed \$3,000.00 to \$4,000.00 a year in securities to Harvard College in order to satisfy the terms of this agreement.

After the death of her husband on December 3, 1970, Mrs. Hankin settled his estate under the Small Estate Procedure in the United States District Court for the District of Columbia, sitting as a Probate Court. No probate of the will was ever required.

Petitioner as head and survivor prepared an inheritance tax form based upon her inheritance of one-half of their combined estate, less expenses and bequests provided for by Gregory Hankin's will. The estimated inheritance tax was based upon the amount left after certain deductions.

Thereupon the District of Columbia imposed a tax upon the entire one-half inherited by Petitioner. Petitioner challenges the imposition of a tax on the entire one-half inherited from her husband without allowance for deductions ordinarily attributable to an inherited estate.

#### Petitioner's Contentions

Petitioner challenges the imposition of a tax on the entire one-half received by her for the following reasons:

(1) 47-1601 of the D. C. Code, is clear and unambiguous on its face and does not differentiate among property that is inherited by right of survivorship, by will or by law or by any other means.

#### 47-1601: Imposition of Tax

"Sec. 1. (a) All real property and tangible and intangible personal property, or any interest therein, having its taxable situs in the District of Columbia, transferred from any person who may die seized or possessed thereof, either by will or by law, or by right of survivorship . . . shall be subject to a tax . . ."

<sup>1/</sup>  
(2) Regulation 6(f), issued by the District of Columbia through the Department of Finance and Revenue in implementing Sec. 47-1601, is discriminatory and violative of the equal protection clause of the 14th Amendment. The Regulation allows deductions where the property is inherited by will, but does

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#### <sup>1/</sup> Reg. 6(f):

"(f) Funeral, administration, and other expenses and debts of the decedent are not proper deductions from the value of jointly held real estate or personal property passing by right of survivorship . . ."

not allow deductions where the property is inherited as a result of a joint estate.

Petitioner requests the Court to strike Reg. 6(f) as unconstitutional as to Petitioner, apply the plain language of Sec. 47-1601, and grant Mrs. Hankin the right to deduct expenses from the inherited estate before the imposition of taxes by Respondent. Petitioner cites Hoskin v. Pesor, 324 F.Supp. 271, 275 (1971) for the proposition that, while a contemporaneous administrative construction is entitled to respect and consideration, it nevertheless, is not controlling upon the Court.

Petitioner's expenses, which she claims she has the right to deduct from the inherited estate before the imposition of taxes, are:

Hospital .....	\$1,200.00
Laboratory fees .....	650.00
Doctors' fees .....	450.00
Funeral .....	383.00
Hankin Student Aid Fund (as provided by the will of Gregory Hankin) to Harvard College .....	78,135.00
1/2 D. C. Income Tax ....	288.50
1/2 Federal Income Tax ..	445.74

#### Respondent's Contentions

Respondent's arguments may be summarized as follows:

(1) Petitioner has failed to present one shred of documentary or testimonial evidence in support of her allegation that funeral expenses, medical expenses, and income tax liabilities of Gregory Hankin were incurred and paid by her as a result of his death. (Respondent does not challenge the existence of yearly payments to Harvard for the Hankin Student Aid Fund made by Petitioner.)

(2) Even if Petitioner should prove the existence and payment of these obligations:

(a) The District of Columbia has consistently imposed an inheritance tax since 1937 on the market value of the property or interest of the decedent on the date of death.<sup>2/</sup> This provision clearly subjects one-half of the value of the property held jointly by the decedent and the Petitioner, citing McKinney v. D. C., 112 U.S. App. D.C. 132.

(b) Petitioner's allegation that payments to Harvard College are required pursuant to the terms of Gregory Hankin's last will and testament are unfounded since the will was never probated. Upon Gregory Hankin's death, his legal interest in the ownership, possession and enjoyment of the jointly held property vested in the Petitioner, citing McKinney, supra.

(c) In any event, the construction of the will desired by Petitioner is unsupported by its terms. The terms of the will provide for payments to Harvard College only if Mr. and Mrs. Hankin died as a result of a common disaster, or if Mr. Hankin was predeceased by the Petitioner. Consequently, the claim for refund based upon the payments to Harvard College should be disallowed.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court makes the following findings of facts, based upon Petitioner's testimony, exhibits attached to the petition and trial stipulations agreed to by both parties.

(1) Gregory Hankin died December 3, 1970, and was, at the time, a resident of the District of Columbia. Charlotte

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<sup>2/</sup> Sec. 47-1602 of the D. C. Code states that:

. . . The taxable portion of real or personal property held jointly or by the entireties shall be determined by dividing the value of the entire property by the number of persons in whose joint names it was held.

A. Henkin is a resident of the District of Columbia, the Petitioner herein and the Petitioner and the District of Columbia are the proper parties to this proceeding.

(2) Petitioner filed an Inheritance Tax return with the District of Columbia, Director of Finance and Revenue, a tax assessment was levied, and it was paid on October 1, 1971, under protest by the Petitioner, who thereupon timely filed the petition on October 26, 1971, for review by the Superior Court, Tax Division.

(3) The Superior Court, Tax Division, has jurisdiction over the parties and subject matter.

(4) At the time of decedent's death, he held securities with Charlotte A. Hankin, his wife, jointly with rights of survivorship. The securities here involved are those listed on the District of Columbia Inheritance Tax return, entitled "Security Portfolio, Gregory and Charlotte Hankin".

(5) The will of decedent dated October 31, 1967, is the valid last will and testament of the decedent. The will was filed with the Registrar of Wills, United States District Court for the District of Columbia, but was not the subject of Probate proceedings. The estate of the decedent was settled under the provisions of Title 20, Section 2101, D. C. Code, as recorded with the Registrar of Wills, United States District Court for the District of Columbia, in Administration No. 24-71, on January 12, 1971. There was no other Probate or administration proceeding in the District of Columbia or ancillary in any other jurisdiction.

(6) The securities herein involved were, at the time of decedent's death and still remain in an account with Bache & Co., and the account is now registered in the name of the Petitioner as the sole owner thereof.

(7) The amount of inheritance tax assessed by the District of Columbia and paid by petitioner was \$1,332.85, plus \$11.66 penalty, totaling \$2,344.51.

(8) Petitioner offered no evidence that the District of Columbia has applied Regulation 6(f) in a discriminatory or inconsistent manner.

The Petitioner alleges the correct inheritance tax to be \$423.76 plus \$6.35 penalty, and now claims in these proceedings a refund of taxes in the total amount of \$1,914.40. The District of Columbia does not consent to the claim of the Petitioner. The issue for determination by the Court, then, is the amount of refund, if any, due the Petitioner under the law of the District of Columbia.

The Court concludes as follows:

(1) There is a direct shifting of economic interest when the surviving owner acquires jointly-held property at the death of the cotenant.

Most states, as does the Federal Government with respect to federal estate taxes, expressly include joint estates within the operation of inheritance. 47 D. C. Code 1601, 1602, 1967 ed. Where property is held jointly in the names of two or more persons with right of survivorship, and one of them dies, the survivor or survivors take an immediate ownership or possession and enjoyment of the property which shall be deemed a taxable transfer. McKimney v. District of Columbia, 112 U.S. App. D.C. 132 (1962).

(2) Regulation 6(f), supra, is not discriminatory or violative of the equal protection clause of the 14th Amendment in implementing Sec. 47-1601 of the D. C. Code, since all members of this class are treated alike.

As a general rule, a classification with respect to inheritance taxes is reasonable if made with respect to the

kind of property or estate transferred. Watson v. State Comptroller, 254 U.S. 122, 65 L.Ed. 170, 41 S.Ct. 43. Joint tenancies with the right of survivorship are in a class by themselves, and a tax which is uniform upon all joint tenancies does not violate a constitutional provision as to uniformity of taxation. Re: Cochrane, 342 Pa. 108, 20 A.2d 305.


<sup>3/</sup>  
Petitioner is precluded, then, from the deductions she seeks from her inheritance tax since a joint tenancy with a right of survivorship vests immediate and exclusive possession of jointly held property into the hands of the surviving tenant(s) and by the uniform application of Regulation 6(f) by the District of Columbia.

(3) Deductions for Payments to Harvard College Under Decedent's Will Are Disallowed.

The Court further concludes that, as the will of Gregory Hankin was never probated, his legal interest in the ownership and enjoyment of the jointly-held property vested in the Petitioner. Therefore, Mrs. Hankin's allegations that payments to Harvard College are required under Mr. Hankin's will cannot stand.

It is, therefore, this 18<sup>th</sup> day of May, 1972,

ORDERED that the petition of Charlotte A. Hankin for a refund of inheritance taxes be and it is hereby denied.

  
W. Byron Sorrell  
Judge

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<sup>3/</sup> Medical and funeral expenses; D. C. and Federal income taxes.