

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. M170404A

The Department of Taxation and Finance (“Department”) received a Petition for Advisory Opinion from [REDACTED]

[REDACTED] Petitioner asks whether any additional New York estate tax is due by virtue of the value of funds discovered in the decedent’s name more than ten years after her death, pursuant to a search of the NYS Comptroller’s Unclaimed Property records, which have been remitted to the Petitioner on behalf of the estate.

We conclude that, because the omitted asset was discovered more than three years after the timely filing of the original estate tax return, and the date of death value was less than twenty-five percent of the New York State gross estate, the Petitioner is not required to file an amended estate tax return or pay any additional estate taxes, penalties, or interest related to the newly discovered assets.

Facts

Petitioner is the successor Executor of the Estate. Decedent died on April 18, 1995. In 1996, the estate filed a request for the issuance of Estate Tax Waivers (ET-99), which were issued by the Department on May 15, 1996, in order to facilitate the transfer of various instruments and securities maintained in a brokerage account in the decedent’s name valued at \$561,968.54. On June 14, 1996, the estate filed a New York State estate tax return (ET-90) reporting a gross estate of \$702,635. No evidence is provided as to whether the estate actually filed a federal estate tax return. The Department issued a closing letter on February 17, 1997.

Petitioner represents that, more than ten years after the death of the decedent, beneficiaries of the estate discovered assets valued at \$19,883.76 in the NYS Comptroller’s Unclaimed Property records. These assets consist primarily of principal and dividend income on various securities and instruments previously held by the decedent. Petitioner represents that due to the death of the original executor, it took ten years to assemble the paperwork necessary to claim these funds. On May 23, 2016,

Petitioner was issued Letters Administration *De Bonis Non* by the Kings County Surrogate's Court in order to specifically settle these previously unadministered assets. On December 12, 2016, the NYS Comptroller's Office released these funds by issuing checks totaling \$19,883.76 to the Petitioner on behalf of the estate. There is no indication from the facts provided that the original ET-90 return was filed falsely or fraudulently with the intent to evade tax, nor is there any indication that there were any federal changes that were not reported on the state return.

Analysis

Under Article 26 of the Tax Law, New York State imposes an estate tax on the transfer of property from any deceased individual who, at his or her death, was either a resident of New York State (Tax Law § 952) or was not a resident but owned real or tangible personal property having an actual situs in New York State (Tax Law § 960). Tax Law § 990 expressly incorporates into Article 26 certain provisions applicable to the administration of the income tax under Article 22 of the Tax Law, including the statute of limitations provisions found in Tax Law § 683. Section 683(a) requires that a tax generally must be assessed within three years after the return is filed. Under Tax Law § 683(c)(1), the tax may be assessed at any time if no return is filed, a false or fraudulent return is filed with intent to evade tax, or the taxpayer or employer fails to report changes to the taxpayer's federal tax return. In addition, Tax Law § 990(b)(6) expressly reads Tax Law § 683(d) as modified to extend the assessment limitation period to six years after the return is filed "if an estate omits from its federal gross estate, federal taxable estate or New York gross estate an amount properly includible therein which is in excess of twenty-five percent of the amount stated in the return of the federal gross estate, federal taxable estate or New York gross estate."

Based on the facts provided, the additional assets were not discovered until more than six years after the estate tax return was filed, and thus the three-year statutory period to assess, and the extended six-year period, had passed. There is no indication in the facts presented that any of the Tax Law § 683(c)(1) exceptions apply. Even if the omitted assets were somehow determined to have been discovered within the extended six-year assessment limitation period, it appears from the information available to the Department that their cumulative value, otherwise includable in the decedent's New York gross estate, is less than twenty-five percent of the total New York gross estate, and presumably the federal gross estate and the federal taxable estate as well. Therefore, the

taxpayer is under no obligation to amend the original ET-90 estate tax return, or pay any additional New York estate taxes, penalties, or interest related to the asset discovered after the three-year limitation period.

DATED: October 6, 2017

/S/

DEBORAH R. LIEBMAN

Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.