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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2994-20**

**MICHAEL J. MORLEY, III,  
Executor of Estate of  
LINDA A. CERRITELLI,**

**Plaintiff-Appellant,**

**v.**

**DIRECTOR, DIVISION OF  
TAXATION,**

**Defendant-Respondent.**

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Submitted December 19, 2022 – Decided May 26, 2023

Before Judges Whipple, Smith, and Marczyk.

On appeal from the Tax Court of New Jersey, Docket No. 007443-2020.

Dilworth Paxson, LLP, attorneys for appellant (Kristen L. Behrens, Francis P. Maneri, and Sarah Gremminger, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Heather Lynn Anderson, Deputy Attorney General, on the brief).

## PER CURIAM

Plaintiff, executor of an estate, appeals an order of the Tax Court which denied plaintiff partial refund of a New Jersey estate tax payment. Because the Internal Revenue Service (IRS) issued a partial refund of federal estate taxes to plaintiff after this appeal was filed, we remand for the Tax Court to reconsider its order granting the Division of Taxation (Division) summary judgment and denying plaintiff summary judgment on the partial estate tax refund in light of N.J.S.A. 54:38-3.

Plaintiff is the executor of the Estate of Linda Cerritelli, who was tragically killed in a gas main explosion in 2014. Plaintiff settled with the tortfeasors for \$20,000,000. The settlement amount was allocated equally between the wrongful death and survival claims of action. The net amount payable to the estate from the survival claim was \$6,709,231.08, and plaintiff filed estate tax returns and paid federal and state estate taxes based on that amount. Subsequent to paying the estate taxes, plaintiff secured the services of an expert who issued a report establishing the value of the decedent's survival action claim at \$2,690,600.00 as of the date of her death in 2014.

Using the lower survival claim value, plaintiff filed an amended return with the Division and sought a partial refund.<sup>1</sup>

The Division rejected the New Jersey estate tax refund claim in a final administrative decision. Plaintiff appealed to the Tax Court. On cross motions for summary judgment, the Tax Court denied plaintiff's motion for summary judgment and granted the Division's cross-motion for summary judgment, finding that: (1) our state's transfer inheritance tax laws and estate tax laws should be read in pari materia; (2) "[t]he Legislature has, under the Transfer Inheritance Tax statute, determined that the taxable date-of-death value of a survival claim action is the amount actually recovered for such claim"; and, therefore, (3) "the amount[] includible in the decedent's gross estate is the amount recovered by the estate . . . for the survival claim action pursuant to N.J.A.C. 18:26-5.3." Morley v. Dir., Div. of Tax'n, 32 N.J. Tax 366, 368 (Tax 2021).

Plaintiff appealed. After the parties filed their merits briefs in the instant appeal, the IRS, citing 26 U.S.C. § 2031(a), adjusted the value of the survival action claim to \$2,690,600, the date-of-death value assigned to it by plaintiff's

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<sup>1</sup> Plaintiff also filed an amended return with the IRS in order to obtain a partial federal refund.

expert, and authorized a federal estate tax refund of \$722,930.<sup>2</sup> We granted plaintiff's motion to supplement the record with the IRS refund documents.

Plaintiff raises the following points on appeal:

I. The Tax Court Erred in Finding that the Inheritance Tax and Estate Tax Statutes and Regulations Should Be Read in Pari Materia, and Thus that the Inheritance Tax Regulation, N.J.A.C. 18:26-5.3(a), is Applicable to The Estate Tax.

II. If, Arguendo, the Inheritance Tax and Estate Tax Statutes and Regulations Can Be Read In Pari Materia, the Tax Court Erred in Finding that, Under Such Statutes And Regulations, the Survival Action Should Be Valued at the Amount Received Rather than at the Clear Market Value as of Decedent's Date of Death.

III. The Tax Court Erred in Finding the Date of Death Value of the Survival Action Claim to Be the Amount Eventually Received.

We review a tax court's grant of summary judgment de novo. Waksal v. Dir., Div. of Tax'n, 215 N.J. 224, 231-32 (2013) (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 539-40 (1995)). Applying the same standard utilized below, we must first determine "whether there exists a genuine issue with respect to a material fact challenged." Brill, 142 N.J. 520, 523 (1995). If

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<sup>2</sup> Pursuant to 26 U.S.C. § 2031(a), a decedent's gross estate "shall be determined by including . . . the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated."

not, then we must determine whether "the moving party is entitled to a judgment or order as a matter of law." Id. at 529 (quoting R. 4:46-2).

We concur with the Tax Court's assessment that this matter was ripe for summary judgment. The parties agree there are no disputed material facts. The issue before the Tax Court centers around the interpretation of tax statutes and corresponding regulations. We review to determine whether the Tax Court's interpretation of the law was correct, and we are mindful that we "need not defer to legal determinations made by the Director or the Tax Court." United Parcel Serv. Gen. Servs. Co. v. Dir., Div. of Tax'n, 430 N.J. Super. 1, 8 (App. Div. 2013), aff'd, 220 N.J. 90 (2014).

Mindful of the IRS modification of the estate's federal tax liability and the accompanying federal refund, we address a preliminary question: is remand to the Tax Court warranted in light of the IRS's acceptance of plaintiff's expert's valuation of the survival action claim?

It is undisputed that the survival action is an asset of the estate. See Aronberg v. Tolbert, 207 N.J. 587, 593 (2011). This is consistent with the position taken by the IRS for federal estate tax purposes. See Rev. Rul. 75-127, 1975-1 C.B. 297.

For decedents who died prior to January 1, 2017, the New Jersey estate tax owed is calculated based upon the estate's federal estate tax liability. N.J.S.A. 54:38-1(a)(2)(a) and N.J.A.C. 18:26-3.4(c); see Beck & Sherman, N.J. Inheritance and Estate Taxes, § 9(1)(b) (2022).

N.J.S.A. 54:38-3, "Reduction of tax; refund; time for filing application for refund," states in pertinent part:

If, subsequent to the determination of the tax due under this chapter, the amount of the Federal estate tax shall be decreased and the amount of the Federal credit correspondingly reduced by reason of any corrected assessment or redetermination, the tax due hereunder shall be reduced accordingly upon satisfactory proof submitted to the State Tax Commissioner, and, if the tax due hereunder shall have theretofore been paid into the State treasury, the Comptroller of the Treasury, on satisfactory proof of such fact submitted to the State Tax Commissioner, and duly certified by him to the Comptroller, shall draw his warrant on the State Treasurer in favor of the executor . . . who has paid said tax, or who may be lawfully entitled to receive the same, for the amount of such tax excessively paid and said warrant shall be paid by the State Treasurer out of any appropriation for the refund of transfer inheritance taxes the same as warrants for the refund of such taxes under the transfer inheritance tax statutes of this State are paid. The foregoing provisions respecting refund shall apply with the same force and effect to any other payments determined by the State Tax Commissioner to have been excessively made under this chapter.

Under this statutory provision, when the federal estate tax is adjusted downward, the state tax due shall be reduced accordingly "upon satisfactory proof submitted." Oberg v. Dir., Div. of Tax'n, 30 N.J. Tax 256, 265 n.4 (Tax 2017).

Here, the Division valued the survival act claim as of the date of settlement, but the IRS subsequently accepted plaintiff's expert's valuation of the survival action claim, and it reduced the estate's federal estate tax liability after the Tax Court issued its order.

Due to the impact of the federal estate tax refund on plaintiff's New Jersey estate tax liability, we remand for the Tax Court to assess the supplemental proofs and corresponding issues raised in light of N.J.S.A. 54:38-3. Christian Mission John 3:16 v. Passaic City, 243 N.J. 175, 190 (2020) (citing N.J.S.A. 54:38-3). We see no need to reach the other issues plaintiff raised on appeal.

Remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION