

BOARD OF TAX APPEALS
STATE OF LOUISIANA

THE ESTATE OF MARY ELLEN NICE
Petitioner

VERSUS

B.T.A. DOCKET NO. 11651D

DEPARTMENT OF REVENUE,
STATE OF LOUISIANA, THROUGH
ITS SECRETARY, KEVIN RICHARD
Respondent

CONSOLIDATED WITH

THE ESTATE OF MARY ELLEN NICE
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B.T.A. DOCKET NO. 11652D

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JUDGMENT WITH REASONS

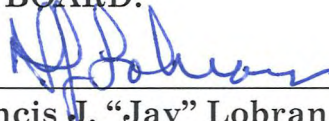
On August 16, 2023, this matter came before the Board for a hearing on the *Motion for Summary Judgment* filed by the Secretary of the Louisiana Department of Revenue (“Department”). Presiding at the hearing were Francis J. “Jay” Lobrano, Chairman, Vice-Chairman Cade R. Cole, and Judge Lisa Woodruff-White (Ret.). Appearing before the Board were Miranda Scroggins, attorney for the Department, and Michael Mayhall, attorney for the Estate of Mary Ellen Nice (“Estate”). At the conclusion of the hearing, the Board took the matter under advisement. The Board now renders Judgment for the reasons set forth in the attached Written Reasons:

IT IS ORDERED, ADJUDGED, AND DECREED that the Department’s *Motion for Summary Judgment* **BE AND IS HEREBY DENIED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Department’s requests to strike portions of the Affidavits attached to *Petitioner, The Estate Of Mary Ellen Nice’s Memorandum In Opposition To The Louisiana Department Of Revenue’s Motions For Summary Judgment* **BE AND IS HEREBY DENIED**.

Judgment Rendered and Signed at Baton Rouge, Louisiana, on this 7th day of September, 2023.

FOR THE BOARD:



Francis J. “Jay” Lobrano, Chairman
Louisiana Board of Tax Appeal

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REASONS FOR JUDGMENT

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Background:

These consolidated Petitions were filed on December 28, 2018, on behalf of Mary Ellen Nice (“Mary”) through her then judicially appointed Curatrix Julianne Nice (“Julianne”). On March 21, 2019, Mary passed away. On July 3, 2019, counsel for Julianne filed an *Ex-Parte Motion to Substitute Party-Petitioner*, indicating that Julianne had been appointed Executrix of Mary’s Estate by Judge Rachael D. Johnson of the Orleans Parish Civil District Court. On July 8, 2019, the Board signed an Order substituting the Estate as Petitioner.

The Petitions are directed at the Department's denial of refund claims for the tax years, 2006, 2007, 2008, 2009, 2010, 2011, 2012, and 2013 (collectively, the "Tax Years"). The Parties disagree as to whether Mary had any "reportable" federal Adjusted Gross Income ("AGI") for the Tax Years for purposes of La. R.S. 47:291(1). The Department adheres to what it claims to be the AGI shown on the IRS Transcripts for the Tax Years ("IRS Transcripts"). The Estate claims that Mary's real federal AGI, in each of the Tax Years, was zero. In addition, the Estate asserts that the Department has misconstrued the IRS Transcripts, and that read logically, the IRS Transcripts reflect an AGI of zero.

In many respects, the parties do not agree on the background facts of these matters. Nevertheless, some facts appear undisputed. There is no dispute that the Department received documents which purported to be Original Returns supposedly filed on Mary's behalf for each of the Tax Years ("Original Returns"). The Original Returns, which were introduced into the record by the Department, are not signed by Mary, but instead bear an illegible signature on the return preparer line. The Estate contends that the Original Returns are invalid because they were prepared and filed by Mary's son, Charles "Chip" M. Nice, III ("Chip"), through a Power of Attorney that was later declared an absolute nullity, void *ab initio*.

Mary's husband died on October 28, 2002. The Estate introduced a physician's affidavit swearing that by no later than February of 2008, Mary was unable to manage her financial affairs. After the death of Mary's husband, Chip allegedly took control of Mary's financial affairs. To that end, a power of attorney was allegedly executed by Mary in favor of Chip on October 26, 2011. All of the purported Original Returns were signed by Chip after that date.

At some time in early 2014, Chip advised Julianne that he lacked the funds to permit Mary to remain in a rehabilitation facility past the date that would be paid by Medicare. After learning of this, Julianne obtained counsel and, through discovery in litigation, allegedly discovered "gross financial improprieties and criminal conduct" by Chip with respect to Mary's finances and assets.

Julianne commenced interdiction proceedings against Mary, which were successful. Julianne also obtained a restraining order against Chip preventing him from managing Mary's affairs. Julianne was further appointed as Mary's Curatrix. Further still, Julianne filed a criminal complaint against Chip for theft, fraud, and elder abuse. However, the complaint was mooted by Chip's death on January 1, 2015.

Julianne retained an accountant who filed Amended federal and Louisiana Returns on Mary's behalf for the Tax Years (collectively, the "Amended Returns"). On each of the Amended Returns, Mary's reported federal AGI was reduced to zero. The Estate claims that the reduction reflects theft losses and the fact that Mary did not receive the benefit of funds withdrawn by Chip. The IRS Transcripts for the Tax Years show a complete reversal of all liabilities. The Estate also undisputedly received refunds from the IRS for 2006, 2010, 2011, and 2013.

Except for 2009, the IRS Transcripts for the Tax Years report AGI in amount greater than zero. For 2006, 2007, 2010, 2011, 2012, and 2013, the IRS Transcripts report an AGI equal to the federal AGI as reported on the respective Original Return for the respective tax year. However, for 2008, the IRS Transcript reported AGI in an amount that was less than the federal AGI reported Original Return for that year, but still greater than zero. The Department adjusted its records for 2008 and 2009 to conform to the federal AGI shown on the IRS Transcripts and issued refunds accordingly. For the remainder of the Tax Years, including the remaining balance for 2008, the Department intercepted the Estate's refunds through the Treasury Offset Program.

Discussion:

After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). A genuine issue is one on which reasonable persons could disagree. *Smith v. Our Lady of the Lake Hosp., Inc.*, 93-2512, p. 27 (La. 7/5/94), 639 So.2d 730, 751. A fact is "material" if it would affect the

outcome of a trial on the merits. *Suire v. Lafayette City-Par. Consol. Gov't*, 2004-1459 (La. 4/12/05), 907 So.2d 37. In ruling on a motion for summary judgment, the Board does not evaluate the weight of the evidence or decide credibility issues. *See Hines v. Garrett*, 2004-0806 (La. 6/25/04), 876 So.2d 764.

The issue presented by the Department's *Motion for Summary Judgment* is whether the federal AGI reported on the Original Returns and the IRS Transcripts is, as a matter of law, the Estate's AGI for purposes of La. R.S. 47:293(1). La. R.S. 47:293(1) defines AGI for Louisiana's individual income tax as the AGI of the individual for the taxable year that is "reportable on the individual's federal income tax return."

This Board has previously declined to equate AGI that was "reported" on a federal return as AGI that is "reportable" under La. R.S. 47:293(1) when doing so would extend the State's income tax to items that do not meet the statutory definition of income. *See Foret v. Department of Revenue*, BTA Docket No. 13233C (La. Bd. Tax App. 07/13/23) (holding gain from the disposition of property does not include income from a prior year for which federal, but not State, tax was deferred); *Boxill v. Louisiana Department of Revenue*, BTA Docket No. C0577A, 2020 WL 13379563 (La. Bd. Tax. App. 03/11/20) (holding that income does not include a mere return of capital to the victim of a Ponzi scheme).

In both *Foret* and *Boxill*, the Department sought to hold a taxpayer to the AGI that was actually reported on federal returns. The Board declined to adopt the Department's construction of law because it was not supported by Louisiana law. In this case, the Department seeks to hold the Estate to AGI that is on the IRS Transcripts. La. R.S. 47:293(1) makes no mention of the AGI shown on an IRS Transcript. Thus, there is even less support for the interpretation of the law urged by the Department here than there was in *Foret* and *Boxill*.

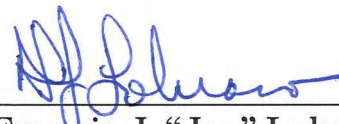
More importantly, determining the Estate's actual AGI that was "reportable" on its federal returns is an unresolved issue of material fact. First, the nullification of the Power of Attorney and the sworn testimony concerning Chip's conduct

undermines the credibility of the AGI reported on the Original Returns. Second, there is a dispute as to whether the Original Returns or the Amended Returns reflect Mary's true AGI. The AGI on the IRS Transcripts is inconsistent with the account history that shows a complete zeroing out of liability on those same transcripts, and thus does not provide a definitive resolution of the dispute in this matter. While, these contradictions do not mean that the Department cannot prevail at trial using the IRS Transcripts and other evidence to outweigh the Estate's proof, they do prevent the Board from granting a motion for summary judgment.

The determination of Mary's AGI for the Tax Years is a genuine dispute of material fact that cannot be resolved with the competent summary judgment evidence submitted by the Department. The existence of this dispute precludes the Board from granting the Department's Motion for Summary Judgment. Accordingly, the motion will be denied.

Baton Rouge, Louisiana, this day, September 7th, 2023.

FOR THE BOARD:



**Francis J. "Jay" Lobrano, Chairman
Louisiana Board of Tax Appeals**