STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2025-10

STATE OF RHODE ISLAND
DEPARTMENT OF REVENUE
DIVISION OF TAXATION
ONE CAPITOL HILL
PROVIDENCE, RHODE ISLAND 02908

IN THE MATTER OF:	:	**22-T-106**
	:	**Estate Tax**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of a Notice of Pre-Hearing Conference and Appointment of Hearing Officer dated November 29, 2022 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing filed with the Division. The parties filed a partial agreement of facts and exhibits ("ASOF"). A hearing was held on November 12, 2024. The parties were represented by counsel, and briefs were timely filed by January 31, 2025.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-22-1 *et seq.*, R.I. Gen. Laws § 44-23-1 *et seq.*, and 280-RICR-20-00-2 *Administrative Hearing Procedures*.

III. ISSUE

The parties agreed there were three (3) issues for hearing as follows:

1. Whether the assets located in Rhode Island on Schedule A.4 and Schedule F of the Taxpayer's Rhode Island estate tax return should be valued at 100% of appraised values or valued at 50% of appraised values?

2. Whether all miscellaneous expenses under Schedule J, Section B.4 of the Taxpayer's Rhode Island estate tax return should be valued at 100% instead of 50%?

3. How much of a marital deduction is the Taxpayer entitled to?

IV. MATERIAL FACTS AND TESTIMONY

The parties' ASOF[1] and joint exhibits are summarized as follows:

1. The Taxpayer is the estate of ("Decedent"), who resided in the state of Louisiana at the time of his death. The Decedent passed away on .

2. The Decedent drafted a handwritten last will and testament dated March 8, 2008. Exhibit One (1). In Article II of said will, to his wife ("Wife"), the Decedent left the following bequests and devises:
   - cash (paragraph 2.1(a));
   - "[a] life estate over the real estate located at , located in Newport, Rhode Island" *Id.* (paragraph 2.1(b)).
   - "All of [Decedent's] rights, title and interests in and to located in New York, NY." *Id.* (paragraph 2.1(c))
   - "All of [Decedent's] rights, title and interests in the farm located at Westport, Massachusetts . . . " (paragraph 2.1(d).
   - To his son, the Decedent left an "ownership interest (remainder interests) in , located in Newport, Rhode Island and adjacent properties subject [to] the life estate in favor of [his Wife]." *Id.* (paragraph 3.1).

3. On or about December 23, 2019, the Division received form RI-4768, application for six (6) month extension of time to file, and form ESTATE-V, Estate Tax Fee form with the estimated payment of tax due in the amount of Joint Exhibit Two (2).

4. On or about July 11, 2020, the Division received Taxpayer's form 706, Federal Estate Tax Return ("Federal Return"). Joint Exhibit Three (3).

5. By correspondence dated August 19, 2022, the Internal Revenue Service ("IRS") issued the Taxpayer an Estate Tax Closing Document, accepting the Federal Return as filed. Joint Exhibit Ten (10).

6. On or about July 11, 2020, the Division received Taxpayer's form RI-100A, Estate Tax Return ("Return"). The Return declared a tax owed of and claimed a refund due from the Division in the amount of Joint Exhibit Four (4).

7. The Return listed the following Rhode Island properties as "non-community real estate" on Schedule A - Real Estate as item #3 as follows: Newport, R.I. and Vacant Lot, Newport, R.I. . These properties were declared at their full appraised value.

[1] The parties filed the agreed to facts and exhibits on May 20, 2024.

8. The Return listed the following Rhode Island properties as "community real estate" on Schedule A- Real Estate as item #4 as follows:
   - , Newport, R.I.
   - , Newport, R.I.
   - Newport, R.I.
   - , Newport, R.I.
   - , Newport, R.I.
   - , Newport, R.I.
   - , Newport, R.I.

   These properties were declared at 50% of their full appraised value totaling

9. On March 31, 2021, the Division issued a Notice of Proposed Assessment ("NOPA") seeking in tax, in interest, and in penalty, for a total assessment of , minus the amount paid of , for a total amount due of Joint Exhibit Six (6).

10. Per the NOPA, all Rhode Island assets the Return reported as community assets at 50% values on Schedule A.4 and Schedule F (#2, 5, 9, 15) were adjusted to reflect their 100% appraised values. *Id.*

11. Per the NOPA, all Schedule J items under Section B.4 ("Miscellaneous expenses") totaling were reduced by 50% except for those expenses directly associated with Rhode Island properties, which were allowed at 100% value. *Id.* The items allowed at 100% value under this section include expenses , expenses expenses , expenses , and expenses . *Id.*

12. Per the NOPA, the amount on Schedule M, item 2, listed for Investment Account valued at was adjusted to to match the amount of the same asset included on Schedule B, item I. *Id.*

13. Per the NOPA, the amount of charitable deduction claimed on Schedule O was disallowed because it was not written in the will. *Id.*

14. By letter dated May 13, 2021, the Taxpayer's counsel provided a detailed response to the NOPA. Joint Exhibit Seven (7).

15. On August 4, 2021, the Division issued the Notice of Assessment ("NOA") seeking in tax, in interest, and in penalty, for a total assessment of minus the amount paid of , for a total amount due of . Joint Exhibit Eight (8).

16. Per the NOA, all Rhode Island assets reported as community assets at 50% value on the Return on Schedule A.4 and Schedule F (#2, 5, 9, 15) remained adjusted to reflect the 100% appraised values. *Id.* The Schedule F assets included by the Division at 100% are:

- 2. Rhode Island vehicles
- 5. Rhode Island boats
- 9. Rhode Island fine art and household furnishings
- 15. Interest in

17. Per the NOA, all Schedule J items under Section B.4 (Miscellaneous expenses) remained reduced by 50% except for those directlv associated with Rhode Island properties (see expense amounts (see #13 above). The NOA further allowed other direct expenses that were necessary to administer the estate which were allowed at 100%. *Id.* Those items listed as necessary to administer the estate were appraisal expenses , professional fees , court costs , bank service charges delivery charges clerical supplies miscellaneous debts paid after DOD , and medical expenses *Id.* Those items reported by the Division at 50% include:
    - Moving Expense
    - Auto Expenses
    - Boat Maintenance Expenses
    - Horse Expenses
    - Expenses
    - Expenses
    - Expenses
    - Expenses
    - Expenses

18. Per the NOA, the amount on Schedule M, item 2, remained adjusted to to match the amount listed for the same asset on Schedule B and stated, "Per IRS guidelines, property interests that are not included in decedent's gross estate may not be listed on Schedule M." *Id.*

19. Per the NOA, the Division rescinded the disallowance of the charitable deduction based on additional information provided by Taxpayer. *Id.*

20. By correspondence dated August 24, 2021, the Taxpayer timely requested an administrative hearing on the NOA. An informal preliminary conference was held on or about November 2, 2021. The matter was not resolved at the preliminary conference and was referred for full administrative hearing.

("Auditor"), Principal Tax Auditor, testified on behalf of the Division. He testified the instructions for form RI-100A (state estate tax return) provide that when one files a state estate return, one must include the federal return and that also includes if one is filing an amended state return then one must file an amended federal return. Division's Exhibit One (1) (said instructions and links to IRS website). He testified the federal and state estate returns mirror

each other. He testified that even if the Taxpayer filed an amended Schedule M, it would not make a difference because there would still be a mismatch between Schedules B and M.

On cross-examination, the Auditor testified one needs to file an amended federal return if filing an amended state return even if one has received a closing federal document for a federal return because a taxpayer needs to file both even if the numbers do not change. He testified that requirement is found in instructions for form RI-100A. He testified the returns need to mirror one another even if amended. He testified the Taxpayer made a cash bequest to his surviving spouse in his will. He testified the form 706 instructions address marital deductions. He testified the original return identified the assets on Schedule B as only half the bequest so only that amount could carry over to Schedule M. He testified that any amended return with the state must show a match between Schedule B and the corresponding deductions on Schedule M.

On redirect examination, the Auditor testified that Schedules B and M need to match, and the Taxpayer's proposed amended return does not address the mismatch. He testified that unless the schedules match, it would not make a difference to the Division. He testified if one is taking a deduction, one needs to follow rules.

certified public accountant, testified on behalf of the Taxpayer. Taxpayer's Exhibit Three (3) (resume). She testified she does not see a reason for an amended federal return because the Taxpayer's proposed change to Schedule M for Rhode Island does not change the federal return so there is no reason to file an amended federal return unless it changed the calculation of the tax owed. She testified she would never file an amended return unless there was change to tax owed calculation. She testified that she does not see a reason there has to be a match between assets and deduction, and she does not think the instructions require such an amendment.

V. DISCUSSION

A. Legislative Intent

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management,* 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. Relevant Statutes

R.I. Gen. Laws § 44-22-1 provides in part as follows:

> Tax on net estate of decedents — Additional tax on postponed enjoyment — Deductions — Marital deduction. (a) A tax is imposed upon the transfer of the net estate of every resident or nonresident decedent as a tax upon the right to transfer. ***
>
> ***
>
> (g) Notwithstanding any other provisions of this chapter, the total estate tax payment on account of the estate of a decedent whose death occurs on or after January 1, 1986, is that percentage of the estate tax which would be payable under this chapter determined in accordance with the following schedule:
>
> ***
>
> (7) Death on or after January 1, 1992. The estate tax payable on or account of the estate of a decedent whose death occurs on or after January 1, 1992, is determined in accordance with § 44-22-1.1.

R.I. Gen. Laws § 44-22-1.1 provides in part as follows:

Tax on net estate of decedent.

(a)(1) For decedents whose death occurs on or after January 1, 1992, but prior to January 1, 2002, a tax is imposed upon the transfer of the net estate of every resident or nonresident decedent as a tax upon the right to transfer. The tax is a sum equal to the maximum credit for state death taxes allowed by 26 U.S.C. § 2011.

***

(4) For decedents whose death occurs on or after January 1, 2015, a tax is imposed upon the transfer of the net estate of every resident or nonresident decedent as a tax upon the right to transfer. The tax is a sum equal to the maximum credit for state death taxes allowed by 26 U.S.C. § 2011, as it was in effect as of January 1, 2001; provided, however, that a Rhode Island credit shall be allowed against any tax so determined in the amount of sixty-four thousand four hundred ($64,400). Any scheduled increase in the unified credit provided in 26 U.S.C. § 2010 in effect on January 1, 2003, or thereafter, shall not apply; provided, further, beginning on January 1, 2016, and each January 1 thereafter, said Rhode Island credit amount under this section shall be adjusted by the percentage of increase in the Consumer Price Index for all Urban Consumers (CPI-U) as published by the United States Department of Labor Statistics determined as of September 30 of the prior calendar year; said adjustment shall be compounded annually and shall be rounded up to the nearest five dollar ($5.00) increment.

***

(c)(1) The terms "gross taxable estate," "federal gross estate" or "net taxable estate" used in this chapter or chapter 23 of this title has the same meaning as when used in a comparable context in the laws of the United States, unless a different meaning is clearly required by the provisions of this chapter or chapter 23 of this title. Any reference in this chapter or chapter 23 of this title to the Internal Revenue Code or other laws of the United States means the Internal Revenue Code of 1954, 26 U.S.C. § 1 et seq.

(2) For decedents whose death occurs on or after January 1, 2002, the terms "gross taxable estate" "federal gross estate" or "net taxable estate" used in this chapter or chapter 23 of this title has the same meaning as when used in a comparable context in the laws of the United States, unless a different meaning is clearly required by the provisions of this chapter or chapter 23 of this title. Any reference in this chapter or chapter 23 of this title to the Internal Revenue Code or other laws of the United States means the Internal Revenue Code of 1954, 26 U.S.C. § 1 et seq., as they were in effect as of January 1, 2001, unless otherwise provided.

(d) All values are as finally determined for federal estate tax purposes.

(e) Property has a tax situs within the state of Rhode Island:

(1) If it is real estate or tangible personal property and has actual situs within the state of Rhode Island; or

(2) If it is intangible personal property and the decedent was a resident.

26 U.S.C. § 2031 provides in part as follows:

> Definition of gross estate. (a) General.--The value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

26 U.S.C. § 2033 provides as follows:

> Property in which the decedent had an interest. The value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

26 C.F.R. § 20.2033–1 provides as follows:

> Property in which the decedent had an interest. (a) In general. The gross estate of a decedent who was a citizen or resident of the United States at the time of his death includes under section 2033 the value of all property, whether real or personal, tangible or intangible, and wherever situated, beneficially owned by the decedent at the time of his death. (For certain exceptions in the case of real property situated outside the United States, see paragraphs (a) and (c) of § 20.2031–1.) Real property is included whether it came into the possession and control of the executor or administrator or passed directly to heirs or devisees. Various statutory provisions which exempt bonds, notes, bills, and certificates of indebtedness of the Federal Government or its agencies and the interest thereon from taxation are generally not applicable to the estate tax, since such tax is an excise tax on the transfer of property at death and is not a tax on the property transferred.
>
> (b) Miscellaneous examples. A cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of that part of the lot which is not designed for the interment of the decedent and the members of his family. Property subject to homestead or other exemptions under local law is included in the gross estate. Notes or other claims held by the decedent are likewise included even though they are cancelled by the decedent's will. Interest and rents accrued at the date of the decedent's death constitute a part of the gross estate. Similarly, dividends which are payable to the decedent or his estate by reason of the fact that on or before the date of the decedent's death he was a stockholder of record (but which have not been collected at death) constitute a part of the gross estate.

The Internal Revenue Manual ("IRM")[2] is an IRS internal comprehensive guide which outlines policies and procedures for its operations. The IRM for Special Topics, Community Property, 25.18.1.1 (05-03-2023)[3] provides "technical guidance on community property law affecting taxpayers domiciled in community property states, or cases otherwise raising community property issues." The IRM, 25.18.1.1.2 (05-03-2023), provides further:

> Authority (1) Federal law determines how property is taxed, but state law determines whether, and to what extent, a taxpayer has "property" or "rights to property" subject to taxation. *Aquilino v. United States*, 363 U.S. 509 (1960); *Morgan v. Commissioner*, 309 U.S. 78 (1940). Accordingly, federal tax is determined, assessed, and collected based upon a taxpayer's state created rights and interest in property.

IRM 25.18.1.3.6 (03-04-2011)[4] provides guidance on determining which state's law govern the classification of property as separate or community property. It provides in part as follows:

> Determining Which State's Laws Apply in Property Characterization
> 1. Given a property's physical location, questions can arise concerning which state's laws govern the categorization of a piece of property as separate or community property. The general rules on this issue are as follows:
>
> a. Real Property. Generally, the law that applies to an interest in real property will be determined by the situs of the property. See, e.g., *Woods v. Naimy*, 69 F.2d 892, 894 (9th Cir. 1934); *Peters v. Haley*, 762 So. 2d 695 (Ct. App. La. 2000), writ denied, 766 So. 2d 547 (La. 2000). However, courts may apply community property principles to real property located in a common law state in an action solely between the spouses, if the property was acquired with community property funds. *Ford v. Ford*, 276 Cal. App. 2d 9, 80 Cal. Rptr. 435 (Ct. App. 1969); *Muckle v. Superior Court*, 102 Cal. App. 4th 218, 125 Cal. Rptr. 2d 303 (Ct. App. 2002). The theory is that the court does not have jurisdiction to determine title to the property in another state, but the court does have jurisdiction to determine as between the parties before them what interest each party has in the property. *Noble v. Noble*, 26 Ariz. App. 89, 546 P.2d 358 (App. Ct. 1976) (involving property in a foreign country).
>
> b. Personal Property. Generally, the law that applies to personal property will be determined by the domicile of the spouses at the time of acquisition. (citation omitted). If the spouses have different domiciles, the interests of the spouses will be determined by the law of the state which has the most significant relationship to the spouses and the property. (citation omitted).
> ***

[2] https://www.irs.gov/irm.
[3] https://www.irs.gov/irm/part25/irm_25-018-001.
[4] *Id.* Administrative notice item.

C. Arguments

The Division issued a Notice of Assessment to the Taxpayer for additional tax, interest, and penalties owed which the Taxpayer appealed. Joint Exhibits Eight (8) and Nine (9). The issues in this matter arise out of the appeal of the assessment. The first two (2) issues turn on the legal determination of whether the property located in Rhode Island should be valued at the Rhode Island or Louisiana rate. The third issue relates to the marital deduction given the Taxpayer, and an issue that arose regarding the Taxpayer proposing to file an amended return that it felt would resolve the third issue. The parties' arguments will be addressed separately for each issue.

D. Rhode Island Estate Tax

For eighty years from 1924 to 2001, individual states based their estate tax on the federal income tax as federal law allowed a state estate tax credit of a dollar to dollar reduction of federal estate tax for state estate tax paid up to a certain limit. This deduction was codified in 26 USC § 2011. The total estate tax was divided between the state and federal government with the estate owing the same amount either way. Thus, most states opted to use what was called a "sponge" tax whereby the state collected its estate tax and any additional amount up to the federal credit allowed under § 2011. Rhode Island was no exception. This approach allowed states to use what state credit was available and allowed federal law to provide the computation. Thus, states availed themselves of the maximum benefits available under § 2011.

This all changed with the passage of the Economic Grown and Tax Relief Reconciliation Act of 2001 ("2001 Act"). This federal act made numerous changes to the federal income tax including repealing the state estate credit for the federal estate credit and replacing it with a deduction. This repeal was to be temporary, but it was extended and then made permanent.[5]

[5] See repeal by Pub.L. 113-295, Div. A, Title II, § 221(a)(95)(A)(i), Dec. 19, 2014, 128 Stat. 4051.

Some states responded to the 2001 Act by doing nothing. Some responded by incorporating by reference a pre-2001 Act version of § 2011. Rhode Island chose this method. See P.L. 2001, ch. 77, art. 7, § 3 which amended R.I. Gen. Laws § 44-22-2.1. Section 2011 was eventually repealed and replaced by § 2058.[6] Cooper, Jeffrey A., *Death by Deduction: Section 2058 and the Decline of State Death Taxes*, 48 ACTEC L.J. 103 (Spring, 2023); Raymon, David S. and Reidel, David T., *A Practical Guide to Estate Planning in Rhode Island*, Massachusetts Continuing Legal Education, Inc. (Chapter 14 Post Mortem Estate Planning) (2nd Ed. 2022); and Hill, Susan K., *Leaping Before We Look?: Repeal of the State Estate Tax Credit and the Consequences for States, Americans, and the Federal Government*, 32 Pepp. L. Rev. 151 (2004).

R.I. Gen. Laws § 44-22-2.1 was enacted in 1985. P.L. 1985, ch. 181, art. 45, § 4. It provided that for those decedents who death occurred on or after January 1, 1991, a tax shall be imposed to a sum equal to the maximum credit for state death taxes allowed by § 2011. The statute also included what is now subsection (d) about values being as determined by federal estate tax purposes.[7] As noted above, the statute was subsequently amended to reflect the 2001 Act.

E. Issue One

The Taxpayer argued that R.I. Gen. Laws § 44-22-1.1(d)'s provision that "[a]ll values are as finally determined for federal estate tax purpose" clearly requires conformity with federal determinations and refers to values that have been reviewed and accepted by the IRS so that Exhibit Ten (10), the IRS estate closing document, is determinative as to the valuation of the Taxpayer's

[6] 26 U.S.C. § 2058 details the deduction (rather than the prior credit) allowed for state estate taxes.

[7] It is noted that (d) originally read as, "[a]ll values shall be as finally determined for federal estate tax purposes." This is also the language in 1990. P.L. 1990, ch. 65, art. 61 § 1 (other amendments to statute). By 2001, the language of (d) is the current version, "[a]ll values are as finally determined for federal estate tax purposes." P.L. 2001, ch. 77. Art. 7, § 3 (other amendments to statute). The undersigned did not identify an amendment for this change in this statute's public laws. Presumably at some point, there must have been a public law relating to general grammatical changes. However, the difference between "shall be" and "are" does not change the meaning of the statute.

Rhode Island property. Thus, since the IRS accepted the community property valuation of the Rhode Island property at 50%, the Taxpayer argued the statute mandates the Division do the same.

The Division argued that IRS's guidance disagrees with the Taxpayer's position and agrees with the Division's position. It argued there was no evidence the IRS reviewed and confirmed the values within the Taxpayer's federal return in the IRS closing document.

When the Rhode Island estate tax was the "sponge" tax, the method of valuation was not necessarily as relevant because the portion of the state tax was determined by the federal credit. In fact, due to the increase in the federal exemption on estate taxes, the vast majority of states that still impose an estate tax impose it on a large number of estates that owe no federal estate tax. Cooper, 48 ACTEC L.J. at 108. So presumably in many cases now, there would be no federal closing letter to argue that its values would apply to a state's estate tax.

In looking at what a statute means, the Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira,* at 457. The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result.

Right after subsection (d), the statute provides that there shall be tax on property – real estate and tangible person property - with actual situs within the state of Rhode Island. Thus, tax shall be paid on property within Rhode Island.

The statutory provision that "[a]ll values are as finally determined for federal estate tax purposes" states that values used in Rhode Island are the same as for federal tax purposes.[8] This

[8] See for example, Lahti, Michael *A Practical Guide to Estate Planning in Rhode Island,* Massachusetts Continuing Legal Education, Inc., Chapter 2 Estate, Gift, and Generation-Skipping Transfer Taxes (2nd Ed. 2022).

made sense when the statute was first promulgated as part of the "sponge" tax by the state on the federal estate tax. It continues to make sense as it refers to values that are used for federal tax purposes. The Rhode Island statute does not provide that an IRS closing letter is a final determination of value. Rather the values are as determined for federal tax purposes.

As pointed out by the Division, Exhibit Ten (10) does not appear to be a final determination of values. Rather the letter states that it is not an agreement under § 7121 but is evidence the estate tax return has been accepted as filed or accepted after an adjustment to which the taxpayer agreed or has been accepted after an adjustment in the deceased spousal unused exclusion amount. The letter accepted the Taxpayer's federal return which used Louisiana values. However, the letter did not make any determination itself of value. Furthermore, the statute does not provide that acceptance of the federal return is the final determination.

26 U.S.C. § 2033 provides that the value of the gross estate "shall include the value of all property to the extent of the interest therein of the decedent at the time of his death." At the time of the Decedent's death, he owned the Rhode Island property. 26 C.F.R. § 20.2033–1. His Wife may have had a 50% interest in that property as he and his Wife were domiciled in Louisiana, and if they had divorced, the Rhode Island property would presumably been included in the division of property. But at the time of his death, the Decedent owned the property in Rhode Island that he had to leave in his will to his Wife.[9] As the IRM states, federal tax is determined, assessed, and collected based upon a taxpayer's state created rights and interest in property.

---

[9] Ratner, James R., *Distribution of Marital Assets in Community Property Jurisdiction: Equitable Doesn't Equal Equal*, 72 La. L. Rev. 21 (Fall 2011); Patton, Mark, *Quasi-Community Property in Arizona: Why Just at Divorce and not Death?*, 47 Ariz. L. Rev. 167 (Spring, 2005); and *Equitable Divorce Doctrine*, 41 A.L.R.4th 481 (publ. 1985, kept current in Westlaw). See also *Hanau v. Hanau*, 730 S.W.2d 663 (TX 1987) (Texas is a community property state; case discussed the long-standing general rule that property which is separate property in the state of the matrimonial domicile at the time of its acquisition will not be treated for probate purposes as though acquired in Texas (community property) and declined to extend to a probate matter, a holding in another case where separate property acquired in common law jurisdictions merited different treatment as community property in the limited context of divorce or annulment. Thus, the case differentiated the treatment of property based on whether it was a divorce or estate matter).

The Taxpayer rejected the Division's reliance on the IRM as it argued the IRM's guidance that situs controls except for an action between the spouses meant the Division should recognize the equitable interest the Decedent and his Wife had in the Rhode Island property. The Taxpayer relied on *Curry v. Curry*, 987 A.2d 233 (R.I. 2010) which it argued showed Rhode Island recognized equitable interests in property across state lines.

A review of *Curry* shows that it is a divorce action – an action between spouses – that had nothing to do with property in a community property state but rather was a matter of dividing the interest that a divorcing Rhode Island domiciled couple had in New York property. An action between spouses is the IRM exception to the situs rule. Indeed, the treatment of the Rhode Island property in a divorce action between the Decedent and his Wife would have been a different matter than an estate tax. This is not an action between spouses because one spouse is deceased. This is an estate matter.

The Taxpayer also relied on *Morgan v. Commissioner*, 309 U.S. 78, 80-81 (1940) which found as follows:

> State law creates legal interests and rights. The federal revenue acts designate what interests or rights, so created, shall be taxed. Our duty is to ascertain the meaning of the words used to specify the thing taxes. If it is found in a given case that an interest or right created by local law was the object intended to be taxes, the federal law must prevail no matter what name is given to the interest or right by state law.

The Taxpayer argued that *Morgan* established that a state's characterization of property interests cannot override federal tax treatment of those interests. This argument is premised on the Taxpayer's assertion that R.I. Gen. Laws § 44-22-1.1(d) means the closing letter has determined the Rhode Island property must be taxed at 50%.

In a later United States Supreme Court case, the Court relying on *Morgan*, concluded as follows:

> In sum, in determining whether a federal taxpayer's state-law rights constitute "property" or "rights to property," "[t]he important consideration is the breadth of the control the [taxpayer] could exercise over the property. *Morgan*, 309 U.S. at 83." *Drye v. U.S.*, 528 U.S. 49, 61 (1999).

As stated above, the IRM sums up *Morgan*'s holding as federal law "determines how property is taxed, but state law determines whether, and to what extent, a taxpayer has "property" or "rights to property" subject to taxation" so that "federal tax is determined, assessed, and collected based upon a taxpayer's state created rights and interest in property." The IRM, 25.18.1.1.2. *Supra.* The Decedent owned the property in Rhode Island. He had sole control of it to dispose of it in his will.

The Taxpayer argued the Division ignored other mandates of the IRM that supported its position.[10] However, those portions of the IRM merely explain community property and domicile as the basis for federal income tax. IRM 25.18.1.3.1 explains that domicile is controlling for federal income tax and property is determined by a taxpayer's domicile, and it explains the difference between residence and domicile. IRM 25.18.1.3.8 is about the forms of ownership and characteristics and explains community property states and the type of property that may be owned (community a/k/a marital property or separate a/k/a individual property). It explains that each spouse has a half interest in each item of community property and that is created by operation of law, so no affirmative acts are required to create community property. IRM 25.18.1.3.15 explains that community property states uniformly have laws creating a rebuttable presumption that property owned by spouses is community property.

The IRM explanation of community property does not mean that Rhode Island must tax its property as a community property. No one is claiming that Louisiana is not a community property

[10] https://www.irs.gov/irm/part25/irm_25-018-001#idm140445705948272.

state. No one is claiming that Rhode Island law controls Louisiana property. Those IRM provisions merely explain what is already known: Louisiana is a community property state so that the Wife had an interest in the Rhode Island property in case of divorce. But these provisions do not change federal law accepting the site of the property as determinative for tax on estates.

The Taxpayer argued the Decedent beneficially owned 50% of the Rhode Island property with the other 50% being beneficially owned by his Wife despite the fact the Decedent held title in fee simple to the Rhode Island properties in his name alone. The Taxpayer argued that § 20.2033-1(a) cannot "magically" convert a 50% beneficial ownership interest into a 100% ownership fee simple just because it is located in a different state and titled solely in the name of the Decedent. The Taxpayer appears to confuse what could have happened at a divorce between the Decedent and his Wife and the Rhode Island property and taxing the Rhode Island property upon the Decedent's death. See footnote Eight (8) (Texas case).

The Decedent was the only one who could sell the Rhode Island property. He had title to it. If his Wife had been a joint tenant, she would have assumed total ownership of the property. Rather, the Rhode Island property was the Decedent's, and he left it to his Wife because she had no ownership in it under Rhode Island law. State law controls the right to property.

The Taxpayer relied on a Louisiana law that falls under a section about marital property in a conflict of laws section. Article 3525.[11] While the Taxpayer argued that termination of community as mentioned in that Article 3525 applies to the death of a spouse, it does not appear

---

[11] LA Art. 3525 provides as follows.

> Termination of community; immovables in another state acquired by a spouse while domiciled in this state. Upon the termination of the community between spouses, either of whom is domiciled in this state, their rights and obligations with regard to immovables situated in another state acquired during marriage by either spouse while domiciled in this state, which would be community property if situated in this state, shall be determined in accordance with the law of this state. This provision may be enforced by a judgment recognizing the spouse's right to a portion of the immovable or its value.

to apply to death. E.g. the statute speaks to termination of community of spouses, either of whom are domiciled in Louisiana. In other words, both are still living but are not in community in Louisiana. The Taxpayer also relied on a 1956 Tax Court case and 1987 Revenue Ruling[12] that it argued both recognized Louisiana as a community property state. There is no dispute that Louisiana is a community property state. The only issue is whether Louisiana's treatment of property should apply to Rhode Island for the purposes of Rhode Island valuing property located in Rhode Island that was solely owned by the Decedent upon the Decedent's death.

Rhode Island is using the value of the property as determined for federal tax purposes in that IRS law and case law defers to state created rights and interest in property which here is 100% ownership by the Decedent. *Supra.*

The Division argued that applying choice of law analysis supports its contention that Rhode Island law should apply. The Taxpayer argued that there is no true conflict of law because Rhode Island law mandates the acceptance of federal values so that the 50% value must be used so there is the same outcome whether Louisiana or Rhode Island law is used. However, there is no Rhode Island statutory mandate that the closing letter is the federal value to be used. Rather federal law provides that Rhode Island law applies. Thus, the value being used by Rhode Island are values used for federal estate tax purposes.

Under *Smile of the Child v. Estate of Papadopouli*, 272 A.3d 99 (R.I. 2022), a choice of law analysis applies when the application of the two (2) different jurisdiction's law would result in different outcomes. However, there is no question that Rhode Island law should be applied to property situated in Rhode Island as provided by state law. And that property was owned by the Decedent so should be valued at 100% as provided by state law as allowed by federal law.

[12] See Exhibit Seven (7) (Taxpayer's response letter dated May 12, 2021, attachments).

Nonetheless, as *Smile of the Child* held, the five (5) policy considerations for making a choice of law determination are as follows: "(1) Predictability of results[;] (2) Maintenance of interstate and international order[;] (3) Simplification of the judicial task[;] (4) Advancement of the forum's governmental interests[;] (5) Application of the better rule of law." (citation omitted). *Id.* at 107. It is predictable that Rhode Island law applies to Rhode Island property. *Id.* at 108. Here, each state applies its own laws for estate tax purposes to property located in that state. It is easier and in the interest of Rhode Island to apply its property law to the value of property located in Rhode Island for estate tax purposes. Applying Rhode Island law to property located in the state provides stability and causes no speculation by other states since it is consistent with the approach of taxing property based on its location.

The Taxpayer argued the statute required "all" values rather than "some" values, and if the legislature wanted only some value, it could have done so. It argued the legislature gave the Division discretion when needed, R.I. Gen. Laws § 44-23-45,[13] but such discretion does not apply to this statutory mandate over federal values. However, there is no statutory mandate that Exhibit Ten (10) is the federal valuation. The Taxpayer is arguing that somehow value is unchanging under federal law but that is not the case because federal law provides that state law applies to property located in state and is dependent on the site of the property. Thus, applying the IRS Code and IRS regulation and guidance, the site of the property as provided for in Rhode Island law controls the tax of that Rhode Island property.

---

[13] R.I. Gen. Laws § 44-23-45 provides as follows:

> Liberal construction — Incidental powers. The provisions of this chapter and chapter 22 of this title shall be interpreted and construed liberally in order to accomplish the purpose of those chapters, and the tax administrator has, in addition to the powers in those chapters specified, mentioned and indicated, all additional implied and incidental powers which may be proper and necessary to effect and carry out, perform and execute all the powers specified, mentioned and indicated in those chapters.

Contrary to the Taxpayer's assertion, R.I. Gen. Laws § 44-22-1.1(d) does not clearly require the IRS closing document is determinative of federal values. Rather the statute clearly says that values used in Rhode Island are the same as for federal tax purposes. The values used for federal estate tax purposes are state valuations for property located in the state. This is clearly provided for by state statute, federal law, federal regulation, and federal case law.

E. Issue Two

As delineated in the ASOF, the Division reduced miscellaneous expenses that it determined were not directly related to Rhode Island properties to 50% rather than 100%. The Taxpayer again relied on R.I. Gen. Laws § 44-22-1.1(c) and (d) to argue that reduced miscellaneous expenses should be valued at 100% rather than 50%. It argued that the values in Exhibit Ten (10) are binding on Rhode Island. As discussed in the preceding section, that federal closing document does not represent the values of Rhode Island property located in Rhode Island but rather state law, the IRS Code, IRS regulation, IRS guidance, and case law allow the value to be that allowed for by Rhode Island law. Thus, the same analysis applies to this issue as well.

The Taxpayer also relies on cases relating to the administration of estates under Louisiana law in Louisiana to argue that Rhode Island should allow the full 100%. *McCullough v. United States*, 134 F.Supp. 673 (Dt. Ct. W.D.LA 1955); *Estate of William G. Helis v. Commissioner*, 26 T.C. 143 (1956) (Exhibit Seven (7) attachment D); and *Succession of William G. Helis*, 75 So.2d 221 (LA 1954). The Taxpayer argued that these cases established criteria for administrative expenses in community property states.

The Division asserted it followed the instructions for form 706 (administrative notice item 2, at 33) so that it allowed the deduction of miscellaneous expenses necessarily incurred in preserving and distributing the estate at 100% of the expenses for what it deemed related to Rhode

Island properties. Other expenses that were not directly associated with Rhode Island properties or were not necessary to administer the estate were allowed at 50%. The Division allowed a 100% deduction for any expense necessary to administer the estate.

The Taxpayer's cases about administering estates in community property states are not relevant to Rhode Island. Rhode Island taxed the property as allowed by federal law and followed federal law in allowing deductions.

F. Issue Three

The parties agreed the third issue was how much of a marital deduction is the Taxpayer entitled to. This revolves around the cash bequest by the Decedent to his Wife, and whether the Taxpayer may take the full bequest as a marital deduction.

The Taxpayer filed form 706, its United States estate tax return, and form RI-100A, its Rhode Island estate tax return. Joint Exhibits Three (3) and Four (4) respectively. On the Taxpayer's federal and Rhode Island estate tax returns, Schedule B, item 1 of the assets, listed a account of and a community share as Schedule M for bequests to surviving spouse lists for item 2, the same account with a value. *Id.* As detailed in the ASOF, the amount on Schedule M was adjusted to to match the amount of the asset included in Schedule B.

The Taxpayer represented the Division allowed a marital deduction of based on Schedule B. The Taxpayer would like a deduction for the full bequest which it represented has been paid to the Wife. Taxpayer's Exhibits One (1) (Taxpayer's executor's affidavit that paid said bequest to Wife); and Two (2) (Wife's affidavit that received said bequest).

In its argument, the Division relied on form 706 instructions that state certain property interests may not be listed on Schedule M to use as deductions. The instructions state, '[d]o not

list on Schedule M: . . . [t]he value of any property that does not pass through the decedent to the surviving spouse. . . [p]roperty interests that are not included in the decedent's gross estate." Administrative Notice Item 3 at 35. As stated above, Schedule B, item 1, identified a investment account number with a value of reduced by one-half community property to Schedule M, item 2, identified the same account and account number but with a value of The Division explained that since the form 706 instructions clearly state property interests that are not included in a decedent's gross estate must not be listed on Schedule M, the Division reduced the value of Schedule M, item 2 to match the value listed on Schedule B.

The Division argued the form 706 instructions clearly state that only property interests included in the gross estate may be listed on Schedule M which is the Schedule B value. It argued that whether that value was in error or not, that amount was on the return so the Division properly adjusted Schedule M to match the Schedule B value as required by the IRS form 706 instructions.

The Taxpayer represented the bequest was not put on Schedule M but rather the account used to pay the bequest was put on Schedule M. It argued the Division disallowed the full marital deduction because of a scrivener's error on the listing on the form. It argued the will made a clear bequest of which was made so the Taxpayer is entitled to the marital deduction. The Taxpayer argued that if form RI-100A wins over the substance of the bequest being made, the issue becomes how can the Taxpayer fix this issue.

In order to obtain the marital deduction, the Taxpayer suggested it file an amended state estate tax return. The Division argued the Taxpayer would need to file an amended federal return because Schedules B and M must match as required by the federal instructions. The Taxpayer argued an amended federal return is not required for it to file an amended state return.

The Taxpayer argued the Division's refusal to allow the marital deduction directly contravenes R.I. Gen. Laws § 44-22-1.1(d). However as discussed above, that statute's requirements do not require acceptance of the federal estate closing letter.

The Taxpayer also appears to be arguing that it is unfair to elevate what it calls a scrivener's error over the actual marital bequest. However, equitable principles are not applicable to an administrative procedure. See *Nickerson v. Reitsma*, 853 A.2d 1202 (R.I. 2004) (Superior Court order vacating an agency sanction on so-called "inherent equitable powers" was vacated).

The Division did not represent that it would never allow the marital deduction. It just argued that it is bound by the filed returns and must rely on those forms and the relevant instructions. The Taxpayer did not argue the Division was wrong in its calculations – reducing the Schedule M value to match Schedule B - but rather argued those calculations were based on a scrivener's error and since the actual marital bequest was made that should override the filing.

The question of the proposed amended state return arose during discussions of this matter between the parties. The Taxpayer did not file an amended state tax return. Instead, the parties requested a ruling on the hypothetical of what the Taxpayer could do. The Taxpayer indicated it had not filed anything because it did not want to keep coming back to this forum.

While testimony was taken regarding the proposed amended return, this proposal is not based on any actual filing. It appears to be a request more in line with a declaratory order action.[14]

---

[14] R.I. Gen. Laws § 42-35-8 provides in part as follows:

> Declaratory order. (a) A person may petition an agency for a declaratory order that interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner.
>
> ***
>
> (c) Not later than sixty (60) days after receipt of a petition under subsection (a), an agency shall issue a declaratory order in response to the petition, decline to issue the order, or schedule the matter for further consideration.
>
> (d) If an agency declines to issue a declaratory order requested under subsection (a), it shall notify, promptly, the petitioner of its decision. *** An agency decision to decline to issue a declaratory

This is a contested case pursuant to R.I. Gen. Laws § 42-35-9. The undersigned declines to rule on a hypothetical amended filing for which no action has been taken by the Division. The Taxpayer may file what it would like with the Division. It does not need permission from the undersigned.

The Division relied on the Taxpayer's estate tax return as filed and the relevant instructions. The Taxpayer may be able to amend that return to fix what it terms a scrivener's error, but it has not done so. However, the Division must rely on what was filed by the Taxpayer with the Division.

G. Conclusion

The issues in this matter arose out of Taxpayer's appeal of the Division's Notice of Assessment issued on August 4, 2021 to the Taxpayer for additional tax, interest, and penalties. In terms of issues one (1) and two (2), the values should not be changed from what the Division used. In terms of the third issue, the Division calculated the deduction based on what the Taxpayer filed. Nothing precludes the Taxpayer from amending its filing; though, the acceptance of such an amendment would depend on what is filed with the Division. However, the Division calculated the marital deduction based on the Taxpayer's filings. Thus, the Notice of Assessment is upheld including the interest and penalties that are provided by statute.[15]

---

order is subject to judicial review for abuse of discretion. An agency failure to act within the applicable time under subsection (c) is subject to judicial action under § 42-35-15.

(e) If an agency issues a declaratory order, the order must contain the names of all parties to the proceeding, the facts on which it is based, and the reasons for the agency's conclusion. *** The order has the same status and binding effect as an order issued in a contested case and is subject to judicial review under § 42-35-15.

***

See also Division's regulation, *Procedures in Handling Requests for Issuance of Declaratory Orders*, 280-RICR-20-00-5.

[15] R.I. Gen. Laws § 44-23-16 provides as follows:

> Time taxes due — Interest and additions to tax on delinquent payments. All taxes imposed by chapter 22 of this title, unless provided, are due and payable nine (9) months after the date of death of the decedent. If the taxes are not paid within nine (9) months from the date of death, interest shall be charged and collected at the annual rate provided by § 44-1-7 from the time the tax is due, determined without regard to any extension of time for payment. In addition, if the taxes are not paid when due (determined with regard to any extension of time for payment), there is added to the amount of tax due five-tenths percent (0.5%) of the tax per month to a maximum of twenty-five percent (25%) unless it is shown that the failure to pay is due to reasonable cause and not due to willful neglect.

VI. FINDINGS OF FACT

1. On or about November 29, 2022, the Division issued a Notice of Pre-Hearing Conference and an Appointment of Hearing Officer to the Taxpayer.

2. A hearing was held on November 12, 2024 with the parties timely submitting briefs by January 31, 2025.

3. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-22-1 *et seq.*, R.I. Gen. Laws § 44-23-1 *et seq.,* and 280-RICR-20-00-2 *Administrative Hearing Procedures.*

2. Pursuant to R.I. Gen. Laws § 44-22-1 *et seq.* and R.I. Gen. Laws § 44-23-1 *et seq.,* the Division's Notice of Assessment for tax, penalties, and interest owed is upheld.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows:

Pursuant to R.I. Gen. Laws § 44-22-1 *et seq.* and R.I. Gen. Laws § 44-23-1 *et seq.,* the Division's Notice of Assessment for tax, penalties, and interest owed is upheld.

Date: March 17, 2025

Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

✓ ADOPT
_____ REJECT
_____ MODIFY

Dated: 3.17.25

Neena S. Savage
Tax Administrator

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO R.I. Gen. Laws § 44-23-33. Appeals.

> Appeals from administrative orders or decisions made pursuant to any provisions of this chapter are to the sixth (6th) division district court pursuant to chapter 8 of title 8. The taxpayer's right to appeal under this section is expressly made conditional upon prepayment of all taxes, interest, and penalties unless the taxpayer moves for and is granted an exemption from the prepayment requirements pursuant to § 8-8-26.

CERTIFICATION

I hereby certify that on the 18th day of March, 2025, a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail, return receipt requested to the Taxpayer's attorney's address on file with the Division of Taxation and by electronic delivery to John Beretta, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.