

PROBATE COURT OF FRANKLIN COUNTY, OHIO

In re Estate of Luce

86 Ohio Law. Abs. 101 (Ohio Prob. Ct. Franklin County 1960) · Decided November 17, 1960

SUMMARY

The court considered exceptions to an Ohio inheritance-tax determination concerning a residuary bequest to an individual for expenditure on charities of her choosing. It held that the bequest was not exempt because the will did not itself restrict the funds to qualifying charitable uses within Ohio and left the selection of charities to a third person. The court also sustained the State's exception to an extraordinary fiduciary-fee deduction and overruled the executor's exceptions.

CASE DETAILS

COURT	Probate Court of Franklin County, Ohio
WRITING FOR THE COURT	Walcutt, J.
JURISDICTION	Ohio
DECIDED	November 17, 1960
DISPOSITION	other
PROCEDURAL POSTURE	The probate court considered exceptions filed by the executor and the State of Ohio to the court's inheritance-tax determination concerning a charitable residuary bequest and an extraordinary fiduciary-fee deduction.
PRECEDENTIAL VALUE	Published Ohio probate court opinion; precedential status beyond the issuing court is not established in the source.

TOPICS

- probate procedure
- probate
- tax
- statutory interpretation

PRACTICE AREAS

- probate
- inheritance tax
- estate administration

QUESTIONS PRESENTED

1. Whether the residuary charitable bequest qualified for exemption from Ohio inheritance tax when the will gave a third person unrestricted discretion to select the charities.

2. Whether the court could enter a high-low inheritance-tax determination where the bequest was not shown to be exempt under the governing statute.
3. Whether an extraordinary fiduciary fee of \$41,164.73 could be allowed when no extraordinary services had been performed.

HOLDINGS

1. A charitable bequest is not exempt under Ohio Revised Code § 5731.09 when the will leaves the selection of charities entirely to a third person and does not itself restrict the bequest to institutions for public charity carried on in whole or in substantial part within Ohio.
2. The high-low determination was not proper because the bequest was not an estate or succession shown to qualify for exemption under Ohio Revised Code § 5731.09.
3. The requested extraordinary fiduciary fee of \$41,164.73 was not allowable because no extraordinary services had been performed.

KEY QUOTATIONS

“The power of choice lies solely in Dessie M. Saum. She could, according to her own choosing, select all exempt charities or partly exempt charities, or all non-exempt charities.” (at 103)

“The burden of proof to exempt the property from taxation lies with the person seeking the exemption.” (at 104)

FACTUAL BACKGROUND

George E. Luce, a Franklin County resident, died testate on November 19, 1959, and his will was admitted to probate six days later. Item XVI gave the residuary estate, totaling \$292,270.90, to Dessie M. Saum to be expended for any charity or charities she selected as a memorial to Luce. The will did not restrict Saum's selection to charities carried on in whole or in substantial part in Ohio. The executor also sought an extraordinary fiduciary fee of \$41,164.73, but conceded that no extraordinary services had yet been performed to justify the fee.

PROCEDURAL HISTORY

George E. Luce died testate, and his will was admitted to probate. The court initially entered an inheritance-tax determination taxing the charitable residuary bequest at the highest rate, then set that determination aside and entered a high-low determination that alternatively taxed the bequest at the highest rate or exempted it. The executor excepted to taxation at the highest rate, while the State excepted to the extraordinary fiduciary-fee deduction and to the high-low determination. The court sustained both branches of the State's exceptions and overruled the executor's exceptions.

DISPOSITION

other

CASES CITED

- In re Estate of Bremer, 166 Ohio St. 233
- Tax Commission of Ohio v. Paxson, 118 Ohio St. 36
- In re Estate of Miller, 171 Ohio St. 202
- In re Estate of Salisbury, 90 Ohio App. 17

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