

Note: The appeal period has expired, pursuant to Iowa Admin. Code rule 701-7.19(8)(d) the Administrative Law Judge's proposed decision is adopted as the final decision by the Department.

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building, Third Floor
Des Moines, Iowa 50319

IN THE MATTER OF:

Virgil Heidbrink Estate

DIA No. 22IDRIIT0008

IDR Docket No. 2021-700-1-0238

PROPOSED DECISION

Inheritance Tax.

STATEMENT OF THE CASE

Deborah Adams, the executor of the Virgil Heidbrink Estate (the Estate), filed an appeal of a decision of the Department of Revenue (the Department) denying her request for a penalty waiver. This matter came on for hearing by telephone on September 3, 2022. Assistant Attorney General John Whiteman represented the Department. Also present on behalf of the Department was tax appeals specialist Malia Kirkpatrick. Adams appeared pro se. Official notice was taken of the administrative file. The Department submitted exhibits marked A-F that were admitted into the record.

FINDINGS OF FACT

Virgil Heidbrink, a resident of Texas, died on October 21, 2019. In his will, he named Ruth Tallman, his sister, as his personal representative. Tallman is in her nineties and in declining health. She asked her daughter, Deborah Adams, to serve as Heidbrink's personal representative instead. Adams agreed. (Ex. B).

Adams hired Karen Washington, an attorney licensed in Texas, to assist. A probate case was opened on December 13, 2019. At some time after that, Washington and Adams learned that Heidbrink had owned property in Iowa. (Ex. B).

Of course, around this same time, the COVID-19 pandemic was beginning. By March 2020, Texas (where Washington lives and the probate case was proceeding), Pennsylvania (where Adams lives), and Maryland (where Tallman lives) were all locked down. Adams is a nurse and was attempting to navigate her potential exposure to the virus, along with her obligations to the estate. Those obligations included obtaining signatures from various people, meeting notaries public, coordinating with her mother (while taking care not to expose her high-risk mother to the

virus), and attending virtual court hearings. With governments shut down, courts delayed by a shift to virtual practice, and travel restricted or ill-advised, Adams' work was delayed. (Ex. B). She herself did not contract COVID-19 during the applicable time period. (Adams testimony).

In June 2020, Adams learned that she would need to pay an inheritance tax in Iowa.¹ Washington is not licensed in Iowa, so she set about finding a lawyer licensed in Iowa who would help Adams. Adams retained Jim Pickner, an Iowa-licensed attorney, on July 30, 2020. (Ex. B).

Pickner got records from Washington. Adams was appointed executor of the estate in Iowa, after some delay. Adams located a notary public in Iowa, after some delay. Heidbrink's property in Iowa was appraised, after some delay. (Ex. B). Finally, on or about September 24, 2020, Pickner filed a return (form IA 706) with the Iowa Department of Revenue. Included in that return was a calculation of a penalty owed to the Department. (Ex. A). In December 2020, Pickner informed Adams he had miscalculated the penalty owed and that an additional payment was due. (Ex. B). All told, Adams paid \$11,425.68 in penalty.² (Ex. B).

In March 2021, Adams (on behalf of Tallman) filed a penalty waiver request. Citing three potential bases for granting the waiver, Adams wrote:

COVID-19 Pandemic caused a delay in timely filing of legal documents, getting documents notarized and mailing of documents along with inheritance tax check. Total amount of penalties paid were \$11,425.68. Requesting a refund of those penalties.

(Ex. B). That request was denied. (Ex. C). Adams then filed a protest. (Ex. D). The protest was denied. (Ex. E). Adams requested a hearing. (Ex. F).

CONCLUSIONS OF LAW AND ANALYSIS

Inheritance tax in Iowa is due on or before the last day of the ninth month after the death of the decedent owner. Iowa Code § 450.6(1). Because Heidbrink died in October 2019, this inheritance tax was due on or before July 31, 2020.

As the law was written in 2020, a person who failed to file a return timely was subject to a penalty of ten percent of the tax shown due. Iowa Code § 421.27(1)(a) (2020). Inheritance taxes not paid timely also draw interest at the rate in effect under Iowa Code section 421.7. Iowa Code § 450.63; *see also* Iowa Code § 421.7.

¹ It is undisputed that the Estate is obligated to pay inheritance tax in Iowa.

² This figure may include interest. The tax return in the record calculates a tax due of \$95,423.31. A 10% penalty would be \$9542.33. This falls short of the \$11,425.68 figure Adams has provided by \$1883.35. The tribunal is left to conclude that the additional \$1883.35 is interest. This assumption does not affect this decision.

The ten-percent penalty may be waived, however, upon a showing by the taxpayer of any of the following conditions:

- (1) An amount of tax greater than zero is required to be shown due and at least ninety percent of the tax required to be shown due has been paid by the due date of the tax.
- (2) Those taxpayers who are required to file quarterly returns, or monthly or semimonthly deposit forms may have one late return or deposit form within a three-year period. The use of any other penalty exception will not count as a late return or deposit form for purposes of this exception.
- (3) The death of a taxpayer, death of a member of the immediate family of the taxpayer, or death of the person directly responsible for filing the return and paying the tax, when the death interferes with timely filing.
- (4) The onset of serious, long-term illness or hospitalization of the taxpayer, of a member of the immediate family of the taxpayer, or of the person directly responsible for filing the return and paying the tax.
- (5) Destruction of records by fire, flood, or other act of God.
- (6) The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.
- (7) Reliance upon results in a previous audit was a direct cause for the failure to file where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.
- (8) Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.
- (9) The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the internal revenue service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage.
- (10) The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.
- (11) The failure to file was discovered through a sanctioned self-audit program conducted by the department.
- (12) If the availability of funds in payment of tax required to be made through electronic funds transfer is delayed and the delay of availability is due to reasons beyond the control of the taxpayer. "Electronic funds transfer" means any transfer

of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal telephone, computer, magnetic tape, or similar device for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account.

(13) The failure to file a timely inheritance tax return resulting solely from a disclaimer that required the personal representative to file an inheritance tax return. The penalty shall be waived if such return is filed and any tax due is paid within the later of nine months from the date of death or sixty days from the delivery or filing of the disclaimer pursuant to section 633E.12.

(14) That an Iowa inheritance tax return is filed for an estate within the later of nine months from the date of death or sixty days from the filing of a disclaimer by the beneficiary of the estate refusing to take the property or right or interest in the property.

Iowa Code § 421.27(1)(c) (2020); *see* Iowa Code § 421.27(1)(d) (2022).

In her request for a penalty waiver, Adams asserted that exceptions (1), (2), and (4) apply here. She maintains that position and has not advanced an argument on any of the other potential exceptions, so they will not be considered here.³ The remaining three will be discussed in turn.

Exception (1) waives a penalty if the taxpayer has paid 90% of the assessed tax by the due date of the tax. As of July 31, 2020, no one had paid any of the inheritance tax owed. Therefore, this exception cannot apply. This argument is rejected.

Exception (2) provides that a taxpayer is allowed one late return or one late payment in a three-year period, when such taxpayer is obligated to file monthly or quarterly returns. The Estate was not obligated to file monthly or quarterly returns—it was merely obligated to file the one return. Therefore, this exception is not available to it. This argument is rejected.

Exception (4) allows for a penalty waiver if the taxpayer, the taxpayer's immediate family member, or the return filer suffers a serious, long-term illness or hospitalization. This perhaps comes closest to Adams' argument—that COVID-19 resulted in unavoidable delays in filing—but, unfortunately for her, the exception's plain text applies only when a listed person suffers the long-term illness. Adams did not contract COVID-19 during the applicable time period and she made no argument that anyone else in her circle did, either. This exception cannot apply to waive the penalty. This argument is rejected.

The law provides that late-filed returns are subject to a penalty unless a taxpayer meets one of the listed exceptions. The return here was filed late, and no listed exception applies. Therefore, the penalty must stand. Note that section 421.27 provides for exceptions to the ten-percent penalty only. There are no exceptions to the assessment of interest, so that too must stand.

³ Kirkpatrick did testify that she considered, and rejected, the other available exceptions.

Adams makes the sympathetic argument that the pandemic caused the delay and the late filing should be excused as a result. Section 421.27 lists the available exceptions. There is neither a specific “pandemic” exception nor a broader “catch-all” or “good cause” exception available. Without something like that, the tribunal is not at liberty to grant the requested penalty waiver. *See, e.g., Kucera v. Baldazo*, 745 N.W.2d 481, 487 (Iowa 2008) (applying rule of “*expressio unius est exclusio alterius*,” which recognizes that “legislative intent is expressed by omission as well as by inclusion, and the express mention of one thing implies the exclusion of others not so mentioned”); *see also City of Des Moines v. Emp’t Appeal Bd.*, 722 N.W.2d 183, 196 (Iowa 2006) (“The same rules of interpretation that apply to statutes apply to regulations of an administrative agency.”).

The Department’s rules do grant the director the authority to abate “any unpaid portion of assessed tax, interest, or penalties which the director determines is erroneous, illegal, or excessive.” Iowa Code § 421.60(2)(i). The Estate has paid its interest and penalty, so there remains no “unpaid portion” to consider.

The Department’s decision is affirmed.

ORDER

The Department’s action is hereby AFFIRMED. The Department shall take any action necessary to implement this decision.

Dated this October 5, 2022.



Joseph Ferrentino
Administrative Law Judge

cc: Deborah Adams, Executor for Virgil E. Heidbrink, 615 Morgan Drive East, Coatesville, Pennsylvania 19320; A1960debbie@gmail.com (by mail and email)
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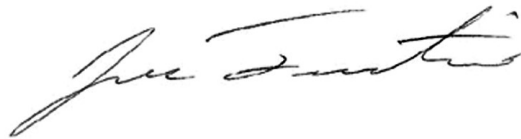
NOTICE

Pursuant to 701 Iowa Administrative Code 7.17(8)(d), this order becomes the final order of the Department for purposes of judicial review or rehearing unless a party files an appeal to or review on motion of the director with 30 days of the date of this order, including Saturdays, Sundays and legal holidays, of the date of this Proposed Decision to file an appeal to the Director of the Department of Revenue. The appeal shall be directed to:

Office of the Director
Iowa Department of Revenue
Hoover State Office Building
Des Moines, Iowa 50319

Case Title: IN THE MATTER OF: VIRGIL HEIDBRINK ESTATE
Case Number: 22IDR0008
Type: Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Joe Ferrentino", written in a cursive style.

Joseph Ferrentino, Administrative Law Judge