

of death value of the stock, and thus, irrelevant to calculating the fee owed to Mullinax under the contract.

The following, from **Estate of Bernard Curry v. United States of America** (706 F.2d 1424 (1983)), gives a summation of one reason why the post death "sales price" has no relevance to the "date of death" "fair market value" of the estate:

"Section 2001 of the Internal Revenue Code of 1954, 26 U.S.C. § 2031(a) provides that the value of the gross estate of the decedent is determined by including "all property" therein. The corresponding Treasury Regulations provide that the value of includible property is its "fair market value" at the time of decedent's death. Section 20.2031-1(b), Treasury Regulations on Estate Tax (1954 Code). That regulation states further that the "fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts." *Id.* The first question for our purposes thus becomes whether the property of which the fair market value is to be assessed should be viewed as it exists in the hands of the estate, or as it may exist if fortuitously balkanized through a chain of post-death transactions.

We believe that the first perspective comports more fully with the nature of the estate tax. As the Supreme Court has explained, the estate tax was not conceived as "a tax upon succession and receipt of benefits under the law or the will. It was death duties as distinguished from a legacy or succession tax. What this law taxes is not the interest to which the legatees and devisees succeeded on death, but the

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 2010-CP-07-4146

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SC Court of Appeals

Ron Orlosky in his capacity as
Personal Representative of The
Estate of Debora L. Orlosky,
and in his capacity as trustee of
the Debora Laura Orlosky
Revocable Trust,

Respondent,

v.

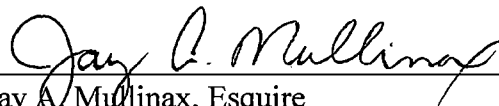
The Law Office of Jay A.
Mullinax, LLC,

Appellant.

CERTIFICATE OF SERVICE

I certify that I have served Page 3 of Appellant's Petition for Rehearing on Ron Orlosky by depositing a copy of it in the United States Mail, postage prepaid, and via electronic mail, addressed to his attorney of record, John R. C. Bowen, Esquire, Laughlin & Bowen, P.C., P.O. Drawer 21119, Hilton Head Island, SC 29925, Attorney for Respondent.

August 13, 2015


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