

Gary Botwinick Quoted In New Jersey Law Journal Article On Inheritance Tax Refund For Single Trust Estate

As published in the [New Jersey Law Journal](#) by Law.com on February 10, 2020.

The New Jersey Supreme Court has rejected an estate's claim for a 50% refund of inheritance taxes paid on distribution of a trust.

Ruling in [the case](#) of Walter and Mary Van Riper, who placed their home in a single irrevocable trust, the justices said that taxes were properly imposed on the estate's full value only after the death of both spouses. The justices affirmed an Appellate Division ruling holding that the entire value of the residence was subject to the inheritance tax, rejecting the estate's argument that it was entitled to a 50% refund of the tax it had already paid.

No tax was paid after the death of Walter in 2007, but on Mary's death in 2013, taxes were paid on the entire \$935,000 value of their home. The estate later filed a complaint with Tax Court, seeking a refund of the tax paid on Walter's half.

The estate claimed the couple's joint ownership of the property was severed when they conveyed it to the estate. They owned the property as joint tenants by the entirety, in which the death of one spouse causes the surviving spouse to gain full ownership. The estate claimed that Walter's share of the tax on the property was due after his death, and the state's failure to collect it at that time meant half the tax paid on Mary's death should be refunded.

Questions arose over the timing of tax payments on the estate because their single-trust arrangement is less common than one in which a couple transfers their property into two trusts, leaving each spouse with sole ownership of an undivided half-interest in the property, the court said.

But the justices rejected the estate's claim that the couple's conveyance of property into a trust severed their joint ownership. And even if that ownership were severed, a new joint ownership was created through the terms of their trust, the justices said.

The justices accepted the Division of Taxation's argument that under the terms of the single trust, the entire tax bill came due after Mary's death, at which time her 100% interest in the home passed to her niece and became taxable. No taxes were due before then because no transfer of property had taken place, the court said.

The court's holding that the transfer of property by tenants of the entirety into a trust does not sever their ownership could impact the way tenancy of the entirety is severed in other settings, said [Gary Botwinick](#) of [Einhorn Barbarito Frost & Botwinick](#) in Denville.

The court's holding could have application in disputes between creditors and debtors, because creditors of one spouse cannot go after property owned by both spouses, said Botwinick. Debtors might be able to apply the holding to protect their assets from creditors, he said.

Click [here](#) to view the entire article on Law.com

Reprinted with permission from the February 10, 2020 issue of The New Jersey Law Journal.

© 2019 ALM Media Properties, LLC. Further duplication without permission is prohibited. All rights reserved.