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Pfeufer v. Cyphers: Giving the Testator's Pen Too Much Might—the Unintended Tax Consequences of Innocent Apportionment Language

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Recent Decisions

THE COURT OF APPEALS OF MARYLAND

PFEUFER v. CYPHERS: GIVING THE TESTATOR'S PEN TOO MUCH MIGHT—THE UNINTENDED TAX CONSEQUENCES OF INNOCENT APPORTIONMENT LANGUAGE

In *Pfeufer v. Cyphers*,[1] the Court of Appeals of Maryland addressed whether a testator may direct inheritance taxes to be paid from his entire residuary estate prior to apportionment among residuary legatees, even when a statute exempts some of the residuary legatees from payment of those inheritance taxes.[2] The court held that the legislative intent to exempt relatives from inheritance taxes did not supersede the testator's express intent that inheritance taxes be paid by the non-apportioned residuary estate.[3]

The court's decision in *Pfeufer* was correct to the extent that it reversed the Orphans' Court's ruling that the tax clause contained in the testator's will was boilerplate.[4] However, to the extent that the Court of Appeals concluded that the testator's express intent did not conflict with the inheritance tax exemption statute, the court's decision created an opportunity for compromise of the legislature's tax preference for exempt individuals.[5] Instead, the court should have more directly addressed the conflict that resulted between its construction of the testator's directive that any inheritance taxes for diverse classes of legatees be paid without apportionment, and the legislature's intent in establishing preferential treatment for exempt legatees.[6] In so doing, the court should have more closely examined whether the tax language in the will was sufficiently detailed to override the statutory scheme.[7] Under such a test, instead of presuming that the testator intended to override the statute, the court could have

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1. 397 Md. 643, 919 A.2d 641 (2007).
2. *Id.* at 645–46, 919 A.2d at 643.
3. *Id.* at 645–46, 660, 919 A.2d at 643, 652.
4. *See infra* Part IV.B.
5. *See infra* Part IV.A.
6. *See infra* Part IV.A.
7. *See infra* Part IV.B.

required a synthesis of the testator's stated intent with the legislative intent and public policy expressed in the statute.[8]

I. THE CASE

The last will and testament of James Russell Hoffmann, the testator, devised his residuary estate in equal portions to his two children, his sister, and to Bruce Pfeufer, a non-relative.[9] Under Maryland's Tax-General Article, section 7-203(b)(2),[10] the testator's children and sister were exempt from any inheritance tax.[11] Pfeufer, who was not a relative, remained subject to inheritance taxes.[12] However, the will directed that any inheritance tax on the testator's estate "'be paid out of the principal of [his] estate . . . without apportionment.'"[13]

In administering the estate, Pamela J. Cyphers, the testator's daughter and the personal representative of his estate, initially deducted the inheritance taxes due on the non-exempt portion of the estate from the testator's entire residuary estate, prior to apportionment.[14] Over one month later, she reallocated payment of the inheritance taxes, requiring them to be paid entirely from Pfeufer's share of the residuary estate.[15]

Pfeufer argued in the Orphans' Court for Montgomery County that the specific language of the testator's will superseded the general rule that inheritance taxes should not be assessed before distribution to the beneficiaries.[16] Specifically, Pfeufer posited that the inheritance tax had to be paid from the entire estate prior to its apportionment, with the remaining balance to then be distributed among the four beneficiaries, so as to give effect to the testator's explicit testamentary intent.[17] Cyphers, on the other hand, contended that the testator's will did not contain language sufficiently specific to override the statute's tax exemption and, therefore, that the inheritance tax on

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8. *See infra* Part IV.B.

9. Pfeufer v. Cyphers, 397 Md. 643, 645–46, 919 A.2d 641, 643–44 (2007).

10. MD. CODE ANN., TAX-GEN. § 7-203(b)(2) (LexisNexis Supp. 2007).

11. *Pfeufer*, 397 Md. at 645–46, 919 A.2d at 643–44.

12. *Id.* at 645–47, 919 A.2d at 643–44.

13. *Id.* at 647, 919 A.2d at 644 (emphasis omitted).

14. *Id.* at 646–47 & n.3, 919 A.2d at 643–44 & n.3. The entire amount of inheritance taxes due on the non-exempt portion of the estate was $14,500. *Id.* at 647 n.4, 919 A.2d at 644 n.4.

15. *Id.* at 647, 919 A.2d at 644.

16. Transcript of Proceedings at 3–6, *In re* Estate of Hofmann [sic], Wills No. 40866 (Cir. Ct. Montgomery County, Md., Orphans' Ct. July 20, 2004).

17. *Id.* at 4.

the non-exempt portion of the estate had to be assessed only against the non-exempt legatee's share of the estate after apportionment.[18]

The Orphans' Court ordered the tax to be paid solely by Pfeufer, stating that the legislature clearly intended relatives to be exempt from inheritance taxes and that this explicit legislative intent overruled what may have been "boilerplate" language contained in the testator's will.[19] Pfeufer appealed to the Court of Special Appeals.[20] Before the Court of Special Appeals conducted proceedings, the Court of Appeals issued a writ of certiorari on its own motion "to decide whether a testator may provide in his will that inheritance taxes be paid from the entire residuary estate prior to apportionment among the residuary legatees when a statute provides that some of the residuary legatees are not required to pay inheritance taxes."[21]

II. LEGAL BACKGROUND

Maryland law includes a two-part framework of state "death taxes"—an estate tax on the transmission of property to a beneficiary, and an inheritance tax on the receipt of property by a beneficiary.[22] The estate tax is generally viewed as being levied against the estate, while the inheritance tax is levied against each beneficiary's legacy, or share of the estate.[23]

Although the estate tax is generally levied against the estate as a whole, and the inheritance tax is levied against beneficiaries' individual shares, Maryland courts will honor a testator's expressed intent to provide for payment of inheritance taxes out of the residuary estate.[24] A court will examine the entire will to determine the testator's intent, but is limited by the will's actual language and the testator's stated intent.[25] Therefore, to ensure that inheritance taxes will be paid from the residuary estate, rather than from distributive shares, a testator must clearly express such an intent in the plain language of the will.[26] Where a testator attempts to not only provide for residuary payment of inheritance taxes, but also to override the preferential treatment

18. *Id.* at 6–7.
19. *Id.* at 8–9.
20. *Pfeufer*, 397 Md. at 646, 919 A.2d at 643.
21. *Id.*
22. *See infra* Part II.A.
23. *See infra* Part II.A.
24. *See infra* Part II.B.
25. *See infra* Part II.B.1.
26. *See infra* Part II.B.2.

that a statute affords certain legatees, a court may require a higher level of specificity.[27]

A. Maryland's Statutory Framework of Estate and Inheritance Taxes

Maryland "death taxes" consist of two separate taxes due on each transfer under a will: the estate tax, which is payable by the decedent's estate, and the inheritance tax, which is payable by the beneficiary.[28] The Maryland estate tax is imposed on the transfer of the Maryland estate of a decedent who, at the time of death, was either a Maryland resident, or a non-Maryland resident whose estate included an interest in Maryland property.[29] The estate tax, as a tax on the transfer of property, is payable out of the estate's corpus, rather than from the individual legacies.[30] Because it is paid from the entire estate, the estate tax is, by statute, "apportioned among all persons interested in the estate" in proportion to the value of each beneficiary's interest.[31]

Maryland's inheritance tax, on the other hand, differs from both federal and Maryland estate taxes.[32] Unlike an estate tax, which is charged against the transfer from a decedent, the Maryland inheritance tax is imposed against a beneficiary's receipt of that transfer, or on "the privilege of receiving [the] property."[33] Maryland courts have historically held that the state inheritance tax is a "charge" against each distributive share according to its value, which the executor must

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27. *See infra* Part II.B.3.

28. *See* MD. CODE ANN., TAX-GEN. § 7-202 (LexisNexis 2004) (imposing the state inheritance tax); *id.* § 7-302 (LexisNexis Supp. 2007) (imposing the state estate tax); Bouse v. Hutzler, 180 Md. 682, 684–85, 26 A.2d 767, 768 (1942) (recognizing the "fundamental difference" between the federal estate tax and the Maryland inheritance tax, but noting that each is a tax on the transfer of property); Textor v. Textor, 170 Md. 128, 130, 183 A. 247, 248 (1936) (stating that the collateral inheritance tax is "fundamentally a succession or legacy tax on the gift, inheritance, or distributive share and, so, is not a tax upon the estate of the donor, testator, or intestate," and further explaining that the statute, therefore, "contemplates the payment or enforcement of the tax against the donee, heir, devisee, distributee, or other donative taker").

29. TAX-GEN. § 7-302. The statutory scheme does, however, provide an exemption for the transfer of some personal property if the decedent was from a state that "does not impose death taxes on the transfer of similar personal property of a [Maryland] resident," or a state that allows a similar reciprocal exemption. *Id.* § 7-303.

30. 76 Md. Op. Att'y Gen. 392, 393 (1991).

31. MD. CODE ANN., TAX-GEN. § 7-308(b) (LexisNexis Supp. 2007). In other words, when an estate tax is assessed against an estate prior to division of the estate into shares, the effect is to reduce each legatee's interest in the estate proportionally.

32. 76 Md. Op. Att'y Gen. 392, 393 (1991); *see also Bouse*, 180 Md. at 684–85, 26 A.2d at 768 (finding that the Maryland inheritance tax is fundamentally different from the federal estate tax); *Textor*, 170 Md. at 130, 183 A. at 248 (recognizing that the collateral inheritance tax is a tax on a gift or distributive share, not on an estate).

33. TAX-GEN. § 7-202.

pay from each legacy with money obtained from that legatee.[34] The legislature has specifically exempted certain relatives and their business entities from payment of the Maryland inheritance tax.[35]

B. Clear Language of a Will May Override a Statutory Tax Apportionment Scheme

Although the Maryland inheritance tax is charged against the distributive shares of an estate under the default statutory scheme, a testator's intention, as expressed clearly in his or her will, may override this statutory tax apportionment scheme in some cases. It has long been the rule in Maryland and other jurisdictions that a court must examine the "four corners" of a will to construe and effectuate a testator's expressed intent.[36] Generally, where a testator's intent is clearly discernable from the will's language, that intent may overcome a statutory tax apportionment scheme.[37] Thus, Maryland courts have recognized that testators may direct the inheritance tax to be paid out of the residuary estate when all beneficiaries are members of the same class and, as such, are all subject, or not subject, to the tax.[38] However, where the legatees are members of different classes, such that some are subject to the tax and others are not, no Maryland case had, prior to *Pfeufer*, examined how explicit a testator's stated intention must be to overcome the legislative intent to exempt certain legatees from the tax.[39]

1. When Construing a Will, the Paramount Concern of the Court Is to Ascertain and Effectuate a Testator's Expressed Intent

It is well-established in Maryland that a court's primary responsibility is to carry out the intention of a testator based on the language

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34. *See, e.g.*, *Bouse*, 180 Md. at 685, 26 A.2d at 768–69 (acknowledging that Maryland's inheritance tax is charged against each share based on that share's value); *Textor*, 170 Md. at 130, 183 A. at 248 (recognizing that the collateral inheritance tax is not enforced against the estate, but rather "against the donee, heir, devisee, distributee, or other donative taker").

35. MD. CODE ANN., TAX-GEN. § 7-203(b)(2) (LexisNexis Supp. 2007) (exempting the decedent's grandparents; parents; spouse; children and lineal descendants of the decedent's children, as well as their spouses; brothers and sisters; and certain businesses if their stockholders, partners, or members are comprised entirely of the above-named individuals); *see also* 76 Md. Op. Att'y Gen. 392, 393 (1991) ("The 'lineal tax rate[ ]' [is] applicable to property that passes to a grandparent, parent, spouse, or child . . . .").

36. *See infra* Part II.B.1.

37. *See infra* Part II.B.2–3.

38. *See infra* Part II.B.2.

39. *See infra* Part II.B.3.

of his or her will.[40] In determining a testator's intent, a court must examine the plain meaning of the words contained in the disputed clause, although a court may also look to "the language of the entire will . . . [and] the surrounding circumstances when the will was made" for context.[41] A court must determine a testator's "expressed," not "presumed," intention and is limited by the actual language of the will.[42] Additionally, legally significant words must be construed in their legal sense, absent the testator's clear direction to the contrary.[43] At the same time, a court may interpret an instrument's language flexibly if necessary to avoid absurd results.[44]

In *LeRoy v. Kirk*,[45] the Court of Appeals explained that to ascertain a testator's intent, a court must look at a will in its entirety to define the contextual plain meaning of the words contained in the will.[46] Specifically, the court analyzed whether a bequest of "'all my personal property'" included only tangible personal property or both tangible and intangible personal property.[47] The court examined the term "personal property" and emphasized that the term was routinely used to refer only to tangible personal property, particularly when a will included examples of what it considered personal property, all of which were items of tangible personal property.[48] Additionally, the court noted, the testatrix had made a specific bequest of $10,000 to the beneficiary, but had she intended for the beneficiary to receive all intangible personal property, she would not have needed to leave the

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40. *See, e.g.*, Emmert v. Hearn, 309 Md. 19, 23, 522 A.2d 377, 379–80 (1987) (acknowledging that the court's "paramount concern" when construing wills is to determine and carry out the testator's intent); Wesley Home, Inc. v. Mercantile-Safe Deposit & Trust Co., 265 Md. 185, 198, 289 A.2d 337, 344 (1972) (recognizing that in construing wills, the court is charged with effectuating the testator's intent based on the "'four corners' of the will").

41. LeRoy v. Kirk, 262 Md. 276, 279–80, 277 A.2d 611, 613 (1971).

42. *Id.*

43. *Emmert*, 309 Md. at 23, 522 A.2d at 380; *see also* Patchell v. Groom, 185 Md. 10, 14–15, 43 A.2d 32, 34 (1945) (recognizing that when legal terms are used, the court will assume that the testator knew of and intended to use the legal meaning of those terms unless there is clear evidence of a contrary intent).

44. *See, e.g.*, Wm. D. Shellady, Inc. v. Herlihy, 236 Md. 461, 471, 204 A.2d 504, 509 (1964) (permitting a flexible interpretation of terms that were obviously mistaken when the literal construction of those terms would have completely undermined the testator's clearly expressed intent); Gideon v. Fleischmann, 193 Md. 203, 207, 66 A.2d 403, 405 (1949) ("If the words of [a] proviso are susceptible of two constructions, one of which would produce an absurd result and the other would carry out the testator's intention, the latter construction should be adopted.").

45. 262 Md. 276, 277 A.2d 611 (1971).

46. *Id.* at 279–80, 277 A.2d at 613.

47. *Id.* at 279, 277 A.2d at 612.

48. *Id.* at 281–83, 277 A.2d at 613–15.

beneficiary this specific sum.[49] The *LeRoy* court also explained that it was not charged with determining the testator's "presumed" intention, but only with ascertaining the intention expressed within the four corners of the will.[50] Therefore, the court concluded that the phrase "'all my personal property[ ]'" was limited to tangible personal property, based on the "face of the will."[51]

Moreover, in *Gideon v. Fleischmann*,[52] the court recognized the principle that if a will is capable of two constructions, one of which would result in an absurdity, while the other would effectuate the testator's intent, the will must be construed to avoid the absurd result.[53] The outcome in *Gideon* turned on the meaning of the phrase "'children or descendants,'" which the appellant had argued that the court should construe to mean "'children or descendants of deceased children.'"[54] The court explained that the word "'descendants,'" as a technical word, had a precise meaning.[55] Thus, it rejected the appellant's proposed construction because it would have produced more unreasonable results than the literal interpretation of the clause.[56]

Similarly, in *Wm. D. Shellady, Inc. v. Herlihy*,[57] the court construed a will to correct what appeared to be an obvious mistake in the classification of the testator's stock.[58] The testator's will stated that he bequeathed 104 shares of class B stock in Wm. D. Shellady, Inc. to various legatees; however, at his death, the testator owned 104 shares of class A stock, but no class B stock.[59] Rather than construing the will strictly, a construction that would have caused the legatees to receive nothing under the will, the court assigned a more flexible meaning to the mistaken stock classification, thus allowing the testator's clear intent—that his legatees receive his stock—to be carried out.[60]

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49. *Id.* at 284, 277 A.2d at 615.

50. *Id.* at 279–80, 277 A.2d at 613.

51. *Id.* at 283–84, 277 A.2d at 614–15.

52. 193 Md. 203, 66 A.2d 403 (1949).

53. *Id.* at 205, 207, 66 A.2d at 404–05 (citing Gibbs v. Meredith, 187 Md. 566, 51 A.2d 77 (1947)).

54. *Id.* at 209, 66 A.2d at 406.

55. *Id.* at 210, 66 A.2d at 406.

56. *Id.*, 66 A.2d at 406–07.

57. 236 Md. 461, 204 A.2d 504 (1964).

58. *Id.* at 471, 204 A.2d at 509.

59. *Id.* at 464–65, 204 A.2d at 505–06.

60. *Id.* at 471, 204 A.2d at 509.

2. *To Override a Legislative Scheme, a Will's Language Must Be Sufficiently Clear*

Maryland courts have generally held that where a will contains clear or explicit language as to a testator's intent to override a statutory tax apportionment scheme, a testator's expressed intent controls.[61] Other jurisdictions have routinely reached similar results.[62]

Maryland courts have addressed the issue of what language is sufficiently clear to override a statutory scheme for tax apportionment. For example, *Smith v. State*[63] examined a codicil that directed that the executor pay "'all collateral, inheritance, succession, or other like tax or taxes'" out of the residuary estate so that all legatees would receive their legacies tax-free, despite a statutory scheme that required certain taxes to be charged to individual beneficiaries' legacies.[64] The court recognized that the testator's intent that the taxes be paid out of the residuary estate was plain.[65]

In *Textor v. Textor*,[66] the court explained that where there is no explicit language or provision in a will overriding the statutorily established collateral inheritance tax scheme, the court will not imply such an intent.[67] The *Textor* court examined a will's bequest "to pay to the directors of the General German Aged People's Home of Baltimore City such a sum of money which, if invested at six percent[ ] will support and maintain twelve beds, six for aged males and six for aged females . . . ."[68] The court declined to order payment of the collateral inheritance tax due on the charitable donation out of the residuary estate because the will did not contain an explicit provision, or inference, that the testator intended such treatment.[69] Relying on reasonable presumptions, the court stated that the testator was presumed to know that he had to clearly express an intent to have the tax paid from the residuary of his estate, and, further, that it would have been easy for him to have done so.[70] Because the will contained no language that could be read to indicate such an intent, the court con-

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61. *See infra* notes 63–77 and accompanying text.
62. *See infra* notes 78–90 and accompanying text.
63. 134 Md. 473, 107 A. 255 (1919).
64. *Id.* at 477–78, 107 A. at 256–57.
65. *Id.* at 480, 107 A. at 257.
66. 170 Md. 128, 183 A. 247 (1936).
67. *Id.* at 130–31, 183 A. at 248.
68. *Id.* at 129, 183 A. at 247 (internal quotation marks omitted).
69. *Id.* at 130–31, 183 A. at 248.
70. *Id.* at 132, 183 A. at 249.

cluded that the gift, rather than the residue, would be subject to the inheritance tax.[71]

More recently, in *Johnson v. Hall*,[72] the court explained that it would not rely on a boilerplate clause in the testatrix's will to override a statutory tax apportionment scheme.[73] *Johnson* addressed a will that contained a standard reference to the payment of debts, expenses, and taxes in urging that these be paid as quickly as possible after the testatrix's death.[74] While it has a duty to determine what a testator meant by the language contained in her will, the court stated, it is limited in its construction by the actual language of the instrument.[75] The court concluded that the language at issue, either by itself or in combination with the language of the entire will, did not reveal the testatrix's intent for the beneficiaries to pay the taxes other than proportionately, in accord with the tax apportionment statute.[76] However, the court in *Johnson* recognized that "[n]o magic or mystical word or phrase is required" to defeat the statutory scheme.[77]

Other jurisdictions generally agree that only where a testator expresses clear intent may a will override a scheme of death tax apportionment. For example, the Supreme Court of Kansas in *In re Estate of Cline*[78] addressed whether a judicial doctrine that typically required apportionment of taxes if a will was ambiguous applied to a will provision directing that estate, inheritance, and other taxes be paid from the testatrix's "'general estate.'"[79] Beneficiaries of the residuary estate asserted that the court should apportion the tax burden, on the ground that the will did not clearly demonstrate the testatrix's intention for the estate and inheritance taxes to be paid solely from the residuary estate.[80] The court declined, finding that because the phrase "'general estate'" is routinely used to refer to the residuary

71. *Id.* at 132–33, 183 A. at 249.

72. 283 Md. 644, 392 A.2d 1103 (1978).

73. *Id.* at 655, 392 A.2d at 1110.

74. *Id.* at 650, 392 A.2d at 1107. Specifically, the will instructed that "'all estate and inheritance taxes, be paid as soon after my death as can lawfully and conveniently be done.'" *Id.* (emphasis omitted).

75. *Id.* at 649, 392 A.2d at 1106–07.

76. *Id.* at 652, 655, 392 A.2d at 1108, 1110.

77. *Id.* at 655, 392 A.2d at 1110. Reiterating the *Johnson* court's conclusion that a testator must be explicit in his intention not to apportion, the Court of Special Appeals concluded in a 2002 case that because the testator had not "'plainly state[d]' an intention to opt out of" the statutory tax scheme, the legislative scheme controlled. Gordon v. Posner, 142 Md. App. 399, 409, 440, 790 A.2d 675, 680–81, 699 (Ct. Spec. App. 2002) (quoting *Johnson*, 283 Md. at 649, 392 A.2d at 1106).

78. 898 P.2d 643 (Kan. 1995).

79. *Id.* at 645–46.

80. *Id.* at 646.

estate, the will included sufficiently "clear, definite, and unambiguous" language to compel that all taxes be paid out of the residuary estate, rather than apportioned under the judicial scheme.[81]

Addressing a similar issue in *In re Robbins Estate*,[82] the Supreme Court of New Hampshire examined a will provision that directed all New Hampshire inheritance taxes to be paid from the testatrix's residuary estate.[83] In particular, the court analyzed, among other issues, the question of whether it could extend the will's explicit directions for payment of inheritance taxes to the federal estate tax.[84] The court acknowledged its goal of effectuating a testator's intent, even where that intent is somewhat ambiguous.[85] The court noted one case where it had permitted an inference that a testator intended his residuary estate to pay all federal estate taxes related to his death, even though he had not specifically named that type of tax in his will.[86] However, because this will explicitly directed payment of only the inheritance taxes due to New Hampshire from the residuary estate, the court concluded that the federal estate taxes still had to be apportioned because the will did not clearly express a contrary intent.[87]

In the case of *In re Estate of Jones*,[88] the Superior Court of Pennsylvania addressed whether, when one beneficiary receives an inter vivos trust and the other receives the residuary estate, estate and inheritance taxes should be apportioned between the trust and the residue in accordance with the statute, or taken from the estate's residue in accordance with the will.[89] The court concluded that "the tax clause in the [w]ill was sufficiently clear and specific to overcome the statutory scheme for apportionment of estate and inheritance taxes," as it specifically directed that all death taxes, including those from property that did not pass under the will, be paid from the principal of the residuary estate.[90]

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81. *Id.* at 646–49.

82. 356 A.2d 679 (N.H. 1976).

83. *Id.* at 681.

84. *Id.* at 680–81. The court found it easy to conclude that the provision overcame the statutory requirement that the succession, or inheritance, tax be paid by each legatee and assessed on the property that each legatee received under the will. *Id.* at 680–82.

85. *Id.* at 681.

86. *Id.*

87. *Id.*

88. 796 A.2d 1003 (Pa. Super. Ct. 2002).

89. *Id.* at 1004–05.

90. *Id.* at 1006.

3. Where Beneficiaries Are Entitled to Different Tax Statuses, Clear Testamentary Language Overrides the Statutory Scheme, but Heightened Clarity May Be Required

While Maryland courts had not, before *Pfeufer*, examined the level of detail required where beneficiaries were entitled to different tax preferences, a number of other jurisdictions had suggested that a testator's intent to negate a statute's preferential treatment of certain beneficiaries had to be explicitly and affirmatively stated.[91] A 1991 opinion by the Maryland Attorney General endorsed this approach.[92] A few other jurisdictions, however, appear willing to override a statutory tax preference to honor a more general tax clause, although these courts still at least call for clear testamentary language before doing so.[93]

Pennsylvania and Wyoming are two jurisdictions that do not permit general testamentary language to override a beneficiary's statutory tax preference. For example, the Supreme Court of Pennsylvania in *In re Estate of Erieg*[94] examined a will that distributed the testator's residuary estate in fractional shares to the testator's widow and niece, and directed that all taxes be paid from the residue.[95] The will did not provide any guidance as to the allocation of tax liability between the two beneficiaries, and did not explicitly state an intent to override the preferential tax treatment to which the testator's widow was entitled under the statute.[96] The court explained that the tax statute was intended to advance the "presumed intentions of most testators," including apportionment and preferential tax treatment of certain family members, and could be overcome only by a provision that is clear and unambiguous.[97] A direction for taxes to be taken from the residue of the estate, the court commented, did not clarify against whose portion of the residuary estate these taxes should be charged.[98] Therefore, the court held "that this general direction to pay all estate taxes out of the residue [was] at most confirmatory of the statutory proration scheme and [did] not remove the will from the application of those laws."[99]

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91. *See infra* notes 94–105 and accompanying text.
92. *See infra* notes 106–110 and accompanying text.
93. *See infra* notes 111–120 and accompanying text.
94. 267 A.2d 841 (Pa. 1970).
95. *Id.* at 842.
96. *Id.* at 842, 845.
97. *Id.* at 845.
98. *Id.*
99. *Id.* at 846.

In the case of *In re Estate of Ogburn*,[100] the Supreme Court of Wyoming examined a will that disposed of property through specific gifts to the testatrix's foster child and his children, and directed that the residuary estate be divided among the testatrix's six siblings.[101] The six siblings were entitled to preferential tax treatment, while the foster child and his children were subject to additional taxes.[102] The will "'direct[ed] the payment of all . . . just debts, taxes, funeral expenses and expense of administration of [the testatrix's] estate.'"[103] The court held that allowing this general language to cause inheritance taxes to be paid other than as the statutory apportionment scheme instructed, thereby reducing the amounts given to the siblings who were entitled to preferential tax treatment, would be inequitable and clearly contradict the goal of the statute.[104] The court also determined that the will's tax directive did not include sufficiently clear language to overcome the inheritance tax statute because the will only referenced taxes of the testatrix's estate and "[t]hese were not her taxes, nor were the taxes levied upon her estate."[105]

In 1991, the Maryland Attorney General endorsed this approach in an opinion that addressed the correct procedure for assessing inheritance taxes when a residuary estate is composed of legatees of different classes.[106] The Attorney General determined that, unlike an estate tax, an inheritance tax should generally not be paid off-the-top before distribution of the residuary estate, and should instead be calculated based on each legatee's tax rate and assessed on each legatee's individual residuary bequest.[107] At the same time, according to the Attorney General, where it is clear that a testator intended an off-the-top deduction of inheritance taxes prior to distribution, deviation from the general rule would be appropriate.[108] In other words, the Attorney General concluded that "to the extent practicable, and subject to a showing of the testator's contrary intent, a tax clause should be construed in a manner that assesses inheritance taxes in keeping with the legislative intent of taxing various classes of legatees at different rates."[109] As such, the Attorney General explained, inclusion of a

100. 406 P.2d 655 (Wyo. 1965).
101. *Id.* at 656.
102. *Id.* at 662.
103. *Id.* at 657.
104. *Id.* at 661–62.
105. *Id.* at 662.
106. 76 Md. Op. Att'y Gen. 392, 392 (1991).
107. *Id.* at 392–93.
108. *Id.* at 392, 394.
109. *Id.* at 394–95.

tax clause that directed certain taxes to be paid from the residuary estate would "not itself [be] an adequate basis for routinely calculating inheritance tax on the residuary estate in a manner that is inconsistent with the legislative purpose in providing preferential inheritance tax treatment to certain classes of individuals."[110]

On the other hand, California and Montana have permitted more general tax clauses to override individual beneficiaries' statutory tax preferences, although these courts still superficially require a clear statement of a testator's intent. For example, in *Estate of Silveira*,[111] the Court of Appeals for the Fifth District of California addressed the imposition of inheritance taxes on a devise of real property to charitable organizations.[112] The court held that because the will provided that taxes "'be prorated among all of the devisees and legatees,'" it was clear and unambiguous that the charitable beneficiaries were required to bear a portion of these taxes even though their gifts had not contributed to the taxes due.[113]

In *In re Estate of Morris*,[114] the Supreme Court of Montana examined whether a will provided a method of apportionment for state inheritance taxes that overrode the statutory provisions.[115] Under the Montana statute, inheritance taxes were to be apportioned among all individuals who were interested in the estate based on the value of their shares of the estate.[116] However, the will directed the personal representative to pay, among other obligations, "'all taxes both State and Federal . . . out of my estate.'"[117] The testatrix's blood relatives were entitled by statute to a preferential tax rate.[118] The blood relatives urged that the inheritance taxes be paid pursuant to the statute, apportioned among all legatees according to the amount that their shares contributed to the overall tax, but the court disagreed.[119] Instead, the court determined that the provision, when considered with other, more precise provisions, was adequate to require the state in-

110. *Id.* at 393.

111. 197 Cal. Rptr. 121 (Ct. App. 1983).

112. *Id.* at 122.

113. *Id.* at 122–24 (emphasis omitted).

114. 838 P.2d 402 (Mont. 1992).

115. *Id.* at 404.

116. *Id.* at 403.

117. *Id.* at 404.

118. *Id.* at 403.

119. *Id.* at 403, 405. In other words, the blood relatives argued that the personal representative should have divided the residue balance into halves and only then deducted each devisee's state inheritance tax liability. *Id.* at 405.

heritance taxes to be paid from the residuary estate, which shifted the tax burden from that set forth in the statutory scheme.[120]

III. THE COURT'S REASONING

In *Pfeufer v. Cyphers*, the Court of Appeals reversed the judgment of the Orphans' Court for Montgomery County and held that "a testator may direct inheritance taxes to be paid from the entire residuary estate prior to apportionment among residuary legatees even when a statute exempts some of the residuary legatees from the payment of inheritance taxes."[121] Writing for a unanimous court, Chief Judge Bell underscored the importance of honoring a testator's expressed intent, as typically ascertained from within the four corners of the will.[122] The court explained that "a statute directing apportionment will only be ignored if the testator clearly and unambiguously indicates that to be his intention."[123] Moreover, the court noted that under Maryland law, a testator may direct that the inheritance tax be paid out of the entire residuary estate, and in such cases, the testator has effectively increased his gift, by the value of the tax, to the legatee.[124]

In the case of Hoffmann's will, the court concluded that the testamentary language clearly expressed Hoffmann's intent that all inheritance taxes be paid from the entire residuary estate prior to apportionment.[125] In reaching this conclusion, the court explained that because the tax would be levied on the entire residuary estate prior to apportionment, the exempt legatees' residuary shares would not be directly taxed or reduced.[126] In other words, the court noted that paying inheritance taxes from the entire residuary estate prior to distribution was "an additional gift to [Mr. Pfeufer] from the testator, not an additional burden on the 'exempt' legatees."[127] Before noting support for its position from other states, the court concluded that Hoffmann's clear intent for all inheritance taxes to be paid from the

120. *Id.* at 404–05.

121. 397 Md. 643, 646, 919 A.2d 641, 643 (2007).

122. *Id.* at 645, 649, 919 A.2d at 643, 645.

123. *Id.* at 651, 919 A.2d at 647 (quoting Johnson v. Hall, 238 Md. 644, 652, 392 A.2d 1103, 1108 (1978)).

124. *Id.* at 653–54, 919 A.2d at 647–48 (quoting Bouse v. Hutzler, 180 Md. 682, 685, 26 A.2d 767, 768–69 (1942)).

125. *Id.* at 655, 919 A.2d at 648–49. The court further stated that "[e]ven if the language were 'boiler-plate,' it sufficiently expressed the testator's intention to require that inheritance taxes were to be paid from the residuary estate prior to apportionment." *Id.* at 660, 919 A.2d at 652.

126. *Id.* at 655, 919 A.2d at 649.

127. *Id.* at 660, 919 A.2d at 652.

entire residuary estate prior to apportionment did not conflict either with the statute that exempted Hoffmann's relatives from the inheritance tax or with public policy.[128] As a result, the court reversed and remanded the case to the Orphans' Court for the inheritance taxes to be paid from the entire residuary estate prior to apportionment and distribution of the estate.[129]

IV. ANALYSIS

In *Pfeufer v. Cyphers*, the Court of Appeals held that a testator could direct inheritance taxes to be deducted from an estate's residue before apportionment, despite a statutory scheme that permitted some of the legatees to take their residuary shares free of inheritance taxes.[130] In so holding, the court correctly rejected the Orphans' Court's ruling that the tax clause in the *Pfeufer* will was boilerplate, but did not adequately justify its conclusion that the testator's express intent did not conflict with the statutory exemption for some of the will's beneficiaries.[131] By failing to acknowledge this conflict and undervaluing the legislative judgment contained within the exemption statute,[132] the court insufficiently examined the level of specificity required for a tax clause to effectively override such an exemption.[133] Rather than addressing these issues specifically, the court, despite its statements to the contrary, applied a lenient standard when it determined that the will's general tax apportionment clause could override the state's statutory inheritance tax exemption.[134] Instead, the Court of Appeals should have affirmed the Orphans' Court's decision to enforce the inheritance tax only against the non-relative's share of the estate, but required payment from the residuary estate of any other taxes and expenses from which the remaining legatees were not exempt—a result that would have synthesized the testator's expressed intent with the legislative intent and public policy expressed in the statute.[135]

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128. *Id.* at 655–59, 919 A.2d at 648–51 (quoting *In re* Estate of Cline, 898 P.2d 643, 645–50 (Kan. 1995); *In re* Estate of Morris, 838 P.2d 402, 403–04 (Mont. 1992); *In re* Robbins Estate, 356 A.2d 679, 680–82 (N.H. 1976); *In re* Estate of Jones, 796 A.2d 1003, 1004–06 (Pa. Super. Ct. 2002); *In re* Estate of Ross, 815 A.2d 30, 32–33 (Pa. Commw. Ct. 2002)).

129. *Id.* at 660, 919 A.2d at 652.

130. *Id.* at 646, 919 A.2d at 643.

131. *See infra* Part IV.

132. *See infra* Part IV.A.

133. *See infra* Part IV.B.

134. *See infra* Part IV.B.

135. *See infra* Part IV.B.

A. *The Court's Interpretation of the Hoffmann Will's Directive for Inheritance Taxes to Be Paid Without Apportionment Reveals a Conflict Between the Testamentary Language and the Statutory Inheritance Tax Exemption*

The *Pfeufer* court erred when it denied any conflict existed between its construction of the testator's direction for inheritance taxes to be paid from his entire residuary estate prior to apportionment and the Maryland statute's inheritance tax exemption.[136] The court concluded that the testator's intent and the inheritance tax statute did not conflict by relying on the principle that when a testator directs that taxes be paid from the residuary estate, he or she merely increases the legatee's gift and does not unduly tax the exempt legatee.[137] It is generally true that a testator's direction for payment of inheritance taxes from the residuary estate may constitute an effective gift increase in certain situations.[138] However, this principle alone does not justify generally requiring an exempt legatee to pay inheritance taxes incurred by a non-exempt legatee's share of the estate when, for example, both are beneficiaries of the testator's residuary

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136. *Compare* Pfeufer v. Cyphers, 397 Md. 643, 655, 919 A.2d 641, 648–49 (2007) (denying that there was any conflict between the testamentary language and the statute), *with* MD. CODE ANN., TAX-GEN. § 7-203(b)(2) (LexisNexis Supp. 2007) ("The inheritance tax does not apply to the receipt of property that passes from a decedent to or for the use of . . . a child of the decedent or . . . a brother or sister of the decedent . . . .").

Moreover, unlike the Maryland estate tax provisions, which explicitly allow a testator to override the statutory apportionment scheme, the Maryland inheritance tax provisions contain no such language. *Compare id.* § 7-308(k) ("Except as otherwise provided in the will or other controlling instrument, this section applies to the apportionment of, and contribution to, the federal and Maryland estate taxes."), *with id.* §§ 7-201 to -234 (LexisNexis 2004 & Supp. 2007) (establishing the Maryland inheritance tax scheme). Although the Maryland inheritance tax scheme permits a testator to specify the source of payment for inheritance taxes, this language does not similarly refer to the method of apportioning such taxes and, as a result, does not undermine the argument that the court's construction of Hoffmann's will did, in fact, reflect a contradiction between the inheritance tax exemption statute and the testamentary language. *See id.* § 7-216(a)(3) (LexisNexis 2004) ("Unless a decedent specified a source for paying the inheritance tax and there is sufficient money from that source, the court may order sale of property to pay the inheritance tax on the property.").

137. *Pfeufer*, 397 Md. at 655, 660, 919 A.2d at 649, 652.

138. *See, e.g.*, Bouse v. Hutzler, 180 Md. 682, 685, 26 A.2d 767, 768–69 (1942) (recognizing that a testator may effectively increase his or her gift to a legatee by the amount of the tax on that gift by providing for the residuary estate to pay the tax); Textor v. Textor, 170 Md. 128, 130–31, 183 A. 247, 248 (1936) (same). For example, when a testator devises $10,000 to a beneficiary, that beneficiary is entitled to $10,000 less the inheritance taxes due on that amount. However, if the testator also provides that the inheritance taxes be paid from the testator's residuary estate, the beneficiary receives the entire $10,000 tax-free. *See Bouse*, 180 Md. at 685–86, 26 A.2d at 769 (explaining this calculation).

estate.[139] To hold otherwise contravenes the public policy—to recognize the typical intention of most testators—enshrined by the legislature's exemption of many family members from inheritance taxes.[140]

Using its previous decisions, none of which addressed the apportionment of inheritance taxes among multiple classes of beneficiaries,[141] the *Pfeufer* court gave insufficient weight to the legislature's intention to exempt some legatees from inheritance taxes.[142] In doing so, *Pfeufer* also ignored important precedent from its sister jurisdictions when it stated that such cases generally concurred with its conclusion that testamentary language may override a statutory scheme that apportions inheritance taxes among legatees.[143] Certainly, it is a well-established principle that clear language in a will may override a statutory tax apportionment scheme.[144] However, the few courts that have addressed this issue in the context of legatees belonging to diverse classes have recognized the importance of the legislative judgment to exempt certain classes of individuals from taxation.[145]

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139. When an exempt and non-exempt beneficiary are entitled to equal shares of a testator's residuary estate, payment of the inheritance tax from the residuary estate prior to apportionment would effectively take from one beneficiary in order to give to another—a result that moves the exempt beneficiary from a statutorily favored position to a position on equal footing with a non-exempt beneficiary. *See In re* Estate of Erieg, 267 A.2d 841, 845 (Pa. 1970) (hesitating to forego application of the statutory scheme without a clear direction from the testator because to proceed otherwise would shift the benefits of a widow's preferential state inheritance tax treatment to another beneficiary who did not receive similar treatment under the statute).

140. *See, e.g.*, *id.* (expressing deep reluctance to depart from a state statutory inheritance tax apportionment scheme that the legislature had adopted to memorialize "the normal intention of testators" in general).

141. *See supra* Part II.B.3.

142. *Compare Pfeufer*, 397 Md. at 655, 919 A.2d at 649 (claiming that it was "immaterial that . . . some of the legatees would not have been obligated . . . to pay taxes on their share"), *with* MD. CODE ANN., TAX-GEN. § 7-203(b)(2) (LexisNexis Supp. 2007) (exempting a decedent's children and siblings from payment of inheritance taxes), *and Erieg*, 267 A.2d at 845 (recognizing the legislative intent to confer preferential tax treatment upon certain classes of legatees).

143. *See Pfeufer*, 397 Md. at 656–59, 919 A.2d at 649–51 (citing to *Cline*, *Robbins*, *Morris*, *Ross*, and *Jones*, but failing to discuss *Erieg* and *Silveira*, which are uniquely on point because they address diverse classes of legatees).

144. *See, e.g.*, Textor v. Textor, 170 Md. 128, 130–31, 183 A. 247, 248 (1936) (explaining that to override a tax apportionment statute, a will must include language that explicitly demonstrates that intent or "certainly" implies such an intent); Gordon v. Posner, 142 Md. App. 399, 409, 790 A.2d 675, 680–81 (Ct. Spec. App. 2002) (stating that to overcome a tax apportionment scheme, a will must include explicit language to that effect (quoting Johnson v. Hall, 283 Md. 644, 649, 392 A.2d 1103, 1106 (1978))).

145. *See, e.g.*, *Erieg*, 267 A.2d at 845 (noting "reluctance to abandon the statutory scheme of proration without a clear indication that such was the testator's intent . . . [because] the effect of such a departure is to take the tax relief available to the testator's spouse and use it to benefit all beneficiaries under the will").

For example, in *Erieg*, the Supreme Court of Pennsylvania required an especially high level of clarity when a will's tax clause, if interpreted to do so, would have overridden a beneficiary's statutory preferential tax status.[146] Likewise, the Supreme Court of Wyoming declined to allow general language directing payment of taxes to deprive blood relatives of their statutory preferential tax status.[147] Instead of broadening the established rule that a testator's expressed intent may override a statutory scheme of death tax apportionment where legatees share the same class,[148] without considering the significance of diverse classes of legatees, the *Pfeufer* court should have realized that a different rule is appropriate in these cases.[149] Thus, in stating that the court's interpretation of the testator's intent did not conflict with the exemption statute, and in failing to sufficiently consider the legislative intent underlying this statute, the court encouraged future litigation by which a non-exempt residuary legatee may benefit from an exempt residuary legatee's tax-exempt status at the exempt legatee's expense—a result likely not intended by either the legislature or most testators.

B. The Will's Directive for Inheritance Taxes to Be Paid Without Apportionment Was Not Sufficiently Clear to Override the Statutory Scheme

If the *Pfeufer* court had first properly recognized that its construction of Hoffmann's will resulted in a conflict between the testator's stated intent and the public policy reflected by the statutory exemption for some of his beneficiaries, the court should have then required a higher level of specificity to override the statutory tax exemption. Instead, the *Pfeufer* court correctly emphasized the significance given to a testator's intent,[150] but construed it too liberally by not explicitly

146. *Compare id.* (requiring an "unambiguous" direction "open to no other interpretation" to override a statutory preference for certain beneficiaries), *with In re* Estate of Jones, 796 A.2d 1003, 1006–07 (Pa. Super. Ct. 2002) (rejecting the argument that the will's tax clause was insufficiently specific, in part, by recognizing that *Erieg* was distinguishable because this case involved only one beneficiary of a residuary estate and, as a result, "there [was] no issue of allocation of tax liability among multiple beneficiaries of the residuary estate").

147. *In re* Estate of Ogburn, 406 P.2d 655, 656–57, 662 (Wyo. 1965).

148. *See supra* Part II.B.2.

149. *See supra* note 146 and accompanying text.

150. *Compare* Pfeufer v. Cyphers, 397 Md. 643, 649, 919 A.2d 641, 645 (2007) (noting that the court's primary purpose is to determine and implement a testator's stated intent), *with* Emmert v. Hearn, 309 Md. 19, 23, 522 A.2d 377, 379–80 (1987) (acknowledging that the court's "paramount concern" when construing wills is to determine and carry out the testator's intent), *and* Wesley Home, Inc. v. Mercantile-Safe Deposit & Trust Co., 265 Md. 185, 198, 289 A.2d 337, 344 (1972) (recognizing that when construing wills, the court is charged with carrying out the testator's intent based on "the 'four corners' of the will").

considering whether the testator intended to deprive his relatives of their statutory tax exemptions.[151] Because the "'plain meaning and import[ ]'" of the words of a will govern,[152] and must explicitly state any intention that would require the court, in construing the will, to ignore a statutory apportionment scheme,[153] the court should have relied only on the plain language of the will, which does not support inferring an intention to override the inheritance tax exemption. Based on the plain language of the will, the testator in *Pfeufer* clearly delineated that all taxes should be paid from his residuary estate without apportionment,[154] but did not explicitly state any intention that his relatives lose their statutory exemptions from the inheritance tax.[155]

Unlike the clause in *Smith*, which the court found was clear enough that it could require the residuary estate to pay the inheritance taxes,[156] the *Pfeufer* tax clause stated simply that taxes should be paid out of Hoffmann's estate without apportionment.[157] Moreover, although the language in Hoffmann's will was not boilerplate, like the provision in *Johnson*, which failed to adequately convey an intent to not apportion taxes,[158] it was still not sufficiently clear to permit an inference that the testator intended to override the statutory preferential treatment for his children and sister. Because the *Pfeufer* clause did not demonstrate that the testator intended to void the statutory

151. *See Pfeufer*, 397 Md. at 655–56, 919 A.2d at 648–49 (focusing instead only on when and from which source the inheritance taxes were to be paid).

152. *Emmert*, 309 Md. at 23, 522 A.2d at 380 (quoting LeRoy v. Kirk, 262 Md. 276, 280, 277 A.2d 611, 613 (1971); Marty v. First Nat'l Bank of Balt., 209 Md. 210, 217, 120 A.2d 841, 844 (1956)).

153. Gordon v. Posner, 142 Md. App. 399, 409, 790 A.2d 675, 680–81 (Ct. Spec. App. 2002) (quoting Johnson v. Hall, 283 Md. 644, 649, 392 A.2d 1103, 1106 (1978)).

154. *See Pfeufer*, 397 Md. at 647, 919 A.2d at 644 (quoting the will's tax clause, which stated, "I direct that all estate, inheritance, transfer, legacy or succession taxes . . . shall be paid out of the principal of my residuary estate; and such payment shall be made as an expense of the administration of my estate without apportionment." (emphasis omitted) (internal quotation marks omitted)).

155. *Id.*

156. Smith v. State, 134 Md. 473, 477, 480, 107 A. 255, 256–57 (1919) (involving a codicil that specifically directed that inheritance taxes be paid from the residuary estate and that each legatee receive his or her legacy free of any taxes).

157. *Pfeufer*, 397 Md. at 647, 919 A.2d at 644.

158. *See Johnson*, 283 Md. at 650, 655, 392 A.2d at 1107, 1110 (examining a will provision directing that "'all estate and inheritance taxes[ ] be paid as soon after [the testatrix's] death as [could] lawfully and conveniently be done'" (emphasis omitted)).

preference available to his exempt legatees,[159] the court should not have presumed such an intent.[160]

While the court may employ the routinely used or legal meanings of terms to determine a testator's intent,[161] Maryland precedent reveals no common usage or legal meaning of a tax clause that automatically renders it sufficient to override a statutory tax preference for certain beneficiaries.[162] In fact, the majority of opinions that have addressed this issue and to which the *Pfeufer* court could have looked to discern such a routine usage or legal meaning require, instead, a clear statement of a testator's intent to void a statutory preference when diverse classes of beneficiaries are involved.[163] Thus, the *Pfeufer* court should have required an explicit statement of intent where the testa-

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159. *Pfeufer*, 397 Md. at 647, 919 A.2d at 644.

160. *Cf. Johnson*, 283 Md. at 649, 655, 392 A.2d at 1106, 1110 (noting that "under tax apportionment statutes an intention not to apportion must be plainly stated in the will or other controlling instrument before the legislative scheme can be ignored," and that although "[n]o magic or mystical word or phrase is required to shift the burden of estate taxes from the legatees and devisees to the residue," the court needed to be "clairvoyant" if it was going to find an intent not to apportion expressed in the will in question); Textor v. Textor, 170 Md. 128, 131, 183 A. 247, 248 (1936) (declining to infer an intent to pay the collateral inheritance tax out of a residuary estate where the will did not include an explicit provision or a clear inference that the testator intended such treatment); 76 Md. Op. Att'y Gen. 392, 393 (1991) (commenting that general phrases or the simple inclusion of a tax clause are not alone sufficient to override a legislative tax apportionment scheme, particularly when legatees are members of different tax classes).

161. *See, e.g.*, LeRoy v. Kirk, 262 Md. 276, 281–85, 277 A.2d 611, 613–15 (1971) (defining a bequest of "'personal property'" to include only tangible personal property based on, among other reasons, the common usage of the phrase); Patchell v. Groom, 185 Md. 10, 14–15, 43 A.2d 32, 34 (1945) (recognizing that when a will includes legal terms, the court assumes that the testator knew of and intended to use the legal meanings of those terms unless there is clear evidence to the contrary).

162. *See, e.g.*, *Johnson*, 283 Md. at 652, 392 A.2d at 1108 (relying, rather, on the plain language of a will's tax clause to determine whether the clause overrode a statutory apportionment scheme); *Textor*, 170 Md. at 130–31, 183 A. at 248 (same).

163. *See, e.g.*, Estate of Silveira, 197 Cal. Rptr. 121, 124 (Ct. App. 1983) (finding a "clear and unambiguous" intent necessary before concluding that charitable beneficiaries had to bear part of the death taxes); *In re* Estate of Erieg, 267 A.2d 841, 845 (Pa. 1970) (requiring an "unambiguous" provision "open to no other interpretation" before a will's direction for taxes to be taken from the residue of an estate can override the statutory preferential tax treatment of certain beneficiaries, given that the statute is intended to reflect the presumed intention of most testators); *In re* Estate of Ogburn, 406 P.2d 655, 661 (Wyo. 1965) (requiring specific testamentary language to allow inheritance taxes to be taken from the residuary of an estate when it would reduce the shares for legatees exempted from the inheritance tax by statute); 76 Md. Op. Att'y Gen. 392, 393 (1991) (commenting that a general tax clause that directs inheritance taxes to be paid from the residuary estate is insufficient to override "the legislative purpose in providing preferential inheritance tax treatment to certain classes of individuals," especially when different classes of legatees are involved). *But see In re* Estate of Morris, 838 P.2d 402, 404–05 (Mont. 1992) (permitting a tax provision to override the statutory tax preference for some beneficiaries because several provisions, when read together, provided a "clear and unambiguous" statement of the

tor intended to deprive legatees of their tax-exempt status, rather than permitting an effectively general tax clause to do so.[164] Such a requirement would have adequately considered the unique issues presented when diverse classes of legatees are involved. Even more importantly, it would have honored the legislative intent behind the statutory exemption for certain legatees, which is especially important in borderline cases where the legislative determination as to the customary intent of most testators should prevail.[165] The court should have properly synthesized the testator's intent with the legislative intent and public policy expressed in the statute by exempting the testator's children and sister from payment of the inheritance taxes, but requiring payment from the residue, prior to apportionment, of any taxes or costs from which they were not exempt.

V. CONCLUSION

In *Pfeufer v. Cyphers*, the Court of Appeals held that the testator's general tax apportionment provision allowed inheritance taxes to be deducted from the residue of his estate before apportionment, despite a statutory exemption from payment of those taxes for some of the residuary legatees.[166] In so holding, the court glossed over the conflict between such a construction and the tax exemption statute.[167] Instead of avoiding the question, the court should have clearly addressed this conflict and recognized that its interpretation of the directive contained in the testator's will, that any inheritance taxes be paid without apportionment, resulted in a conflict between the testamentary language and the legislature's intent in establishing a statutory inheritance tax exemption.[168] Additionally, the court should have examined whether the tax language in the testator's will was sufficiently detailed to override the statutory scheme of preferencing certain legatees through a tax exemption.[169] Following such a test,

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testatrix's intent to do so in that she explicitly ordered payment of the taxes before division and distribution of the residue to the different classes of legatees).

164. *See, e.g.*, *Erieg*, 267 A.2d at 845 (expressing reluctance to override a statutory proration scheme in the absence of explicit testamentary intent to do so); 76 Md. Op. Att'y Gen. 392, 394–95 (1991) ("[T]o the extent practicable, and subject to a showing of the testator's contrary intent, a tax clause should be construed in a manner that assesses inheritance taxes in keeping with the legislative intent of taxing various classes of legatees at different rates.").

165. *See, e.g.*, *Erieg*, 267 A.2d at 845 (commenting that tax proration statutes are intended to promote the presumed wishes of most testators).

166. 397 Md. 643, 646, 919 A.2d 641, 643 (2007).

167. *See supra* Part IV.A.

168. *See supra* Part IV.A.

169. *See supra* Part IV.B.

rather than imposing a judicially created presumption that the testator intended to override the statutory preference, the court could have affirmed the Orphans' Court's order that the inheritance taxes be paid by the non-exempt legatee, but then synthesized the testator's stated intent to pay inheritance taxes from the residuary estate with the codified legislative presumption that testators generally intend for certain family members to benefit from a tax exemption.[170] This would have resulted in enforcement of the inheritance tax only against the non-relative's share of the estate and required payment from the residuary estate, prior to apportionment, of any other taxes and expenses from which the remaining legatees were not exempt.[171] Although the *Pfeufer* court preserved the general principles of will construction, its decision allows non-exempt legatees to contort Maryland law in a way that may decrease their tax liability while threatening testators' intentions to provide unencumbered gifts to their tax-exempt family members.[172]

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170. *See supra* Part IV.B.
171. *See supra* Part IV.B.
172. *See supra* Part IV.