

AUDIT REPORT – REGISTER OF WILLS
OFFICE

*Final Report –
October 19,
2016 from the
New Castle
County
Auditor's Office*

Audit Report – Register of Wills Office

To: Ciro Poppiti III, Register of Wills
 Virginia Gokool, Chief Deputy
 Alex Mili, Chief Deputy

Audit Conclusions and Reportable Items

In our opinion,

- Internal controls in the Register of Wills Office are adequate to provide reasonable assurance that estates are being administered in accordance with State Code and the office’s policies and procedures.
- Based on our sampling, estates during the audit period were administered in accordance with State Code and the office’s policies and procedures.
- “Operation Backlog” (i.e., the Office’s efforts to close older estates and to collect any estate closing costs due to the County) has accomplished the Office’s objectives related to it.

Opportunities for improvement are included in the “Opportunities for Improvement” section of this report beginning on page 8.

Overview

The duties and powers of the Register of Wills Office are governed by Delaware State Code. Title 12 is titled “Decedent’s Estates and Fiduciary Relations” and Part IV of Title 12 is titled “Administration of Decedent’s Estates.” There are 10 chapters within Part IV. Chapter 25 is titled “Register of Wills” and Section 2501 of this chapter indicates that the Register of Wills Office acts as a Clerk of the Court of Chancery. Section 2502 states “The Register of Wills shall have power to take acknowledgments, administer oaths, issue notices, certify and authenticate copies of instruments, documents and records of the Court and perform the usual functions of the Register Office.”

The Register of Wills Office’s website indicates that it “assists families and attorneys in obtaining the necessary documents to transfer the assets of a deceased person.”

When a person dies in New Castle County, an estate must be probated¹ if either the decedent had more than \$30,000 in personal property in his/her name alone, or the decedent owned Delaware real estate in his/her name alone, either solely held or as a tenant in common. Upon receiving original copies of

¹ Probate is the legal process by which the assets of a decedent are properly distributed (if he or she made a will) to the beneficiaries or heirs through an executor named in the will, or (if he or she died without a will) according to the local law by a court-appointed administrator.

the death certificate and any Will left by the decedent, the Register of Wills Office probates an estate and provides the Executor (if named in the Will) or Administrator (when there is no Will or when the executor is not named in the decedent's Will) Letters Testamentary or Letters of Administration respectively. The Executor/Administrator² is then responsible for filing an inventory³ within 3 months and an accounting⁴ within a year. Once a Personal Representative provides the final accounting and other closing documents for an estate, the estate is closed. The Register of Wills Office collects 1.75% of the net probate assets for New Castle County as a part of the closing costs.

In Fiscal Year (FY) 2014, 2542 files were opened and 1402 estates were probated. In FY 2015, 2707 files were opened and 1517 estates were probated.

The primary revenue stream for the office is the collection of the 1.75% estate closing fee. This generally represents about 90% of the office's total revenue. Total revenues for the office for FY 2016, FY 2015, and FY 2014 were \$3,375,150, \$3,824,397, and \$3,827,056, respectively.

For estates with less than \$30,000 in personal property and with no solely owned real estate, the named executor in the original, valid self-proven will or the closest next-of-kin (in case of no will) may be given a Small Estate Affidavit in order to transfer the property.

Apart from probating estates, the Register of Wills Office also provides a service to hold wills for safekeeping and confidentiality while a person is alive. Also, the Register of Wills Office has extensive archives the public can access for the purpose of tracing genealogy or to check title on real estate.

Audit Objectives, Methodology, and Scope

We conducted a "performance audit" of the Register of Wills Office. Performance audits, as defined by Generally Accepted Governmental Auditing Standards, are audits that provide findings and conclusions based on an evaluation of sufficient, appropriate evidence against criteria. The overall performance audit objectives for this audit were:

- Internal Control: An assessment of the Register of Wills Office's system of internal control that is designed to provide reasonable assurance of administering estates in accordance with State Code and the office's policies and procedures.
- Compliance: An assessment of the Register of Wills Office's compliance with criteria established by provisions of laws, formal policies and procedures, and other requirements.
- Program effectiveness, economy, and efficiency: An assessment of the extent to which the Register of Wills Office is achieving its goals and objectives related to the closing of older estates.

Specifically, our performance audit, and its scope and methodology, included:

² The term "Personal Representative" encompasses both an Executor and an Administrator.

³ Delaware State Code, Title 12, Part IV, Chapter 19.

⁴ Delaware State Code, Title 12, Part IV, Chapter 23.

- Estate Administration: To determine whether the estate opening, inventory filing, and estate closing processes are functioning in accordance with Delaware State Code and office policies and procedures. A random sample of 15 estates opened between July 1st, 2014 and December 31st, 2014 was selected; and paper files and records on the Wills and File & Serve systems for these estates were reviewed. The review included ensuring that:
 - all required documents are received;
 - information is accurately reflected in the Wills system;
 - a Real Estate Memorandum is generated for single ownership properties once the inventory is filed; and,
 - calculations for the inventory and for the accounting, including closing costs, are accurate.

We also reviewed 6 estates that had judicial actions in the past 3 years to ascertain that exceptions to inventories and accountings are not a result of any inadequacies in the reviews of such documents at the Register of Wills Office.

- Real Estate Transfers: To verify that the Office of Assessment is furnished with all the information required by §2508 of Delaware Code. For this, we met with the Register of Wills and Chief Deputy from the Register of Wills Office, and also met separately with the Assessment Services Manager and Assessment Services Supervisor from the Office of Assessment. Also, we independently verified that a Real Estate Memorandum had been prepared for any single ownership real estate filed in the inventories of the above sample of 15 estates.
- Estate processing timelines: To evaluate the Register of Wills Office's initiative to close stale estates, known as Operation Backlog. For this:
 - We selected a sample of 10 estates that were sent Rule to Show Cause notices, 10 estates closed administratively and 10 estates updated with a Register's Order. We reviewed these estates to ensure that such estates were indeed stale (more than 2 consecutive years of inactivity). We also tried to determine whether there were updates for these estates on the File & Serve and Wills systems. For the estates closed administratively, we looked for the proposed order.
 - To ensure that 'big' inventory estates are processed timely, we looked at all estates with a petition personalty >\$30,000 and inventory due in January 2016.
- Refunds: We asked the Register of Wills office to provide us with a list of all the refunds processed in the last 3 years. We looked at refunds over \$250 to see if they had the correct authorizations.
- IT systems: To evaluate effectiveness and efficiency, we looked at the adequacy of the technological systems used at the Register of Wills Office. Specifically, we focused on the presence of systemic controls and quality of information (data accuracy, comprehensiveness of information, and accessibility in the forms of reports). We also asked to see the research collected by the Register of Wills Office on the acquisition of a new system.

In general, our testing involves audit sampling. We evaluate the results of the tests and use professional judgment, based on the number of exceptions and/or the materiality of such exceptions, whether to

include exceptions in the audit report. In some cases, we perform additional testing to help us obtain additional audit evidence in making such evaluation and determination.

If our audit work reveals an item which we believe is significant in the context of one or more audit objectives, we include this in a “Significant Deficiencies” section of the audit report. A Significant Deficiency is an item (such as a deficiency in internal control or noncompliance with a particular law) which we believe has, or could have, a significant adverse impact upon the agency’s ability to accomplish a major objective and, therefore, warrants management’s particular attention. All other reportable items are included in an “Opportunities for Improvement” section of the audit report.

Because the scope of an audit does not allow us to examine every single function and transaction performed by an area, an audit would not necessarily disclose all matters that might be significant deficiencies or opportunities for improvement.

Generally Accepted Government Auditing Standards

Except as discussed in the following paragraph, we conducted our audit in accordance with Generally Accepted Government Auditing Standards promulgated by the United States General Accounting Office. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We have not met the requirement of Section 3.96 of Government Auditing Standards that requires an audit organization performing audits in accordance with GAGAS to have an external peer review every three years. We plan to have such a review performed in 2017.

Views of Responsible Officials

Management has included a general response as well as a response to each of the report recommendations. These responses are incorporated into the body of the report.

Appreciation of Cooperation

We sincerely appreciate the cooperation of the Register of Wills Office’s personnel and the willingness to work together in determining constructive improvements to the Office.

Cc: Thomas Gordon, County Executive
Timothy Mullaney, Chief Administrative officer
Michael Coupe, Chief Financial Officer
Betsy Gardner, Clerk of Council
New Castle County Council and New Castle County Audit Committee Members

General Comments

General Comment on Register of Wills Office

The current Register of Wills has been proactive in taking steps to increase the effectiveness and efficiency of the office. That there has been a shift from just “docking” documents to analysis for process improvements in the Office can be seen in some of the initiatives undertaken:

- Operation Backlog: This refers to the initiative to review and close delinquent estates. It has generated more than \$2.35 million in revenue for the County, almost equal to adding an extra year’s worth of revenue and resulting in five of the top seven revenue years for the office. The initiative also received the National Association of County Recorders, Election Officials and Clerks (NACRC) Best Practices Award in 2013.
- E-filing: When the Register of Wills took office in 2011, the Register of Wills office did not have scanners and members of the Delaware Bar were hesitant to adopt new technological changes. The Register of Wills worked with the Delaware Bar to show them the advantages of e-filing and, starting December 1, 2012, the office began accepting electronically filed documents using the File & ServeXpress system.
- Collection of fees and forms upfront: The new policy of collecting fees (except closing costs) and forms upfront motivates executors to complete the probate process. It also reduces the amount of uncollected fees for the County.
- Estate Closing Document: The current Register of Wills introduced the Estate Closing Document. This document is given to the personal representative and marks the closing of an estate. This initiative adds approximately \$30,000 a year to County revenues.
- Affidavit in Lieu of Receipts: To simplify filing and to reduce papers filed, the Register of Wills has instituted the Affidavit in Lieu of Receipts for estate expenses up to \$100,000. Since this document has an officer of the court authorizing it, it also provides a control for the accuracy of estate expenses.
- Evening Office Hours in Middletown: Tuesday, April 5th 2016 marked 5 years for the monthly evening hours held by the Register of Wills Office in Middletown. This initiative makes the Register of Wills Office more accessible in the Appoquinimink area of the County.
- Law firm meetings: The Register of Wills has held meetings with at least 5 major law firms in the past year. Along with keeping the attorney community updated of the various changes in the Register of Wills Office and gathering feedback, this has helped send a message to the attorney community that the County is serious about timely estate processing.
- Commission Letter: The current Register of Wills has implemented the filing of a commission letter by the personal representative. It’s a signed note by the personal representative acknowledging that any commission earned by him/her from estate administration must be included in his/her State and Federal income tax returns. This helps ensure that commissions earned by personal representatives are not overlooked while filing income tax returns.
- Case Information Sheet and Trust Inquiry Form: The current Register of Wills has introduced two new forms to the forms that must be filed at estate opening – Case Information Sheet and Trust Inquiry Form. The Case Information Sheet works as a convenient financial tracker of all the fees paid at estate opening, while the Trust Inquiry Form collects information for the Court of

Chancery on any Trust that may be created by the decedent's will. These forms are proactive in ensuring that all relevant information is collected in an easily accessible way.

We view these as positive developments in estate processing and commend the Register of Wills and his staff for their efforts.

Opportunities for Improvement

General Response from Register of Wills Office

We thank the Auditor for providing us with an independent review of the Register of Wills. We believe the Auditor conducted the audit with professionalism and respect. We were pleased that the Auditor took a genuine interest in our operations and even attended a special Court session.

We believe that the audit report reflects the workings of our Office. We appreciate the tenor of the report, which congratulates us on the many strides we have taken over the past five years. Such strides include reducing the backlogged and stale cases (which has generated \$2.35 million for the County); establishing clear policies on the day-to-day application of Delaware estate law; and implementing a technology overhaul of the Office.

We agree with the Auditor that there are opportunities for improvement, which we address after each individual comment.

In all, we hope that this audit is not a “one off”. We look forward to continued open communication with the Auditor, in efforts to work together to build a stronger Register of Wills and a stronger New Castle County.

1.

To meet the changing needs of estate processing, procure a new computer system to replace the current Wills system. Explore opportunities to increase revenue by introducing new services made possible by adopting new technology.

Background

The Register of Wills office uses two computer systems in its processing of estates – the Wills system and the File & ServeXpress (F & S) system.

The F & S system is the archival system where all estate documents are stored. It is also used by attorneys to e-file and by other Courts in Delaware including the Court of Chancery and the Supreme Court. The Register of Wills Office started using F & S in December 2012 and was the first Register of Wills office to use it. In fact, the New Castle County Register of Wills office created the model to be used by other Register of Wills offices on F & S.

The Wills system was built by the County's in-house technology team and serves as the accounting/financial system for the Register of Wills Office. It is an old system and the developer who developed it is no longer with the County. Hence, it is difficult to make changes and upgrades to it. Some of the shortcomings of the Wills system include its inability to communicate with F & S, inability to compute Net Personal Estate and Closing Costs, inability to generate automatic monthly statistical reports for management, absence of ticklers for inventory and accounting due dates, and inability to make quick enhancements to accommodate new fields for Operation Backlog and other new initiatives.

Comments

New Wills System

Given the limitations of the current Wills system and the crucial role it plays in estate processing, we believe the Register of Wills Office should procure a new computer system as soon as practical. The Chief Deputy has done a considerable amount of research on specifications for the new system. Based on her research so far and our review of the current processes in the Register of Wills Office, below is a list of features that we think should be a part of the new Wills system:

- Best possible data security
- Scalable: not only to meet demands of an increasingly aging population but, if possible, also to the Sussex and Kent County Register of Wills Offices. The Register of Wills informed us that the Register of Wills offices in the three counties have different operating systems, making such an integration ideal, but challenging.
- Ability to communicate with the F & S system (and eFlex, should the office adopt eFlex for pro-se filings): to populate information directly into the new Wills software. The Register of Wills

pointed out that this would depend largely on F & S system's (a third party vendor's system) ability and willingness.

- Enhanced accounting and financial capabilities: including ability to handle ACH and Credit Card payments, and generate financial reports. Please note the Register of Wills informed us that his office gets very few inquiries from Personal Representatives about making Credit Card payments.
- Include additional information: such as, Total Solely Owned Real Estate, Total Solely Owned Stocks and Bonds, Total Solely Owned Mortgages, Notes and Cash, Total Jointly Owned Property, Total Probate Assets filed in Inventory, Total Probate Assets filed in Accounting, Total Administrative Expenses, Total Debts of the Estate, Total Funeral Expenses, Number of Contacts Made with PR/Attorney (Phone, Email, Mail), Type of Estate Closing (Conventional / Rule to Show Cause Hearing / Administrative Closure).
- Built-in systemic checks: including maker-checker database design for reviews of Inventory and Accounting; creation of overdue notices for Inventory and Accounting; ability to compute Net Personal Estate values and Closing Costs.
- Ability to make quick enhancements: such as adding new fields for new initiatives
- Ability to seal and restrict access to records
- Ability to search and view wills online
- Ability to convert existing data in microfilm and microfiche into image files that can be retrieved, printed and displayed

Some of the features listed above could enable the Register of Wills Office to enhance the services it offers to the public, like the ability to search and view wills online.

Revenue Enhancement

The current trend is for more and more transactions to move online. For example, starting July 2016, the Bucks County Register of Wills office has announced electronic filing for any filing, once an initial filing is made via traditional personal or by mail methods. To enable such enhancements in services to the public, the Register of Wills office should consider fee enhancements like a Convenience Fee on Credit Card transactions. The Register of Wills offices in Pennsylvania also charge an Automated Computer Project Fee (all first time filings) and a Judicial Computer Project Fee (all petitions for grant of letters).

Also, by making wills (public records once in probate) available online, the County would be able to monetize the wills it stores. In the United Kingdom, a name and year of death is required to find wills, which is made ready for download within 10 days of order, as for many wills someone has to locate the physical copy in the warehouse⁵.

⁵ <http://www.bbc.com/news/uk-30609527>

Recommendation

We recommend that the Register of Wills Office consider the above suggested list of features while procuring a new computer system to replace the current Wills system. Also, the Register of Wills Office could consider fee enhancements or new sources of revenue enabled by adopting new technology.

Management's Response

We document financial transactions, case information and case notes through software colloquially called the "Wills System". The Wills System was created in-house by the County a decade ago. Unfortunately, the Wills System is outdated, and the window of its usefulness is closing.

We thank and applaud the Auditor for recognizing the need for new operating software.

We are committed to working with the new administration in: (a) finalizing the specifications desired; (b) putting same out for bid; and (c) purchasing the new software.

While cost is always concern, especially given the constraints on County revenue, the time for action is now. Hopefully, given this Audit report, the County will be receptive toward moving forward.

2.

Formulate a clear, objective policy to determine whether a stale estate goes through a Rule to Show Cause hearing, Administrative Closure or is updated with a Register's Order. Explore the use of reminders and overdue notices to encourage timely estate processing. Utilize technology more to provide Operation Backlog with increased transparency and analysis. Adopt a uniform documentation policy for Operation Backlog.

Background

When the then newly elected Register of Wills performed a comprehensive review of all opened estates in 2011, it revealed that over twenty percent of estates were delinquent. Estates become delinquent when personal representatives fail to complete the probate process, causing problems of unclear re-titling of decedents' real property, unpaid estate creditors, withheld distributions to beneficiaries, and/or uncollected probate fees. Realizing that this problem would get worse as the Baby Boomers generation reaches its senior years and more deaths occur, the Register of Wills Office launched the Operation Backlog initiative.

This initiative identified delinquent estates (more than 3000 open estates in January 2011) and moved an estate forward using one of the three following ways:

- a. Rule to Show Cause – compels the personal representative to appear before a master (judge) in Chancery Court.
- b. Administrative Closure – akin to Rule to Show Cause without going through a formal court hearing.
- c. Register's Order – a way to mark a file as reviewed and no further action is to be taken for now.

As of April 2016, Operation Backlog has closed or updated more than 1,522 estates and generated more than \$2.35 million in closing costs and fees. In 2013, the Register of Wills Office received the National Association of County Recorders, Election Officials and Clerks (NACRC) Best Practices Award for Operation Backlog. We commend the Register of Wills Office for the success of the Operation Backlog initiative. Please note though that these additional revenues to the County will recede in the coming years as, per the Register of Wills, "most of the low hanging fruit has already been picked."

Comments

Operation Backlog Policy

The criteria used to decide how to move a stale estate forward has been continuously evolving. The most current criteria are as follows:

- a. Rule to Show Cause – This is the default methodology when a Register's Order does not apply.

- b. Register's Order – Register's Order is issued where the time and cost of pursuing the case outweigh any benefit to the County.
- c. Administrative Closure – The Register of Wills Office is experimenting with administrative closures at this time. Generally, estates with cash assets under \$100,000, especially when the decedent owned real estate, are closed administratively. However, the office is waiting for more data.

Given that most of the “low hanging fruit” is gone and it's been five years since the launch of Operation Backlog, we believe that the criteria used to assess how to move a delinquent estate forward should now be made more specific. Based on the more than 1500 stale estates processed as a part of Operation Backlog, it should now be possible to start quantifying the expected costs and benefits of pursuing a case. A more scientific approach to criteria development for Operation Backlog would involve listing all the policy variables. From our conversations with the Register of Wills and Chief Deputy, we are suggesting the following list of relevant policy variables (please note that some of these are already being used):

- year of last activity on estate,
- cash assets in estate,
- type of real estate (if any) in estate,
- inventory filing (Y/N),
- litigation (Y/N),
- attempts made to contact PR,
- manpower time required,
- other costs such as cost of postage,
- potential money collection for County

Using the above variables, the Register of Wills Office should be able to devise a formal, less judgmental methodology to determine whether a stale estate goes through a Rule to Show Cause hearing, Administrative Closure or is updated with a Register's Order. This would speed up the processing of Operation Backlog cases, rely less on an individual deputy's judgment, and provide a more scientific means of supporting why the officer chose a particular method.

Going forward, the Register of Wills Office might also want to test the use of reminders to Personal Representatives for upcoming inventory/accounting deadlines. This would be a proactive measure and might reduce the need for more expensive follow-ups later.

Use of Technology

Operation Backlog's implementation is minimal in technology use. This is primarily due to the archaism of the Wills system. As noted elsewhere in this report, the Register of Wills Office will benefit greatly from a new technological system to replace the current Wills system.

A list of all Operation Backlog estates is maintained in a spreadsheet on a shared drive. Deputies work off of this spreadsheet and make updates to it. This approach is very dependent on the proper

maintenance of the spreadsheet. Since the current Register of Wills and Chief Deputies are very hands-on, there seems to be no problem with this process. However, if the current leadership were to leave, it would be more desirable to have some marker on the Wills system for all Operation Backlog cases. This would enable anyone at any time to generate a list of Operation Backlog estates from the Wills system, review the status of different Operation Backlog estates, and therefore provide Operation Backlog with more transparency and analysis.

Documentation Policy

Our review of a sample of Operation Backlog estates revealed that documentation of the processing of Operation Backlog estates is not standard. For two of the Administratively Closed estates reviewed, there were no records on File and Serve. Similarly, two of the Rule to Show Cause estates had no records on File & Serve, while two other estates did not have Estate Closing Documents on File & Serve (though the Wills system showed they were closed). For estates updated with a Register's Order, the update on the "Correspondence" and "Mailing/Other" tabs for two estates showed "Updated Order" instead of "Register's Order." Not following a uniform/standard procedure for updating the Operation Backlog estates may result in confusion and duplication later. Hence, it is our recommendation that the Register of Wills Office prepare a separate policy on updating and documenting Operation Backlog estates on the File & Serve and Wills systems. The Register of Wills Office leadership might also want to consider uploading all documents for all estates closed under Operation Backlog to File & Serve. Since members of staff are already spending time on the Operation Backlog initiative, it would save time in the future if these estates needed to be re-opened/reviewed.

Recommendations

- We recommend that the Register of Wills Office consider formulating a clear, objective policy for moving stale estates forward. This would make the process less labor and time intensive, especially since the estates remaining in Operation Backlog now are more difficult to close and/or have fewer assets. The office should consider using other tools like reminders and overdue notices to ensure timely estate processing.
- We recommend a better utilization of technology to provide Operation Backlog with more transparency and analysis.
- We recommend that the Register of Wills Office prepare a documentation policy for Operation Backlog so that there is no confusion regarding the Operation Backlog estates in the future.

Management's Response

Operation Backlog began in May 2011 as an initiative to address 3,000+ stale cases, dating back to the year 2000. Operation Backlog has achieved quantifiable goals:

- 1,522+ cases have been closed or updated;
- There are only 99 stale cases remaining that have personal assets greater than \$100,000;
- There are no open cases for the Year 2000; and

- \$2.35 million has been generated for the County.

Operation Backlog is essentially in the final stages, with our staff “mopping up” the stale cases that remain.

We believe that the Auditor has provided us good advice in how to process these remaining cases. We intend to follow the Auditor’s recommendations:

- We are refining our written policy on how we handle stale estates. The refined policy will make clear under what circumstances our Office utilizes a judicial hearing, an administrative closure, or a register’s order.
- We will increase our efforts with overdue notices to executors to ensure timely estate processing.
- We are exploring ways to utilize technology to better track and manage large estates.
- We are also exploring ways to better document our successes (and thorny obstacles) in closing stale estates.

We take note of a successful initiative we conducted in May 2016. This initiative is new, not just for New Castle County, but for the State of Delaware and perhaps the country.

Our Office – in conjunction with Chancery Court – held a two-day marathon session in which **all the open cases from 2012 were reviewed**. This judicial proceeding forced the executors to take immediate action to file the necessary paperwork and fees—otherwise the Court ordered the estate closed.

We were delighted with the results, especially because we systematically (and in one fell swoop) prevented the 2012 cases from falling into a backlog. We also generated \$50,000+ for the County.

We intend to replicate the initiative as such:

May 2017	2013 estates
October 2017	2014 estates
May 2018	2015 estates
May 2019	2016 estates

3.

Ensure refunds of estate closing costs are handled in accordance with County Code and Office Policy.

Background

The Register of Wills Office issues refunds for closing costs when Final Accountings reveal more expenses than anticipated in the First Accounting, when payment is based on an error of listing non-probate assets as probate assets and/or there are erroneous calculations. The latter two reasons for closing cost refunds are very rare. Also, any refund requests do not happen very often.

Per the Delaware Supreme Court's 1962 decision *In Re Estate of Zoller*, the closing cost [the fee imposed on the net personal estate by County Code §2.03.006(16)] is a tax. However, the U.S. Supreme Court in *Chesebrough v. United States* (a 1904 case) stated the common law rule that "taxes voluntarily paid cannot be recovered back, and payments with knowledge and compulsion are voluntary." Consistent with *Chesebrough*, the Delaware Superior Court in 1988, in *Division of Revenue v. Fierro*, stated that "there is no right to recovery of taxes voluntarily paid, even by mistake, in the absence of statutory authorization." County Code §14.03.001 and §14.03.006 confer statutory authorizations for limited recovery of taxes paid in error.

The Register of Wills relies on the expansive construction of County Code §14.03.001 and §14.03.006, in harmony with the Delaware Supreme Court's 1962 decision, to apply these sections of County Code to closing cost refunds (*Delaware Estate Administration: Policy, Procedures & Case Law*, a 2015 publication of the Register of Wills Office), even though it is not ascertainable from the texts of these sections whether County Council intended to include estate closing costs as a "tax."

The approval process is an internal control to see that County funds are disbursed appropriately.

Comments

Approval of Refunds

We asked the Register of Wills Office to provide us with a list of all refunds issued in the last 3 years. In the past three years, the Register of Wills Office issued 25 refunds for overpayment of closing costs totaling \$15,971 (this includes a single \$6,368 refund). This also included 10 refunds over \$250, of which 5 refunds were over \$1000.

When we asked for relevant approvals for the refunds over \$250, we were told that only one refund (for \$1,429.75) had been approved by the County's Chief Financial Officer (CFO). Per its October 6, 2015 Refund Policy, the Register of Wills Office should have obtained approvals from the CFO for two other refunds which were greater than \$250 and issued after October 6, 2015. (Note: The remaining refunds greater than \$250 were issued before the date of the policy.) Although the office did not follow its Refunds Policy requirement, the dollar materiality is small.

Refund Policy

Prior to November 2014, the County's refund policy for taxes generally required CFO approval for amounts up to \$5,000 and County Council approval for amounts above that (County Code §14.03.001 and §14.03.006). Ordinance No. 14-107, which was approved on November 7th 2014, increased the authorization limit for the CFO approval from \$5,000 to \$20,000.

The Register of Wills Office's October 6th 2015 policy⁶ in *Delaware Estate Administration: Policy, Procedures & Case Law* did not comply with the amended County Code. (However, the new Refund Policy will be in accordance with the Code.) We do believe that the Register of Wills Office (a separately elected office) should have the discretion to authorize "small" refunds on its own and not have to prepare paperwork for the CFO each time; however, going forward, the Register of Wills wants all refunds to be approved by the CFO because in deciding whether to grant a refund, Finance first checks whether the estate owes the County any debts such as property taxes.

At the closing conference on this report, the Register of Wills informed us that they are changing their Refund Policy. Going forward, no refunds will be provided for overpayment of fees on non-closing costs and all refunds on closing costs will require approval from the CFO. The Register of Wills affirmed that there is nothing in the Delaware Code that prohibits the Register of Wills from not providing refunds.

Recommendations

We recommend the following:

- Management update *Delaware Estate Administration: Policy, Procedures & Case Law* with the latest Refund Policy and ensure that it complies with any future County Code changes.
- Management implement internal controls to ensure the policy is adhered to and any changes to County or State Codes applicable to refunds are incorporated, if necessary, into policy revisions.

Management's Response

Our Office averages 25 refund requests a year, with an aggregate total of about \$6,000. While \$6,000 for an entire year is not a lot of money, it is nonetheless important to have a refund policy that is (a) compliant with the law; (b) communicated to the public; and (c) followed by the staff.

Developing a written policy has been a priority of the Office. In fact, a written policy was included in the first draft of our policy manual.

We appreciate the collaborative discussion with the Auditor over our refund policy. We found the discussion most helpful.

As the Auditor's report indicates, we are refining our refund policy. We look forward to finalizing our policy with the new County administration before the end of February 2017.

⁶ Prior to 2015, the Register of Wills Office did not have a formal policy on refunds – they just paid what was owed.