



INTERIOR BOARD OF INDIAN APPEALS

Estate of Robert Lawrence Wourinen a.k.a. Robert Laurence Wuorinen

59 IBIA 314 (01/22/2015)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF ROBERT LAWRENCE ) Order Reversing Decision  
WOURINEN a.k.a. ROBERT )  
LAURENCE WUORINEN ) Docket No. IBIA 12-112  
)  
)  
) January 22, 2015

The Bureau of Indian Affairs (BIA) appealed to the Board of Indian Appeals (Board) from an Order Reopening and Modifying Estate Distribution (Reopening Order) entered on May 8, 2012, by Administrative Law Judge (ALJ) Richard J. Hough in the estate of Robert Lawrence Wourinen, a.k.a. Robert Laurence Wuorinen (Decedent).<sup>1</sup> Decedent's trust estate consists of interests in a single allotment on the White Earth Reservation in Minnesota, and trust personalty consisting of money in an Individual Indian Money (IIM) account that had accrued as of the date of death. The ALJ's original probate decision, dated September 21, 2010 (Decision), determined that the White Earth Band (Tribe), as the Tribe with jurisdiction over Decedent's trust real property interests, inherited all of Decedent's trust real property and trust personalty, under the American Indian Probate Reform Act (AIPRA), *see* 25 U.S.C. § 2206, because in the absence of surviving siblings (or closer relatives), the Tribe was next in line to inherit.

Cheri Lee Mayberry, Decedent's niece and the daughter of a pre-deceased sister of Decedent, petitioned to reopen Decedent's probate. Mayberry disputed the Tribe's jurisdiction and disagreed with AIPRA because, she argued, heirship should include nieces and nephews. The ALJ granted reopening and modified the Decision in part, holding that state rules of inheritance should apply, and determining that Mayberry was entitled, under Minnesota state law, to inherit Decedent's trust personalty. BIA appeals from the Reopening Order and contends that the ALJ's original Decision was correct, because following the enactment of AIPRA, the ALJ had no basis to apply state inheritance rules to Decedent's trust personalty.

We reverse the Reopening Order. Applied to the facts of this case, AIPRA is clear that the Tribe inherits Decedent's entire trust estate, including his trust personalty.

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<sup>1</sup> Decedent was White Earth Chippewa, and his probate case was assigned Probate No. P000047763IP in the Department of the Interior's probate tracking system, ProTrac.

## Background

Decedent died intestate (i.e., without a will) on July 30, 2006. Data for Heirship Finding and Family History, Feb. 5, 2010, at 1-2 (Administrative Record (AR) Tab 37). At the time of death, Decedent was a resident of the State of Minnesota, and owned an interest in White Earth Allotment No. 1317 (Allotment). *Id.*; Inventory of Decedent's Report, Jan. 4, 2010, at 1 (AR Tab 48). Decedent also had an IIM account, which at the time of death had an accrued balance of \$693.91. AR Tab 37 at 2. Decedent was not married at the time of death, had no children, and was not survived by any parents or siblings. *Id.* at 1. As noted, Decedent was survived by his niece, Mayberry. *Id.* at 2.

On September 21, 2010, after conducting a hearing attended by Mayberry, the ALJ issued the Decision probating Decedent's trust estate. The ALJ first determined, based on Decedent's date of death, that AIPRA applied to his estate. Decision at 1. Applying the inheritance rules under AIPRA, the ALJ concluded that Decedent's trust real property and the post-death income generated by that property passed to the "tribe with jurisdiction over the land," referring to the Tribe and the Allotment. *Id.* The Decision also ordered the distribution of Decedent's trust personalty to the Tribe as the tribe with jurisdiction over the Allotment. *Id.* at 2.

Approximately 18 months later, Mayberry filed a petition for reopening. Letter from Mayberry to ALJ, Mar. 12, 2012 (AR Tab 15). Mayberry disputed the Tribe's jurisdiction over Decedent's "interests and land," and expressed disagreement with AIPRA's limited line of succession for family members of a decedent. *Id.* at 2. Mayberry argued that nieces and nephews should also be entitled to inherit. *Id.*

In response to Mayberry's petition, the ALJ issued an order to show cause why Decedent's estate should not be reopened and modified to distribute the trust personalty to Mayberry as Decedent's niece, pursuant to state law rules of inheritance, as would have been the case before AIPRA was enacted. Notice of Petition for Reopening and Order to Show Cause (OSC), Apr. 3, 2012 (AR Tab 13). The ALJ recognized that AIPRA generally directs the disposition of trust land and money, but concluded that there is a "discrepancy" in AIPRA when inheritance moves beyond siblings to non-family heirs, in this case the Tribe, because AIPRA's language identifies the tribal heir as the tribe "*with jurisdiction over the land.*" *Id.* at 3. According to the ALJ, because funds that have accrued as of the date of death are intangible property, no longer associated with any land, AIPRA does not "adequately provide" for the distribution of trust personalty beyond siblings. *Id.* The ALJ concluded that because, prior to AIPRA, the Department consistently applied state rules of intestate succession to Indian trust property, it makes sense to fall back to state law "where AIPRA does not apply." *Id.* at 4.

After allowing for responses from the parties, and receiving none, the ALJ entered the Reopening Order and directed that Decedent's trust personalty be distributed to Mayberry pursuant to the laws of inheritance of the State of Minnesota. Reopening Order at 1. BIA appealed the Reopening Order to the Board, arguing that AIPRA does apply, that Mayberry is not an eligible heir under AIPRA, and that Decedent's trust personalty should pass under AIPRA to the Tribe. Notice of Appeal, June 6, 2012 (AR Tab 5). BIA contends that in enacting AIPRA, Congress intended to create a uniform Federal probate code to replace the different state rules of inheritance that previously applied, and that Congress intended to limit the class of family members who may be heirs to the immediate family members and lineal descendants listed in AIPRA. *Id.* at 3. BIA argues that the Board should reverse the Reopening Order and issue an authoritative interpretation of AIPRA's applicability to the distribution of trust personalty when a decedent dies intestate.<sup>2</sup> *Id.* at 4.

## Discussion

### I. Introduction

We agree with BIA that the ALJ's Reopening Order must be reversed.<sup>3</sup> The state law rules of inheritance that would have applied in the present case, before the enactment of AIPRA, would have done so only because Congress affirmatively provided, through Federal law, that state rules would apply and because the Department inferred such Congressional intent from Federal law. When Congress enacted AIPRA, it repealed the Federal statutory provisions that would have made state law applicable to Decedent's trust property, and created uniform inheritance rules, subject only to other Federal law or approved tribal codes. As applied to the facts of this case, AIPRA's language is clear in designating the Tribe as the heir to Decedent's entire trust estate, including his trust personalty. Even if that were not the case, it would not follow, in our view, that Congress intended state rules of intestate succession to again apply to Indian trust personalty when AIPRA's language is ambiguous regarding the rules of descent.

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<sup>2</sup> Mayberry did not file a brief in these appeal proceedings. Of course, to the extent Mayberry disagrees with AIPRA, *see supra* at 314-15, or would argue that it is constitutionally defective, those are not matters that the Board has jurisdiction to address.

<sup>3</sup> Although not raised by BIA, we note as an initial matter that Mayberry's petition for reopening apparently was untimely. *See* 43 C.F.R. § 30.243(a)(3) (1-year deadline after discovery for an interested party to petition for reopening). While reversal might be warranted on that ground alone, the ALJ would still have authority to reopen the case on his own motion, and may have implicitly intended to do so in issuing the Reopening Order.

We begin by reviewing the law of inheritance that applied to Indian trust property before AIPRA was enacted, and then describe the provisions of AIPRA that now govern inheritance, as well as related provisions in Federal probate law. We then discuss the applicability of AIPRA to the facts of this case, to explain why we conclude that AIPRA governs the disposition of Decedent's trust personalty and requires that it pass to the Tribe.

## II. Pre-AIPRA Rules of Inheritance

Prior to the enactment of AIPRA, Federal law broadly provided that the inheritance of trust allotments was governed by the rules of intestate succession (inheritance) of the state or territory in which the property was located. *See* Indian General Allotment Act, § 5, 24 Stat. 388, 389 (Feb. 8, 1887), 25 U.S.C. § 348 (1999). The language of § 348 refers only to “land,” and is silent with respect to trust personalty.

In 1910, Congress authorized Indian allottees to dispose of their allotments by will. Act of June 25, 1910, § 2, 36 Stat. 855, 856, codified as amended at 25 U.S.C. § 373. A few years later, Congress amended the 1910 statute, and in so doing, added personalty (“individual Indian moneys”) to the classes of trust property that were subject to disposition by will. Act of Feb. 14, 1913, § 2, 37 Stat. 678. The amendment also provided, in the case of an approved will that was subsequently set aside by the Secretary of the Interior as fraudulent, that “the property of the testator shall thereupon descend or be distributed in accordance with the laws of the State wherein the property is located.” *Id.* at 679, codified at 25 U.S.C. § 373.

In 1983, the Board broadly cited § 373 as Federal law under which “inheritance of both real and personal property held in trust by the United States for an Indian is made subject to the laws of the state in which the property is located.” *Estate of Richard Doyle Two Bulls*, 11 IBIA 77, 80 (1983). In *Estate of Samuel R. Boyd*, 43 IBIA 11 (2006), the Board recognized that § 373 does not address intestate succession except in the situation where a will has been set aside as fraudulent. *Estate of Boyd*, 43 IBIA at 20. But we saw no reason why Congress would not have intended the same result when no will ever existed, and thus we concluded that § 373's rule applying state law to the inheritance of trust personalty should govern even where no will existed.<sup>4</sup> *Id.*

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<sup>4</sup> Although *Boyd* was decided in 2006, the decedent in that case died before AIPRA's rules of inheritance became effective, and thus the Board was interpreting Federal law as it applied prior to AIPRA.

### III. AIPRA

In 2004, Congress enacted AIPRA, as an amendment to the Indian Land Consolidation Act, to more comprehensively address the severe fractionation of individually owned Indian trust and restricted lands, and the difficulty for estate planning caused by the application of different state probate laws to different trust and restricted real property interests. AIPRA, § 2, 118 Stat. 1773. The Congressional findings incorporated in AIPRA refer exclusively to trust or restricted “land,” e.g., the increasingly fractionated ownership of such “lands,” and the absence of a uniform general probate code for such “land.” *Id.* But, as further described below, AIPRA’s substantive provisions also address trust personalty, including the testate (i.e., through a will) and intestate disposition of trust personalty.

AIPRA provides in general that “the owner of an interest in trust personalty may devise such an interest to any person or entity.” 25 U.S.C. § 2206(b)(3)(B). AIPRA further provides that “[a]ny trust personalty that is not disposed of by a valid will shall descend in accordance with the applicable law of intestate succession as provided for in [§ 2206(a)].” *Id.* § 2206(b)(4)(B). Subsection 2206(a) provides that “[s]ubject to any applicable Federal law relating to the devise or descent of trust or restricted property, any trust or restricted interest in land *or interest in trust personalty* that is not disposed of by a valid will,” unless governed by an approved tribal code, “*shall descend* in accordance with— (i) [§ 2206(a)(2)-(5)]; and (ii) other applicable Federal law.” *Id.* § 2206(a)(1) (emphases added).

Subsection 2206(a)(2) contains AIPRA’s general rules governing the inheritance of trust and restricted property. Subsection 2206(a)(2)(A) provides that if there is a surviving spouse, the spouse “shall receive trust and restricted land and trust personalty in the estate.”<sup>5</sup>

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<sup>5</sup> Specifically, a surviving spouse receives a life estate without regard to waste in the decedent’s trust or restricted lands, and either one-third of the trust personalty (if the decedent is survived by one or more eligible heirs) or all of the trust personalty (if there are no eligible heirs). Following the subparagraphs determining the share of trust personalty and life estate interests that pass to a surviving spouse, AIPRA provides that “[t]he remainder shall pass as set forth in [§ 2206(a)(2)(B) (Individual and tribal heirs)].” 25 U.S.C. § 2206(a)(2)(A)(iii).

AIPRA defines “eligible heirs,” for purposes of § 2206, as “any of a decedent’s children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are—(A) Indian; or (B) lineal descendants within 2 degrees of consanguinity of an Indian; or (C) owners of a trust or restricted interest in a parcel of land . . . .” 25 U.S.C. § 2201(9). Nieces and nephews are not included in the classes of individuals who may be eligible heirs.

Where, as here, there is no surviving spouse of a decedent, AIPRA provides that

*the trust or restricted estate* or such remainder shall, subject to [§ 2206(a)(2)(A) and (D)], pass as follows:

- (i) To those of the decedent's children who are eligible heirs [including surviving children of deceased children of the decedent].
- (ii) If *the property* does not pass under clause (i), to those of the decedent's surviving great-grandchildren who are eligible heirs . . . .
- (iii) If *the property* does not pass under clause (i) or (ii), to the decedent's surviving parent who is an eligible heir, and if both parents survive the decedent and are both eligible heirs, to both parents . . . .
- (iv) If *the property* does not pass under clause (i), (ii), or (iii), to those of the decedent's surviving siblings who are eligible heirs . . . .
- (v) If *the property* does not pass under clause (i), (ii), (iii), or (iv), to the Indian tribe with jurisdiction over the interests in trust or restricted lands . . . .

25 U.S.C. § 2206(a)(2)(B) (“Individual and tribal heirs”) (emphases added).

#### IV. The Descent of Decedent's Trust Personality

As applied to the facts of this case, the descent of Decedent's trust personality under AIPRA is straightforward and we do not find any “discrepancy” in AIPRA's language. Subsection 2206(a)(2)(A) governs both trust realty and trust personality “in the estate,” and Congress's use of the terms “estate” and “property” in § 2206(a)(2)(B) is not limited to land. Indeed, the ALJ recognized that § 2206(a) “generally directs” the disposition of trust personality, not questioning that “the property” that passes to surviving children, grandchildren, great-grandchildren, parents, or siblings, under subparagraphs (i) through (iv), includes trust personality.

But even though the next subparagraph governing descent also refers to “the property,” the ALJ found problematic AIPRA's identification of the heir in that subparagraph as the Indian tribe “with jurisdiction over the interests in trust or restricted lands,” when applied to trust personality. OSC at 3; *see* 25 U.S.C. § 2206(a)(2)(B)(v). The ALJ posited that in some cases there may be multiple interests in lands on multiple reservations, or even cases in which a decedent owns no interest in trust or restricted lands and the estate consists entirely of trust personality. OSC at 3. Based on these concerns, the ALJ concluded that AIPRA did not adequately address trust personality, and he found this to be sufficient grounds to return to state rules of inheritance. *Id.*

But in the present case, we find no ambiguity in AIPRA's language. Decedent owned interests in a single White Earth allotment, and the ALJ concluded that the White Earth Band is the tribe with jurisdiction over that interest. *Id.* at 2. Because

§ 2206(a)(2)(B)(v) necessarily includes trust personality, the Tribe, as the “tribe with jurisdiction over [Decedent’s] interests in trust . . . land[,]” is the heir to his trust personality. Thus, contrary to the ALJ’s conclusion, there is a readily identifiable heir to Decedent’s trust personality under AIPRA, and there was no need to resort to resolving ambiguities or confusion that may arise under AIPRA in other cases.<sup>6</sup>

Even were that not the case, it would still be clear that Congress intended to address the descent of trust personality in the provisions of AIPRA. Indeed, Congress was more explicit than had previously been the case. *See Estate of Boyd*, 43 IBIA at 20. To the extent ambiguities or “discrepancies” in AIPRA may arise in other cases, the focus must be on Congressional intent. Prior to AIPRA it was common to refer to state law as “applying” to the probate of Indian trust property, but it is worth reiterating that state rules of inheritance only “applied” because Congress so provided. Before AIPRA was enacted, in the context of Federal law that clearly incorporated state law rules of inheritance for trust realty, and a Federal statute that did so in the case of an approved-then-cancelled will, *see* 25 U.S.C. § 373, the Board came to the conclusion that Congress, prior to enacting AIPRA, intended that state laws of inheritance apply generally to trust personality. *Estate of Boyd*, 43 IBIA at 20. While § 373 may have sufficed to support our conclusion in *Boyd*, we do not think it can support a conclusion in the post-AIPRA legal framework that Congress intended to incorporate state rules of inheritance for trust personality where AIPRA leaves off in identifying family members as heirs. Our conclusion is reinforced by the language in AIPRA providing that trust personality shall descend in accordance with § 2206(a)(2) – (5) and “other applicable Federal law,” 25 U.S.C. § 2206(a)(1)(B), making no mention of state law.<sup>7</sup>

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<sup>6</sup> We recognize that the underlying problems and policy considerations that prompted Congress to enact AIPRA had everything to do with Indian land and nothing to do with Indian trust personality. Even Congress’s interest in a uniform probate code was based on the estate planning difficulties caused when individuals owned interests in trust land in more than one state, a concern that does not apply to trust personality. *See Estate of Boyd*, 43 IBIA at 21 (trust personality deemed located in the state in which the decedent was domiciled). The question of whether or not Congress “adequately” considered trust personality may be a fair policy question, in some respects, but we are not convinced that it is relevant to our interpretation of AIPRA in this case.

<sup>7</sup> Because this case involves only one tribe with jurisdiction, we need not decide whether Congress’s use of “tribe” in § 2206(a)(2)(B)(v) was intended to include the plural “tribes,” and if so, how Congress intended trust personality to be divided, or whether and if so how subparagraph (v) applies when an estate consists only of trust personality. We note that if neither AIPRA nor other applicable Federal law provides for the descent of Indian trust property to an heir, there is Federal law governing the escheat of Indian trust property. *See* (continued...)



## Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board reverses the Reopening Order and reinstates the Decision.

I concur:

          // original signed            
Steven K. Linscheid  
Chief Administrative Judge

          //original signed            
Thomas A. Blaser  
Administrative Judge

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(...continued)  
25 U.S.C. § 373a (disposition of trust or restricted estate in the absence of heirs); *id.*  
§ 373b (restricted estate or homestead on the public domain).