Circuit Court for Baltimore County
Case No. 03-C-17-12251

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2540

September Term, 2018

COMPTROLLER OF MARYLAND

v.

ESTATE OF WILLIAM F. MEYERS, SR.

Kehoe,
Nazarian,
Arthur,

JJ.

Opinion by Nazarian, J.

Filed: February 7, 2020

William F. Meyers, Sr., died testate on December 12, 2012. He was survived by his wife, Anna Mae Meyers, and two adult children. His assets at the time of his death, as reported initially to the Baltimore County Register of Wills, totaled about $3.2 million in stock and real estate. He had other assets as well, including bank accounts, other real estate, and the home he owned with his wife as tenants by the entireties. Mrs. Meyers died about a year after her husband. Assets worth approximately $2.25 million were then distributed to Mrs. Meyers's estate.

The Comptroller of Maryland and the Estate of William F. Meyers, Sr. (the "Estate") dispute whether the Estate can claim the $2.25 million that passed to Mr. Meyers's wife as a marital deduction to Mr. Meyers's gross estate. If it can, the value of Mr. Meyers's taxable estate for Maryland estate tax purposes would fall below the $1 million exemption threshold in effect at the time he died and his Estate would have no estate tax liability.

This dispute began after the Estate failed to file a timely Maryland estate tax return. After sending at least three notices without a response, the Comptroller assessed taxes, interest, and penalties (totaling about $200,000) based on the $3.2 million figure, which did not include the marital deduction. The Estate appealed that assessment to the Maryland Tax Court, which, among other things: determined that the $2.25 million was allowable as a marital deduction under the terms of Mr. Meyers's will; held the Estate owed no estate taxes; and declined to uphold the assessment of interest and penalties. On the Comptroller's petition for review, the Circuit Court for Baltimore County affirmed, but remanded the case

to the Tax Court with instructions to value certain assets and include them in the estate.

The Comptroller argues on appeal that its assessment of estate taxes, interest, and penalties should have been upheld by the Tax Court. He argues that under the terms of Mr. Meyers's will, the $2.25 million was not distributed to Mrs. Meyers as a bequest—which would make it eligible to be claimed as a marital deduction—but instead passed to her as part of the residuary trust that the will established, which (the parties agree) would disqualify those assets from being claimed as a marital deduction. The Comptroller also argues that his assessment of interest and penalties should be upheld because it was proper at the time it was made. We hold that the Tax Court erred in its construction of the will and did not sufficiently explain its decision concerning interest and penalties. We reverse the order of the circuit court and remand with instructions to vacate the Tax Court's order and remand to the Tax Court for further proceedings consistent with this opinion.

I. BACKGROUND

A. General Principles.

The parties' briefs and arguments present their dispute entirely from down in the trees, if not the weeds, so we start by panning back out at least to the forest. First, the Estate itself.

> A *gross estate* refers to the total dollar value of all property and assets in which an individual had an interest at the time of the individual's death. Federal estate taxes are assessed on the basis of the *taxable estate*, which is the gross estate minus any allowable deductions.

Bandy v. Clancy, 449 Md. 577, 610 (2016) (emphasis in original) (McDonald, J., dissenting). In Maryland, a decedent's gross estate has two parts: "(1) the federal gross

estate as determined by the Internal Revenue Code, plus (2) any property not otherwise in the federal gross estate that is included in Tax-Gen. 7-309(b)(6)." *Comptroller of the Treasury v. Taylor*, 465 Md. 76, 89 (2019). The second piece does not appear to be at issue here.

At issue in this case is the *marital deduction*, the value of which "generally is the full value of all property in the gross estate that passes from the decedent to a surviving spouse, provided that the interest passing to the spouse does not terminate or fail." *Bandy*, 449 Md. at 610 (*citing* 26 U.S.C. § 2056) (McDonald, dissenting).

The parties, the Tax Court, and the circuit court assumed that the value of Mr. Meyers's federal taxable estate would be the same as his Maryland taxable estate, and we do the same here. But in 2012, when Mr. Meyers died, the exclusion amounts for federal and Maryland estate taxes were different: $5.12 million of a decedent's taxable estate was exempt from federal estate taxes and $1 million was exempt from Maryland estate taxes. In this case, then, the Estate apparently owed no federal estate taxes because Mr. Meyers's estate, even without applying the marital deduction, was valued at less than $5.12 million. But if the marital deduction were not allowed, the Estate *would* owe Maryland estate taxes because its value would exceed $1 million. And whether the $2.25 million could be taken as a marital deduction hinged on whether that amount passed to Mrs. Meyers as a "bequest" under the following provision of Mr. Meyers's will:[1]

[1] When presenting this case to the Tax Court and the circuit court, the Comptroller appeared to assert that the will established a marital *trust*. But on appeal, the Comptroller asserts instead that the will established a marital *bequest*. The Comptroller did not explain the

> If my beloved wife, ANNA MAE MEYERS, survives me, I give to her an amount equal to the lesser of (1) the maximum marital deduction available to my estate, less the value of all other property interests which qualify for the marital deduction and pass or have passed to my said wife either under provision of this, my Will, or in any manner outside of this, my Will; and (2) the lowest amount, if any (including zero) which, when added to the value of all other property interests which qualify for the martial deduction and pass or have passed to my wife either under another provision of this, my Will, or in any manner outside of this, my Will, after allowing for the unified credit against the Federal Estate Tax and the State Death Tax Credit (if use of this credit does not increase the State Death Taxes paid) reduce[s] to zero the Federal Estate Tax payable by my estate. It is my intention to use the maximum amount of any unified credit to fund the RESIDUARY TRUST as long as and provided that my estate is not required to pay any Estate Tax.
>
> For the purpose of determining the aforesaid amounts, the values and amounts of assets and deductions, as finally determined for Federal Estate Tax purposes shall be used. This bequest may be satisfied in cash or in kind, or partly in cash. For the purpose of allocating property to this bequest, any assets so allocated shall be valued at their fair market value on the date of distribution, and no assets shall be allocated thereto which do not qualify for the marital deduction.

(underlining in original). We will analyze this provision in greater detail later, but as a sneak preview, the action lies primarily in subsection (2) of the first paragraph and whether, as the Comptroller argues, the amount it defines necessarily is zero.

B. The Will, The Estate, And The Marital Bequest.

About three months after Mr. Meyers died, in March 2013, the Estate's personal

reason for the apparent inconsistency in its positions, but because the Estate does not dispute that the will did not create a marital trust, we assume that there was no marital trust, which is consistent with our own review of the will.

representative filed Mr. Meyers's will with the Register of Wills for Baltimore County. About nine months later, on January 27, 2014, the personal representative filed with the Register an inventory indicating that the estate was worth $3,238,500 and took the form of real estate and stock.

About two months after that, on or about March 25, 2014, the Comptroller's office received a partial copy of a docket sheet for Mr. Meyers's estate from the Register. Over the course of the next two years, the Comptroller sent three notices to the Estate's personal representative about its (missing) Maryland estate tax return. *First*, in July 2014, the Comptroller sent a letter. *Second*, in September 2015, the Comptroller sent a statutory notice and demand, relying on Maryland Code, §§ 13-303 and 13-402 of the Tax-General Article ("TG").[2] *Third*, in May 2016, the Comptroller sent a second notice informing the personal representative that if he did not respond within ten days, the Comptroller would assess taxes, interest, and penalties in accordance with TG § 13-402. The Estate did not respond to any of the Comptroller's correspondence or statutory notices, so on June 9, 2016, the Comptroller assessed taxes, interest, and penalties against the Estate based on the approximately $3.2 million value of the estate that the personal representative had reported

[2] TG § 13-303 provides in relevant part that, if a person fails to file a tax return, the Comptroller "shall mail the person or governmental unit a notice and demand for the return that requires the person . . . to file the return and to pay the tax within 30 days after the date on which the notice is mailed."

TG § 13-402 provides in relevant part that, if a person failes to file a return after receiving a notice and demand under TG § 13-303, the Comptroller "shall . . . (i) compute the tax by using the best information in the possession of the tax collector; and (ii) assess the tax due."

on the original January 2014 inventory. The Comptroller's assessment listed the following amounts:

> $117,880 in taxes;
>
> $42,992 in interest under TG § 13-601(d);[3]
>
> $11,788 as a late payment penalty under TG § 13-701(a);[4] and
>
> $29,470 as a penalty of for failure to comply with the statutory notice and demand under TG § 13-708.[5]

In the meantime, in September 2014, Mr. Meyers's personal representative had filed an amended inventory with the Register of Wills that claimed the value of the estate was $754,766.50 (in real estate and stock). Also in September 2014, the Orphans' Court approved the Estate's "Second and Final Administration Account." According to that

[3] TG § 13-601(d) provides that interest accrues beginning nine months from the date of death:

> Interest on unpaid Maryland estate tax begins 9 months after the date of the death of a decedent and applies to all Maryland estate tax that is not paid by that date, including a payment made in accordance with an alternative payment schedule.

[4] TG § 13-701(a) provides for a late-payment penalty of 10% of the unpaid tax:

> (a) Except as otherwise provided in this subtitle, if a person or governmental unit fails to pay a tax when due under this article, the tax collector shall assess a penalty not exceeding 10% of the unpaid tax.

[5] TG § 13-708 provides for a penalty of 25% of the unpaid tax if the taxpayer fails to timely pay tax in response to a statutory demand as provided for in the Tax General Article:

> (a) If, within the period required in a notice and demand for a return, a person or governmental unit fails to file the return and pay the tax due, the tax collector shall assess a penalty of 25% of the tax assessed under § 13-402 of this title.
>
> (b) A penalty under this section is in addition to the penalty provided under § 13-701 of this subtitle.

account, the value of the estate was $3,004,766.50 (in "[r]eal property" and "stock"). The remainder after expenses was $2,865,801.91, and of that, $2,111,035.41 (in real estate) was distributed to Mrs. Meyers's estate and $754,766.50 (in "corporate stock") was distributed to one of Mr. and Mrs. Meyers's sons.

On July 1, 2016, after receiving the Comptroller's June 2016 assessment, the Estate filed a Petition of Appeal in the Tax Court. The Tax Court conducted a trial on March 9 and October 25, 2017. At the end of the trial, the Tax Court entered an oral ruling stating that, among other things, the Estate owed no Maryland estate taxes. On November 29, it entered a written order holding the same and setting forth similar findings.

Because our review requires a precise understanding of the Tax Court's findings and conclusions, both oral and written, we reproduce a considerable portion of the Tax Court's critical legal conclusions or factual findings. In its oral ruling, after observing that the estate could have been handled better, the Tax Court concluded *first* that there was "nothing wrong" with the Comptroller's assessment of taxes:

> I'm really not here to judge another person's legal work, but I would have to say that **a lot of this could've been avoided it seems to me a lot of the time and energy on the part of a lot of people if all this had been done properly the first time. And that's all I'm going to say, okay? About that.**
>
> The Comptroller's office, you know, made an assessment based upon an original inventory that was filed, which based upon what was filed it was clear there had to be an estate tax return filed. Absolutely correct. Okay? So the assessment as it was originally filed, based upon what the -- what was filed with the Register of Wills, is absolutely what -- **there's nothing wrong with what the Register of Wills officer or the Comptroller's officer, whoever is in charge of the filing the estate tax returns, I find no fault whatsoever with what they**

> **did.**
>
> And then what kind of occurred was kind of a comedy of errors so-to-speak. Because apparently there was a misunderstanding by counsel that no estate tax return had to be filed if there was a marital deduction, okay, which could have been applied to the estate of Mr. Meyers. But, you know, you still have to file an estate tax return in Maryland, okay? Even if everything is going to the wife. Okay, so that was kind of the first problem. And apparently someone assumed that you didn't have to file one, and that's what created this problem from the beginning.

The Tax Court's *second* finding was that Mr. Meyers owned a 50% interest in the New North Point Company, and that the value of that interest was $657,966.00:

> [T]he first [finding] is regarding the tax returns filed by Mr. Meyers indic[ating] that he had a hundred percent interest in the corporation. However, I've got to weigh that against the other testimony and documentation that has been brought into evidence, okay?
>
> ***
>
> [B]ased upon the evidence that I've seen . . . it appears to the court that Mr. Meyers at the time of his death only had a 50 percent interest in the North -- New North Point Company.
>
> ***
>
> **The other question that I need to decide is the valuation, and I think that based upon the new evidence that was submitted, I find that the value of the 50 percent interest of William F. Meyers based on the appraisal of $657,966.**

Third, the Tax Court directed the Estate to file a Maryland Tax return, and when it did so, to include in the gross estate the value of Mr. Meyers's half of the "Eastern Avenue property" and any other property that was excluded that should have been included:

> With respect to the tax return that was filed there is still -- well it really, **the amended tax return still hasn't been filed, and I think that still needs to be filed, but when it is filed, and I'm directing that it shall be filed with the Comptroller's office, you need to include the other property that was for**

> **one reason or another was excluded**. Now, based upon the SDAT sheet it's clear to me that that's tenants by the entirety property. William F. Meyers and Anna Mae Meyers were married. It's very clear to me that that is, and it's the best evidence I have, I don't have any evidence that it was held as tenants in common. When husband and wife's name are on a deed the [p]resumption is . . . that it's owned by husband and wife so long as they were married, and they certainly were married. . . .

Fourth, the Tax Court found that Item V "set out a marital deduction":

> [A]nd the third finding I have to make, and **I find as a matter of law that the provision set forth in the will clearly set out a marital deduction, and I believe that was the intent of the testator. Not withstanding [sic] any changes in the law, I believe that the intent of the testator and the language as written is sufficient for finding that the estate passed to Mrs. Meyers.**

Fifth, and finally, the Tax Court concluded that "there's no tax owed [] to the State of Maryland for estate tax."

On or about November 8, 2017, the Comptroller moved for reconsideration. And on November 29, the Tax Court entered a one-line order summarily denying the Comptroller's motion for reconsideration, as well as an order memorializing the findings it had made on the record on October 25. The wording of the Tax Court's written order differed slightly from the wording of its oral ruling:

> 1. It is the finding of the Court that the assessment issued by the Comptroller's office was proper; and
>
> 2. It is the finding of the Court from the weight of the testimony and evidence that the deceased, William Fred Meyers, Sr., at the time of his death owned but a fifty percent (50%) interest in the New North Point Co., Inc.; and
>
> 3. It is the finding of the Court that the deceased's interest in the New North Point Co., Inc. at the time of death, pursuant to

> the Revised Valuation of the New North Point Co., Inc. is $657,966.00; and
>
> 4. It is the finding of the Court that the Marital Deduction provision of the Last Will and Testament of William Fred Meyers, Sr. is valid; and
>
> 5. It is the finding of the Court that the Estate Tax Return must still be filed with the Comptroller[']s office.
>
> NOW THEREFORE, it is hereby ORDERED that the Estate of William Fred Meyers, Sr. has NO TAX liability.

All told, then, the Tax Court found as follows:

> (1) the Comptroller's assessment was proper at the time it was made;
>
> (2) Mr. Meyers owned a 50% interest in the New North Point Company, and the value of that interest was $657,966.00.
>
> (3) Item V of Mr. Meyers's will is valid and sets out a marital deduction;
>
> (4) the Estate has no tax liability;
>
> (5) the Estate must file a Maryland Estate Tax Return; and
>
> (6) the Estate must include in the return the gross estate the value of Mr. Meyers's half the "Eastern Avenue property" and any other property that was excluded.

On December 22, 2017, the Comptroller filed a petition for judicial review of the Tax Court's decision in the circuit court. After briefing and a hearing, the court denied in part and granted in part the Comptroller's petition. The circuit court affirmed the Tax Court's finding that the Estate has no tax liability and the Tax Court's implicit decision not to uphold the Comptroller's assessment of interest and penalties. But it remanded the case to the Tax Court for a determination of the value of a property on Eastern Avenue owned by Mr. and Mrs. Meyers so that the value of Mr. Meyers's portion could be included as part of his estate.

The Comptroller appealed. We include additional facts as necessary below.

II. DISCUSSION

The Comptroller raises two questions[6] that we rephrase: Did the Tax Court err in (1) the way it construed Item V of the will; and (2) declining to uphold the Comptroller's assessment of interest, a late-payment penalty, and a penalty for failure to comply with a statutory notice and demand?[7] We hold that the Tax Court erred in its construction of the will. We hold further that that the Tax Court failed to explain its decision on interest and penalties sufficiently and that its decision is not effectively reviewable on appeal. We reverse the order of the circuit court affirming the Tax Court decision and remand to the

[6] The Comptroller phrases the Questions Presented as follows:

> 1. Is the value of a marital deduction set up in Item V of the decedent's will, which specifies a value of the *lesser* of a formulary amount equal to $2,250,000 or a formulary amount equal to $0, limited to $0?
>
> 2. Even if the Estate of William Fred Meyers Sr. ultimately—and belatedly—proved that it has no estate tax liability, should the assessments of interest, late-payment penalty, and penalty for failure to comply with a notice and demand to file an estate tax return nevertheless be affirmed?

[7] The Estate identifies three Questions Presented, which we reproduce verbatim:

> 1. Were the RESIDUARY TRUST and/or FAMILY TRUST provisions of the decedent's Last Will and Testament applicable?
>
> 2. Is real property held as tenants by the entireties at the time of death property includable in an Estate such that its value is subject to Maryland tax?
>
> 3. Was [the Tax Court's] ruling that where no tax liability exists, no interest or penalties result?

The second question raises an issue not properly before this Court because the Estate did not file a cross-appeal. We will therefore not consider that question.

circuit court with instructions that it remand the case to the Tax Court for further proceedings consistent with this opinion.

The Tax Court is an administrative agency, and we review its decisions under the same appellate standards that apply to agency decisions generally. *Siegel v. Comptroller of Md.*, 186 Md. App. 411, 421 (2009) (*citing SDAT v. Consolidation Coal Sales Co.*, 382 Md. 439, 453 (2004)). We look through the circuit court's decision and review the decision of the Tax Court itself. *Frey v. Comptroller of the Treasury*, 422 Md. 111, 136 (2011). We "may uphold a Tax Court decision only on the findings and reasons given by the Tax Court." *NIHC, Inc. v. Comptroller of the Treasury*, 439 Md. 668, 683 (2014). Put another way, "in judicial review of agency action the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency." *United Steelworkers of Am. AFL-CIO v. Bethlehem Steel Corp.*, 298 Md. 665, 679 (1984); *accord Comptroller of the Treasury v. Taylor*, 465 Md. 76, 98 (2019).

We review the Tax Court's factual findings for substantial evidence in the record, which means that "a factual finding must be upheld if it is such that a reasoning mind reasonably could have found it from the agency record . . . ." *Comptroller of the Treasury v. Johns Hopkins Univ.*, 186 Md. App. 169, 181 (2009) (citations omitted). We review the Tax Court's purely legal decisions without deference. *Johns Hopkins*, 186 Md. App. at 181 (*citing SDAT*, 331 Md. at 72); *see, e.g.*, *Frey*, 422 Md. at 138 (reviewing without deference a decision of the Tax Court when it was based on an analysis of case law).

A. The Tax Court Erred In Its Construction Of Item V Of Mr. Meyers's Will.

Because the interpretation of a will is a question of law, *Pfeufer v. Cyphers*, 397 Md. 643, 648 n.5 (2007), we review without deference the Tax Court's interpretation of the will's Item V. *See Frey*, 422 Md. at 138. In construing a will, the testator's intention "is the polar star, and must prevail, if consistent with the rules of law[.]" *Castruccio v. Estate of Castruccio*, 239 Md. App. 345, 355 (2018) (*quoting Walters v. Walters*, 3 H & J. 201, 205 (Md. 1811)). But the court's job is to determine the testator's *expressed* intent, not his *presumed* intent. *Pfeuer*, 397 Md. at 649. "Generally, that intent is gathered from the four corners of the will, with the words of the will given their plain meaning and import." *Id.* (cleaned up). And "[w]ords having legal significance . . . will be construed in that sense unless the will clearly indicates otherwise." *Id.* (internal quotations and citation omitted).

Here again is the text of Item V of Mr. Meyers's will, this time with the relevant portions emphasized:

> If my beloved wife, ANNA MAE MEYERS, survives me, **I give to her an amount equal to the <u>lesser</u> of** *(1) the maximum marital deduction available to my estate,* less the value of all other property interests which qualify for the marital deduction and pass or have passed to my said wife either under provision of this, my Will, or in any manner outside of this, my Will; **and** *(2) the lowest amount, if any (including zero) which,* when added to the value of all other property interests which qualify for the martial deduction and pass or have passed to my wife either under another provision of this, my Will, or in any manner outside of this, my Will, after allowing for the unified credit against the Federal Estate Tax and the State Death Tax Credit (if use of this credit does not increase the State Death

> Taxes paid) *reduce[s] to zero the Federal Estate Tax payable by my estate*. **It is my intention to use the maximum amount of any unified credit to fund the RESIDUARY TRUST as long as and provided that my estate is not required to pay any Estate Tax.**
>
> For the purpose of determining the aforesaid amounts, the values and amounts of assets and deductions, as finally determined for Federal Estate Tax purposes shall be used. This bequest may be satisfied in cash or in kind, or partly in cash. For the purpose of allocating property to this bequest, any assets so allocated shall be valued at their fair market value on the date of distribution, and no assets shall be allocated thereto which do not qualify for the marital deduction.

(underlining in original, other emphases added). The Comptroller argues that because there is no factual dispute that the value of Item V(1) is $2,294,887 and the value of Item V(2) is $0, and because there can be no dispute that the "lesser" of those two numbers is $0, then the value of the marital deduction is $0. The Estate declines to offer its own construction of Item V, even after numerous opportunities, indeed entreaties, at oral argument. Instead, the Estate tries a "nothing to see here" strategy—it argues that the provision "makes [] no sense," then points over there, to the conclusion that the direct distribution of the assets to Mrs. Meyers's estate after she died, in accordance with the final account approved by the Orphan's Court, resulted in no tax liability.

Item V is no model of clarity, but we can interpret it nonetheless. By its terms, Item V establishes a marital bequest from Mr. Meyers to his wife that is calculated according to a formula: the "amount equal to the lesser of" (1) the maximum marital deduction available to Mr. Meyers's estate (less the value of other property interests that passed to his wife, if any) and (2) the lowest amount which would reduce to zero the Estate's federal estate tax

liability (after "allowing for" certain credits).

It doesn't appear that the Tax Court applied that formula. As best we can discern, as we explain further below, the Tax Court divined Mr. Meyers's intent to establish a marital bequest eligible for a marital deduction from this sentence in Item V:

> It is my intention to use the maximum amount of any unified credit to fund the RESIDUARY TRUST as long as and provided that my estate is not required to pay any Estate Tax.

Although the Tax Court's reasoning is a bit difficult to follow, it appears that the court interpreted that sentence to mean that the Estate would fund a residuary trust in the amount of $1 million (*i.e.*, the amount necessary to qualify for the Maryland estate tax exemption in 2012) and a marital trust with the rest. That approach, expressed by the Tax Court in an exchange with counsel for the Comptroller, would seem to fulfill Mr. Meyers's ostensible intent to avoid both federal and state estate tax liability:

> It says that -- because **the residuary estate is supposed to be, as I read it, everything that's not in the marital estate.** Okay? Your witness is shaking her head. But let's talk about that a minute. Because it says that, I give to my wife an amount equal to the lesser of the maximum marital deduction available in my estate, less value is (inaudible) the property that she has already received. Okay? And the lowest amount, and, not or, and the lowest amount, if any, including zero, which when added to the value of the other property which qualified for marital deduction, pass or passed to my wife either under another provision of the will or any manner outside of my will. After allowing for the [] unified credit against a federal estate tax and state tax death credit. **If the use of the credit does not decrease the state death tax is paid it is my intention to use the maximum amount of any unified credit, which would be a million dollars on estate tax, to fund the residuary trust so long as that's provided is not required to pay any state tax.**

> **It says, It is my intention to use the maximum amount of any unified credit, the unified credit [] is not the marital deduction, to fund the residuary estate. So why -- the residuary estate, why wouldn't that be the million dollars on the 998 and then everything else goes into the marital, the Item 5, which would constitute the marital deduction amount?**

(emphasis added.) The Tax Court went on to conclude that Mr. Meyers's intent as to Item V was consistent with analogous clauses in wills—clauses it had "seen a hundred times"—that set up marital and residuary trusts for the purpose of avoiding estate taxes:

> [COUNSEL FOR THE COMPTROLLER]: **The language in that intention part is aspirational.**
>
> THE COURT: **Oh no, no, no. It's not -- that's not aspirational, that section, which I've seen a hundred times, basically it's for the purpose of making sure that we're going to use the maximum unified credit goes into residuary trust, okay? Because the purpose of this is not to have to pay the government any taxes. That's why you have the residual -- you have a marital -- basically a marital trust and a residuary trust. The residuary trust you want to use your unified credit, since we had to use it, we have to, at that point had to use it because we didn't have portability between husband and wife, okay? You wanted to use your unified credit and that's why that's constructed that way. In my opinion. Now if that's not correct and you can show me some law, I'm great to hear that.**
>
> [COUNSEL FOR THE COMPTROLLER]: Right.
>
> THE COURT: But that's my understanding of it.
>
> [COUNSEL FOR THE COMPTROLLER]: I can't show you any law, but what I can say is this whole item is directed to federal estate tax.
>
> THE COURT: No, it also says –
>
> [COUNSEL FOR THE COMPTROLLER]: It hasn't got any –
>
> THE COURT: No, no, no.
>
> [COUNSEL FOR THE COMPTROLLER]: -- reference to

> state tax.
>
> THE COURT: No. And the state death tax credit.
>
> [COUNSEL FOR THE COMPTROLLER]: Which doesn't exist.
>
> THE COURT: It also applies to state death taxes.
>
> [COUNSEL FOR THE COMPTROLLER]: It didn't exist --
>
> THE COURT: Well this is --
>
> [COUNSEL FOR THE COMPTROLLER]: -- in 2012. So you take that out --
>
> THE COURT: Well --
>
> [COUNSEL FOR THE COMPTROLLER]: -- the only reference is to the federal estate tax. And when we go back up to the introductory prefatory language of the section, it's an amount equal to the lesser of.
>
> THE COURT: **The clear intent is to put in this particular -- Item 5, monies that apply for a marital deduction, the balance goes into the residuary trust because you want to use up your unified credit. That is the absolute**. . . .

We appreciate that the Tax Court sought to effectuate Mr. Meyers's "intention to use the maximum amount of any unified credit to fund the residuary trust," for the Estate not to pay estate tax, and Mr. Meyers's desire to avoid estate taxes generally.[8] But when interpreting a will, it's not the intent the terms *suggest* that governs; it's what the terms

[8] The Comptroller argues that by its express terms, Item V does not suggest "that Maryland estate taxes were even contemplated . . . ." The Tax Court did not agree with the Comptroller's view on this point and the Comptroller does not convince us that Mr. Meyers did not intend to minimize both federal and state tax liability by way of Item V. We don't have enough information to determine whether Item V would have minimized federal estate tax liability or both state and federal estate tax liability if it were applied under the tax laws for which it was intended (*see* discussion on page 19 and footnote 10, below). But it is not necessary for us to resolve that question for us to interpret the will by its express terms.

actually say, however undesirable the result. *Pfeuer*, 397 Md. at 649. And Item V does not support the Tax Court's application of it, as best we can discern.

It appears that in finding that a marital deduction applies, the Tax Court either ignored or changed Item V's "either / or" formula. And as such, the Tax Court erred. A court (or agency such as the Tax Court) may not read into a will terms that aren't there in order to minimize a testator's estate tax liability. *Frank v. Frank*, 253 Md. 413, 415, 420 (1969) (affirming circuit court's declaratory judgment that, even if drafters of the will intended otherwise, the express language of decedent's will unambiguously meant that his wife's testamentary power over the disposition of residuary trust assets did not include the power to dispose of those assets for her own use or benefit, which had the effect of precluding the trust assets from qualifying for the marital deduction). Item V's formula determines the value, if any, of the will's marital bequest, and the Tax Court should have applied that formula to the assets in the Estate.

The Estate argues that Item V "makes no sense whatsoever," and implies that the tax savings Item V attempted to set up could not work under the tax laws in effect in 2012, when Mr. Meyers died. In the Estate's view, it is either nonsensical or impossible to apply Item V strictly.[9] The Tax Court appears to have credited this position—it stated that

[9] As for the Estate's other arguments, neither convinces us the Tax Court was correct in upholding the marital deduction. The Orphans' Court's approval of the final account does not affect our decision—nothing in the record suggests that the Orphans' Court ever construed the will. And the direct distribution to Mrs. Meyers's estate also does not affect the Maryland estate tax liability of *Mr. Meyers's* estate because the value of his estate is a function of its value at the time of *his* death, a point the Estate conceded during oral

"[notwithstanding] any change in the law," it believed that "the intent of the testator and the language as written is sufficient" to find the estate passed to Mrs. Meyers and the marital deduction applied. The Comptroller agrees as well that Item V appears to have been intended for an outdated tax scheme. Although neither the parties nor the Tax Court explained this well, they all seem to agree that Item V likely was drafted in a way that would minimize estate tax liability under a pre-2005 set of tax laws, but that by 2012 would not work the same way.[10] For instance, it appears that certain parts of the formula set forth in Item V may no longer be relevant to calculating the value of the marital deduction—*e.g.*, if, as the Comptroller represents, the State Death Tax Credit referenced in Item V(2) was repealed in 2005 and was replaced with a deduction.

At first glance, there is some difficulty in applying a formula for which inputs may be missing. But again, the language of the will controls, not the tax laws that were (or weren't) in effect at the time Mr. Meyers died. And the change in the tax laws creates no ambiguity in the language of Item V that we can discern.[11] So as best we can discern its

argument. *See* 26 U.S.C. § 2033 ("The value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.").

[10] The authors of a treatise on estate administration in Maryland observe that under TG § 7-309, "there are now in effect seven different estate tax regimes, depending on the decedent's date of death . . . ," all of which have different requirements and consequences, including whether a Maryland estate tax return must be filed and the phase-out of the federal state death tax credit, among others. Allan J. Gibber and Michaela C. Muffoletto, *Gibber on Estate Administration* § 9.1 at 746 (6th ed. 2018).

[11] Wills can have patent or latent ambiguities, as we recently explained in *Castruccio*, 239 Md. App. at 361–62, but we discern neither here:

> a "latent ambiguity" [] is "an ambiguity that is not apparent merely from reading the text of the donative document but

reasoning, the Tax Court erred as a matter of law in construing Item V of the will as intending to eliminate estate tax liability, then reverse-engineering the analysis to fit that purported intent.

Although we could attempt to interpret Item V ourselves, that would require us first to assign values to V(1) or V(2), a task the Tax Court should perform in the first instance. We agree with the circuit court that the Tax Court made no findings of fact about what those values are, but we disagree that those findings can be inferred from the Tax Court's comments on the record or its determination that there is no tax owed. Instead, the Tax Court should work through the language of Item V, as written; calculate the relative values of V(1) and V(2); assign an ultimate value to the marital bequest Item V creates; and calculate the tax the Estate owes from the result. Accordingly, we reverse the circuit court's affirmance and remand the case with instructions to vacate the Tax Court order and remand to the Tax Court for further proceedings consistent with this opinion.

> becomes apparent from extrinsic evidence." *Restatement (Third) of Property (Wills and Other Donative Transfers)* § 11.1 cmt. c (2001). "Language in a will, for example, that devises property 'to my cousin John,' contains a latent ambiguity if evidence extrinsic to the document reveals that the testator had no cousin named John when he executed his will but did then have a nephew named John and a cousin named James." *Id*. A latent ambiguity is to be contrasted with a patent ambiguity, which "is apparent on the face of the will itself, as, for example, when different clauses of a will dispose of the same plot of land to different devisees." *Emmert v. Hearn*, 309 Md. [19, 27 n.4 (1987)].

B. The Tax Court Did Not Sufficiently Explain Its Decision Concerning Interest And Penalties.

The next question is whether the Tax Court erred in declining to uphold the assessment of interest, a late payment penalty, and a penalty for failure to comply with a statutory notice and demand. We are unable to review the Tax Court's decision concerning interest and penalties meaningfully because it failed to explain what that decision was and the reasoning behind it.

As an initial matter, we observe that the recalculation of the value of Mr. Meyers's estate on remand may affect the appropriate calculation of interest and penalties. But it may not, and that question is not the one before us. The particular question before us is whether the Tax Court erred in declining to uphold the Comptroller's June 2016 assessment of interest and penalties based on the $3.2 million value of the estate reflected in the initial January 2014 inventory that the Estate's personal representative filed with the Register of Wills. The parties did not cite, and we did not find, any place in the administrative record where the Tax Court made any explicit decision on that question or where it explained the grounds for its ruling. We found one place where the Tax Court discussed penalties: at the conclusion of the March 9, 2017 hearing, in the context of ordering the Estate to provide additional information and continuing the trial to a later date:

> THE COURT: All right. I don't want the Comptroller to have to do anything else in this, okay?
>
> [COUNSEL FOR THE ESTATE]: I understand.
>
> THE COURT: Because they've already spent a whole lot of time, and I will be very honest with you, if I could assess a penalty just to assess a penalty for everything that everybody has been through, I would, but I'm not sure I can and hope that

I won't have to get into Jameson. Okay?

Otherwise, in its oral ruling at the October 25 hearing, and in its written order, without distinguishing between the tax assessment and the interest and penalties assessments, the Tax Court found that the Comptroller's assessment was proper when made.

If we were to infer what may seem obvious—that the Tax Court believed that it could not, as a matter of law, allow the assessment of interest and penalties when it held that no estate tax was ever due—we would be engaging in a task that belongs as a threshold matter to the Tax Court. *See, e.g.*, *United Steelworkers*, 298 Md. at 679–80 (remanding case to the agency so that it could set forth findings and explain its decision, and reasoning that: "Were we to search the subject record for evidence sufficient to support any one or more of the theories advanced by Steelworkers or by MOSH, and then to decide if that theory constitutes a violation of the general duty clause, we would be performing the administrative function that MOSHA commits to the Commissioner, and not our proper function of judicial review"). Put another way, we are unable to decide whether the Tax Court's apparent waiver of the interest and penalties assessed by the Comptroller was appropriate because it stated neither the decision itself nor the underlying reasoning.

For its part, the Comptroller argues that the interest and penalties should be upheld (even if there were no tax liability) because the Tax Court found that the Comptroller's initial tax assessment was properly made. The Comptroller details the Estate's failures to respond to notices and other alleged shortcomings as support for its position that imposition of interest and penalties is appropriate, even in the event that we affirm the Tax Court's

decision that there is no Maryland estate tax liability.

In support of its argument, the Comptroller relies primarily on *Comptroller v. Jameson*, in which the Court of Appeals upheld the Tax Court's affirmance of the Comptroller's assessment of interest on the late payment of estate taxes even though subsequent payment of state inheritance taxes eliminated the original estate tax liability. 332 Md. 723, 736 (1993). The Court of Appeals reasoned that the estate owed tax at the time the return was due because, under the statute then in effect, the estate tax liability could not be eliminated until the inheritance taxes were paid. *Id.* Because the inheritance taxes were not paid until later, the interest assessment on overdue estate taxes was proper when it was made. *Id.* And that holding makes sense in light of the overarching purpose of the Comptroller's authority to impose interest and penalties on the late payment of taxes: "as an inducement to pay taxes and is levied for a failure to pay them." *Comptroller v. Campanella*, 265 Md. 478, 486 (1972).

Jameson does support the general proposition that the Comptroller may assess interest for late payment of estate taxes, even when the tax liability is later determined to be zero. But nothing in *Jameson* ***requires*** the Tax Court to uphold such an assessment under any circumstances.[12] Instead, the standard for whether the Tax Court appropriately

[12] The Comptroller relies on two other cases that do not affect our reasoning or conclusion. The first case, *Comptroller v. Phillips*, is inapplicable because the question of whether the Comptroller properly assessed interest and penalties was neither before nor decided by the Court. 384 Md. 583, 595 (2005). The second case, *Comptroller v. Campanella*, held that there was no statutory authority "for the repayment of interest incurred by late filing of the Maryland estate tax" where later events demonstrated that no Maryland estate tax was due. 265 Md. 478, 487 (1972). It reversed the Tax Court's order requiring the Comptroller to

waived interest and penalties imposed by the Comptroller (regardless of whether estate taxes are due) was stated by the Court of Appeals in *Frey*, 422 Md. at 184–87, and expanded in the recent case of *Taylor*, 465 Md. at 94–95. Under TG §§ 13-510(a)(1), 13-528(a)(1)–(2), 13-606, and § 13-714,[13] the Tax Court has the authority to waive interest and penalties "for 'reasonable cause.'" *Taylor*, 465 Md. at 94–95; *Frey*, 422 Md. at 184–85, 185 n.21. But the party appealing an interest and penalties assessment must demonstrate "with affirmative evidence that reasonable cause exists or that the tax collector's decision was an obvious error." *Taylor*, 465 Md. at 94 (*quoting Frey*, 422 Md. at 187). As applied to this case, the Estate bore the burden to establish, through "affirmative evidence," that reasonable cause to waive interest and penalties existed or that there was a clear error in the Comptroller's assessment of them. There is no indication in the record that the Tax

refund the interest as well as the taxes. *Id.* But again, like *Jameson*, nothing in *Campanella* suggests that the Tax Court is *required* to uphold the Comptroller's assessment of interest and penalties if proper when made. Put another way, nothing in *Campanella* suggests that the Tax Court lacks the discretion to waive interest and penalties when the taxpayer met his burden to show error or reasonable cause. *Campanella* did not approach the question from that perspective and, as we explain above, the standard for waiver of interest and penalties is set forth in *Frey* and *Taylor*.

[13] TG § 13-510(a)(1) provides that a party may appeal to the Tax Court from "a final assessment of tax, interest, or penalty" under the Tax-General Article.

TG § 13-528(a)(1) provides that the Tax Court has "full power to hear, try, determine, or remand any matter before it" and TG § 13-528(a)(2) provides that "[i]n exercising these powers, the Tax Court may reassess or reclassify, abate, modify, change or alter any valuation, assessment, classification, tax or final order appealed to the Tax Court."

TG § 13-606 provides: "For reasonable cause, a tax collector may waive interest on unpaid tax."

TG § 13-714 provides: "For reasonable cause, a tax collector may waive a penalty under this subtitle."

Court considered or applied that standard—as we note above, the Tax Court made no explicit decision on this question. Accordingly, we reverse the circuit court's order concerning this issue and remand with instructions to vacate the Tax Court's order and remand the case for further proceedings consistent with this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED AND CASE REMANDED WITH INSTRUCTIONS TO VACATE THE ORDER OF THE TAX COURT AND REMAND TO THE TAX COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. PARTIES TO SPLIT COSTS.