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FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE

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WILLIAM M. COX, SR.
Commissioner

In the matter of:

ESTATE [REDACTED]

Contact: [REDACTED]

FINAL RULING NO. 2008-02
January 9, 2008

Inheritance and Estate Tax Refund
for the tax period October 24, 2001

FINAL RULING

The Department of Revenue ("the Department") conducted an audit of the Inheritance and Estate Tax return of the Estate of [REDACTED] ("the Estate") for the taxable period [REDACTED], 2001, the date of death of [REDACTED] ("the decedent"). This audit resulted in an additional assessment of Inheritance and Estate Tax due the Commonwealth of Kentucky in the amount of \$ [REDACTED] (plus interest). The estate paid the additional assessment and submitted a timely protest to the Department requesting a refund.

Refund Request as of December 18, 2007

Tax Year	Refund Request	Interest	Total
[REDACTED]/2001	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

A conference was held on [REDACTED], 2004. At issue is the allocation of an allowable credit among the beneficiaries of the Estate.

KRS Chapter 140 sets forth Kentucky's Inheritance and Estate Tax laws on transfers of property made in contemplation of, or at death. See KRS 140.010 *et seq.* An estate is entitled to a credit for property transfers if that property was transferred to the decedent within five years prior

to the death, and a tax was paid on the prior transfer under the provisions of KRS Chapter 140. See KRS 140.095(2).

In this case, the Estate included property previously subject to Inheritance and Estate Tax within five years of the decedent's death. Therefore, the Estate is entitled to a credit based upon the prior transfer when calculating its Kentucky Inheritance and Estate Tax liability.

The position of the Estate is that the credit for prior transfers should be allocated only among two of the nine beneficiaries named in the decedent's Last Will and Testament. These two beneficiaries, [REDACTED] and [REDACTED], were also contingent beneficiaries of the same property transferred from, and subject to Inheritance and Estate Tax in the prior estate. The decedent amended her will to include them shortly after she received the property from the prior estate.

The Department disagrees with the Estate, based upon the express language of the governing statute. KRS 140.095(3) addresses the allocation of the prior transfer credit and provides in pertinent part:

If the estate of the immediate decedent consists in part of property not previously transferred and taxed as described in subsection (2), it shall be presumed for the purpose of this subsection, unless the contrary clearly appears, that each distributive share of the entire estate includes the same proportion of the previously taxed property as the entire value of each share bears to the aggregate value of all the entire shares.

In other words, the credit is to be allocated among all the beneficiaries in an amount equal to each beneficiary's proportionate share of the value of the entire estate, unless there is clear evidence to the contrary.

In this case, the decedent's Last Will and Testament did not designate that monetary bequests to [REDACTED] and [REDACTED] were to be paid from amounts representing the previously taxed property. Nor did the evidence presented by the Estate indicate as much. The assets of the Estate were converted to cash and the proceeds commingled before disbursement of the monetary bequests. Thus, there is no clear evidence that the decedent intended the previously taxed property to be segregated and disbursed only to beneficiaries [REDACTED] and [REDACTED]. Accordingly, the credit must be allocated among all the beneficiaries as stated in the KRS 140.095(3), rather than only to beneficiaries [REDACTED] and [REDACTED].

Based on the foregoing, the additional assessment of Inheritance and Estate Tax in the amount of \$[REDACTED] (plus interest) is proper. Therefore, the Estate's request for a refund of the payment of the additional tax assessment is denied.

This letter is the final ruling of the Department of Revenue.

APPEAL

You may appeal this final ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this final ruling, your petition of appeal must be filed at the principal office of the Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40602-2120, within thirty (30) days from the date of this final ruling. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. Contain the petitioner's or appellant's position as to the law and facts; and
4. Include a copy of this final ruling with each copy of the petition of appeal.

The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 2 (3) of 802 KAR 1:010:

1. An individual may represent himself in hearings before the Board;
2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and
3. An attorney who is not licensed to practice in Kentucky may practice before the Board if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,
Finance and Administration Cabinet



Douglas M. Dowell
Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED