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LORI HUDSON FLANERY  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

ESTATE OF [REDACTED]

Contact: [REDACTED]

FINAL RULING NO. 2014-45  
December 12, 2014

Inheritance and Estate Tax Refund Denial  
for the tax period [REDACTED] 2008

**FINAL RULING**

The Department of Revenue's audit of the Estate of [REDACTED] ("Estate") for the taxable period [REDACTED] 2008 resulted in an assessment of Inheritance and Estate Tax due to the Commonwealth. The assessment was paid in full and a subsequent refund was requested.

Tax Year	Refund	Interest through 12/12/2014	Total Due
[REDACTED] 2008	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

At issue is whether beneficiaries, [REDACTED] and [REDACTED], nephew and great-nephew of [REDACTED] (the "Decedent"), are free from the inheritance tax liability on their distributive shares of the [REDACTED] according to Article 5, §5.2 of the Decedent's Last Will and Testament (the "Will").

[REDACTED] and [REDACTED] each inherited from the Decedent according to the Will. As reported on the Inheritance and Estate Tax Return (the "Return"), [REDACTED] received property valued at \$ [REDACTED] and [REDACTED] received property valued at \$ [REDACTED]

The Will, created on [REDACTED] 2008, provided in Article 2 the entire estate was to be given to the Trustee then serving under the [REDACTED] Trust (the "Trust"), "to be administered and distributed in accordance with" and "subject to any amendment to" the Trust prior to the Decedent's death. The Trust, established in [REDACTED], had been amended periodically, most recently on [REDACTED], 2008, the same day the Will was created. Article 5, §§5.2 and 5.3 of the Will provides:

All Death Taxes on or with respect to any property required to be included in my gross estate for Death Tax purposes, whether or not passing under this Will, shall be charged against my Residuary Estate and may be paid in the order and out of those assets of my Residuary Estate that my Executor deems best without reimbursement from any person, even though such taxes or a part thereof may be by law imposed on, or payable by, the recipient of such property.

In obtaining funds to pay these Debts, Expenses and Death Taxes, my Executor may enter into any transaction authorized by this Will with the Trustee of the [REDACTED] Trust or request all or part of the necessary funds from the Trustee. If the Trustee . . . has the authority to pay part or all of the Debts, Expenses and Death Taxes, and indicates a desire to do so, then my Executor may allow the Trustee to make those payments.

The original Trust Agreement provided for the payment of all taxes "[i]f there are not sufficient assets in the Settlor's estate" (see Art. 3 §3.2), and for such payments to be charged to the Trust "without apportionment or charge against any beneficiary of the trust estate" (see Art. 3 §3.3 (D)(3)).<sup>1</sup> In 2008, Article 4, "Distributions after Death of Settlor," was amended in its entirety, providing in part:

Allocation of Death Taxes. Notwithstanding any provision of the Agreement to the contrary, Settlor directs that all Death Taxes payable by reason of Settlor's death shall be allocated to, and collected or otherwise recovered from, the shares of property passing to, or to any trust for the benefit of, "Noncharitable Beneficiaries" (hereinafter defined) by reason of Settlor's death, including, without limitation, any share of property passing to any Noncharitable Beneficiary under this agreement. . . . [T]he term "Noncharitable Beneficiaries" shall mean all persons to whom or for whom any beneficial interest (whether outright or in trust) in Settlor's property passes at the time of or by reason of Settlor's death, other than any Charitable Organizations, and the term "Noncharitable Beneficiary" means any one of the Noncharitable Beneficiaries.

Art. 4 §4.8 (emphasis original).

<sup>1</sup> An exception was made for "property passing in accordance with a qualified disclaimer by Wife pursuant to Section 2158 of the [Internal Revenue]Code." Art. 3 §3.3(D)(3).

The Estate timely filed its inheritance tax return within nine months from the date of death, remitting the tax due less the amount calculated for the distributive shares received by [REDACTED] and [REDACTED] as a result of the Decedent's death. Subsequently, the Department of Revenue billed [REDACTED] and [REDACTED] each individually, in accordance with KRS 140.190(2), which was paid under protest. See also, Match's Ex'x v. Match's Ex'rs, 306 Ky. 334, 207 S.W.2d 759, 761 (Ky. 1948)(the obligation to pay the inheritance tax is placed as much upon the beneficiary as upon the executors of the estate).

Although [REDACTED] and [REDACTED] agree that inheritance tax is due on their distributive shares, they seek a refund, claiming that the Estate is responsible for the payment of the taxes based upon the language in Article 5, §5.2 of the Will quoted above.

### Law and Analysis

Absent a clause in a will providing for the payment of the inheritance taxes, [REDACTED] as a Class B beneficiary (nephew), and [REDACTED] as a Class C beneficiary (great-nephew) are personally liable for the inheritance taxes on the fair cash value of property transferred to each as a result of the Decedent's death. KRS 140.010; 140.070; 140.190(2). However, where a will indicates an intent that the inheritance taxes are to be paid from the residue of the estate, rather than proportionately out of each bequest that contributed or added to the tax liability, the law recognizes that the taxes are to be paid "off the top" from the residuary estate thereby relieving the beneficiaries of their obligation otherwise. See e.g. University of Louisville v. Liberty Nat'l Bank & Trust Co., 499 S.W.2d 288, 289 (Ky. 1973); see also, Houghland v. Lampton, 33 S.W.3d 536, 538 (Ky. App. 2000)(a testator may elect to shift the burden of inheritance taxes from the person or fund which is ordinarily liable to some other person or fund).

In cases where two competing clauses are in play, here -- the bequest of tax provided in the Will versus the provision in the Trust that taxes are to be collected from the beneficiaries --, "the testator's intent controls . . . and should be ascertained from the four corners of the will." Houghland v. Lampton, 33 S.W.3d at 539. The intention of the testator is gathered from the entire instrument, in this case, the Will and the Trust into which the assets of the Estate were poured at the death of the Decedent. See e.g. Hale v. Moore, 289 S.W.3d 567, 581 (Ky. App. 2008 (reviewing the will and trust agreement to gather the intention of the testator); Stouse v. First Nat'l Bank, 245 S.W.2d 914, 920 (Ky. 1952)(trust instrument and two formal amendments are valid parts of the will in question). As between competing provisions, the last prevails, though the provisions of each must be given effect as far as practicable. See Deppen's Trustee v. Deppen, 132 Ky. 755, 117 S.W. 352, 354 (1909); see also, Bowman v. Morgan, 236 Ky. 653, 33 S.W.2d 703, 706 (1930)(provisions of a will apparently in conflict should be reconciled if this can reasonably be done). Where there is irreconcilable repugnancy, however, the later clause must prevail as being the latest expression of the testator's intention. Deppen's Trustee, 117 S.W. at 354.

Under the guidance of the foregoing, we believe that the intention of the Decedent was for the inheritance taxes to be paid by the executor using funds he requested from the Trustee of the Trust, a “pour-over” trust funded by the entirety of the Estate. The boiler-plate nature of the provision in §5.2 of the Will providing for the payment of taxes, followed by the provision in §5.3 granting permission to request the funds from the Trustee, when read together, indicates to us that the Decedent merely intended for the taxes to be paid by the executor, but funds to pay the taxes were to be requested from the Trustee.

Further, that §4.8 of the Trust, providing for allocation of the tax liability among the beneficiaries “notwithstanding any provision of the Agreement to the contrary,” as well as Article 2 of the Will expressly providing that gifts are “subject to any amendments to the Trust,” indicates the Decedent’s express intention. The funds used to pay the taxes are to be allocated to and recovered from the shares of the noncharitable beneficiaries of the Trust (in this case, all the noncharitable beneficiaries of the Estate) by the Trustee.

Under this interpretation, we have reconciled and given effect to each of the competing provisions. That this was the Decedent’s intention is also supported by the fact that the Will and the amendment to the Trust considered here were executed on the same day.

Accordingly, [REDACTED] and [REDACTED], as beneficiaries of the Trust, must bear their share of the burden of the inheritance tax liability relative to the fair cash value of the property received by each by reason of the death of the Decedent. Therefore, their refund request is properly 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 40601-3714, 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 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;
3. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC or any other artificial legal entity, the entity must be represented by an attorney on all matters before the Board, including the filing of the petition of appeal. If the petition of appeal is filed by a non-attorney representative for the legal entity, the appeal will be dismissed by the Board; and
4. An attorney who is not licensed to practice in Kentucky may practice before the Board only if 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

  
Attorney Manager  
Office of Legal Services for Revenue

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED



