



**MATTHEW G. BEVIN**  
Governor

**FINANCE AND ADMINISTRATION CABINET**  
**DEPARTMENT OF REVENUE**  
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**WILLIAM M. LANDRUM III**  
Secretary

**DANIEL P. BORK**  
Commissioner

In the matter of:

ESTATE OF [REDACTED]

Contact: Law Office of [REDACTED]  
Attn: [REDACTED]  
[REDACTED]

**FINAL RULING NO. 2016-45**  
December 28, 2016

Inheritance and Estate Tax  
Refund Claim

**FINAL RULING**

The Department of Revenue's audit of the Estate of [REDACTED] ("Estate") 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. The amount of refund requested and applicable interest is shown in the chart below:

Period	Refund	Interest through 12/28/2016	Total
[REDACTED], 2013	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

At issue is whether [REDACTED] and [REDACTED] ("Beneficiaries"), brother-in-law and nephew of [REDACTED] ("Decedent"), are free from the inheritance tax liability on their receipt of \$ [REDACTED] ("Gift").

The beneficiaries received gifts of \$ [REDACTED] on [REDACTED], 2012 and \$ [REDACTED] on [REDACTED], 2012. The Decedent's date of death is [REDACTED], 2013. These gifts were reported on the Inheritance and Estate Tax return; however, tax was not paid at the time of the filing on these gifts. The Estate was subsequently assessed tax for these gifts and tax was remitted to the Commonwealth.

KRS 140.020(1) subjects transfers made “in contemplation of death” to the inheritance tax upon the death of the transferor. For the reasons below, the Department holds the position that the gifts were in contemplation of death and taxed correctly.

KRS 140.020(2) creates a presumption that:

every transfer made within three (3) years prior to the death of the grantor, vendor or donor of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without adequate and valuable consideration, shall be constructed prima facie to have been made in contemplation of death.

The inquiry whether a transfer was in contemplation of death is necessarily one into the state of mind of the transferor. See e.g.; United State v. Wells, 283 U.S. 102 (1931); 23 AmJur Proof of Facts 279 (org. Pub. 1969); Chase’s Ex’x v. Comm. 284 Ky. 471, 145 S.W.2d 58, 59-60 (1940) (“gifts made in contemplation of death within the meaning of the Inheritance Tax Act are gifts motivated by the thought of death.”); accord Comm. V. Sitow, 307 Ky. 432, 211 S.W.2d 406 (1948); Greer v. Glenn, 64 F. Supp. 1002, 1005 (E.D. Ky. 1946) (the thought of death is the impelling cause of transfer); accord Boyd v. United States, 192 F. Supp. 242, 244 (E.D. Ky. 1961). Each case must be decided based upon its own particular facts and circumstances. Chase’s Ex’x v. Comm. 145, S.W.2d at 60; Greer v. Glenn, 64 F. Supp. At 1004. The burden is upon those who claim the Estate to establish that a gift made within three years of death was not made in contemplation of death Chases’s Ex’x v. Comm. 145 S.W.2d at 60.

The Estate has failed to provide any proof that the gifts in question were not made in contemplation of death. Therefore, the beneficiaries must bear their share of the burden of the inheritance tax liability. Therefore, their refund request is properly denied.

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

### APPEAL

For purposes of this final ruling, the terminology “Kentucky Board of Tax Appeals” and “Board” represent both the Kentucky Board of Tax Appeals, as well as, the Kentucky Claims Commission that was established by Executive Order on August 8, 2016 and is expected to replace the current Kentucky Board of Tax Appeals on October 1, 2016.

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 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,

DEPARTMENT OF REVENUE

  
Attorney Manager  
Office of Legal Services for Revenue

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED