

140.040 Taxation of transfers by power of appointment -- When transfer deemed to take place -- Date as of which value of property determined -- Remainder interests -- Rates and exemptions.

- (1) Whenever any person shall exercise a power of appointment derived from any disposition of property (whether by will, deed, trust agreement, contract, insurance policy or other instrument) regardless of when made, such appointment shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person possessing such a power of appointment so derived shall omit or fail to exercise the same in whole or in part, within the time provided therefor, a transfer taxable under the provisions of this chapter shall be deemed to take place to the person or persons receiving such property as a result of such omission or failure to the same extent that such property would have been subject to taxation if it had passed under the will of the donee of such power. The time at which such transfer shall be deemed to take place, for the purpose of taxation, shall be governed by the provisions of subsections (2) to (4) of this section.
- (2) In the case of a power of appointment which passes to the donee thereof at the death of the donor, under any instrument, and if the donor dies on or after April 24, 1936, the transfer shall be deemed to take place, for the purpose of taxation, at the time of the death of the donor and the assessment be made at that time against the life interest of the donee and the remainder against the corpus. The value of the property to which the power of appointment relates shall be determined as of the date of the death of the donor and shall be taxed at the rates and be subject to the exemptions in effect at the death of the donor. The determination of the applicable rates and exemptions (in effect at the death of the donor) shall be governed by the relationship of the beneficiary to the donee of the power of appointment. In the event the payment of the tax at the death of the donor should operate to provide an exemption for any beneficiary of a donee not authorized by KRS 140.080, then such exemption shall be retrospectively disallowed at the time of the death of the donee. It is further provided that the remainder interest passing under the donee's power of appointment, whether exercised or not, shall be added to and made a part of the distributable share of the donee's estate for the purpose of determining the exemption and rates applicable thereto.
- (3) In all cases other than that described in subsection (2) the transfer shall be deemed to take place, for the purpose of taxation, at the time of the death of the donee. In such cases, the value of the property to which the power of appointment relates shall be determined as of the date of the death of the donee and shall be taxed at the rates and be subject to the exemptions in effect at the death of the donee. The determination of the applicable rates and exemptions (in effect at the death of the donee) shall be governed by the relationship of the beneficiary to the donee of the power of appointment.
- (4) The provisions of subsection (2) shall not preclude the taxation, at the death of the donee, of any transfer made by means of a power of appointment if such

transfer was not in fact reported to or a tax assessed thereon by the Department of Revenue within the period of limitation prescribed by KRS 140.160. If the transfer by the power of appointment is not so reported or a tax assessed thereon, the period of limitation prescribed in KRS 140.160 shall not begin to run until the death of the donee of such power.

- (5) The amendments to this section, adopted by the 1948 General Assembly, shall apply to all powers of appointment whether created before or after the effective date of said amendments. It is the declared intention of the General Assembly to impose a tax upon every transfer of property by means of a power of appointment, regardless of when or how created, and it is the declared intention of the General Assembly that the use of the power of appointment device shall not permit the transfer of property, to which such a power relates, to escape thereby the payment of state inheritance taxes.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 85, sec. 452, effective June 20, 2005. -- Amended 1948 Ky. Acts ch. 96, sec. 8. -- Amended 1942 Ky. Acts ch. 204, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4281a-14.