

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) As used in this section, "power of appointment":
 - (a) Means only a general power of appointment that may be exercised in favor of:
 1. The individual holding the power of appointment;
 2. That individual's estate;
 3. That individual's creditors; or
 4. The creditors of that individual's estate;
 - (b) Does not include a power that is:
 1. Limited by an ascertainable standard relating to the health, education, maintenance, and support of the individual holding the power of appointment; or
 2. Exercisable only by the individual holding the power of appointment in conjunction with another person having a substantial interest in the property subject to the power of appointment which is adverse to the exercise in favor of:
 - a. The individual holding the power of appointment;
 - b. That individual's estate;
 - c. That individual's creditors; or
 - d. The creditors of that individual's estate; and
 - (c) Shall be administered by the Department of Revenue as nearly as practicable identical to a general power of appointment as defined in 26 U.S.C. sec. 2041(b).
- (2)
 - (a) Whenever any person exercises a power of appointment derived from any disposition of property:
 1. Whether by will, deed, trust agreement, contract, insurance policy or other instrument; and
 2. Regardless of when the person exercises the power of appointment; the power of appointment shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the property to which the appointment relates belonged absolutely to the donee of the power and had been bequeathed or devised by the donee by will.
 - (b) Whenever any person possessing a power of appointment omits or fails to exercise the power of appointment, 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 receiving the property as a result of the omission or failure to the same extent that the property would have been subject to taxation if it had passed under the will of the donee.
 - (c) The time at which a transfer shall be deemed to take place, for the purpose of taxation, shall be governed by the provisions of subsections (3) to (5) of this section.

- (3) (a) In the case of a power of appointment which passes to the donee at the death of the donor, under any instrument:
1. The transfer shall be deemed to take place, for the purpose of taxation, at the time of the death of the donor;
 2. The assessment shall be made at that time against the life interest of the donee and the remainder against the corpus;
 3. The value of the property shall be determined as of the date of the death of the donor;
 4. The donee of the property shall be taxed at the rates and be subject to the exemptions in effect at the death of the donor; and
 5. 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.
- (b) 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 the exemption shall be retrospectively disallowed at the time of the death of the donee.
- (c) 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 applicable exemption and rates.
- (4) In all cases other than that described in subsection (3) of this section:
- (a) The transfer shall be deemed to take place, for the purpose of taxation, at the time of the death of the donee;
 - (b) 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; and
 - (c) 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.
- (5) (a) The provisions of subsection (3) of this section shall not preclude the taxation, at the death of the donee, of any transfer made by means of a power of appointment if the transfer was not in fact reported to or a tax assessed by the Department of Revenue within the period of limitation prescribed by KRS 140.160.
- (b) If the transfer by the power of appointment is not reported or a tax is not assessed, the period of limitation prescribed in KRS 140.160 shall not begin to run until the death of the donee of the power of appointment.

Effective: July 15, 2024

History: Amended 2024 Ky. Acts ch. 166, sec. 35, effective July 15, 2024. -- 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.