

No. 47518-9-II

DIVISION II, COURT OF APPEALS  
OF THE STATE OF WASHINGTON

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ESTATE OF BARRY A. ACKERLEY,

Appellant

v.

WASHINGTON DEPARTMENT OF REVENUE,

Respondent

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ON APPEAL FROM THURSTON COUNTY SUPERIOR COURT  
(Hon. Carol Murphy)

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**BRIEF OF APPELLANT**

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## I. INTRODUCTION

Under the unified federal gift and estate tax regime, the decedent's estate owes federal estate taxes on the amount of federal gift taxes he or she paid within three years of death. Congress enacted this unique "gross-up" rule to lessen the federal tax advantage of so-called "death bed" transfers. But Washington law is different. Washington has no gift tax, no gross-up rule and, as a constitutional imperative, its stand-alone estate tax applies only to a "transfer of property" upon death. Notwithstanding these differences, the DOR assessed the Estate of Barry A. Ackerley ("the Estate") estate tax on the amount Mr. Ackerley paid in federal gift taxes, reasoning that because such amounts were included in the federal taxable estate, they must be included in the Washington taxable estate as well.

Wrong. Washington's estate tax incorporates only those aspects of the federal estate tax that are consistent with our statute's "transfer of property" requirement. Mr. Ackerley's payment of federal gift taxes on lifetime gifts did not result in a "transfer of property" at death—under any interpretation of that term. The money used to pay this debt to the federal government was no longer Mr. Ackerley's property, nor could he transfer it to his beneficiaries at death. Indeed, federal authorities confirm that gift taxes included in the federal taxable estate by virtue of the automatic

gross-up rule do not reflect a “transfer” of property. The trial court cited no other basis to uphold the DOR’s assessment, and there is none.

## **II. ASSIGNMENT OF ERROR AND STATEMENT OF ISSUES**

The trial court erred when it denied the Estate’s petition for review and affirmed the DOR’s determination that the Estate owes estate tax on the amount of federal gift taxes Mr. Ackerley paid within three years of his death. CP 96-100. The sole issue for review is as follows:

For purposes of the federal estate taxes, the taxable estate must include the amount of federal gift taxes paid by the decedent within three years of his or her death. 26 U.S.C. § 2035(b). The Washington Estate and Transfer Tax Act, Chapter 83.100 RCW (the “Washington Estate Tax”), contains no comparable “gross-up” provision but, rather, applies only to the “transfer of property” at death. RCW 83.100.040(1). Does a decedent’s payment of federal gift taxes on lifetime gifts qualify as a “transfer of property” upon death such that the amount of federal gift taxes must be included in the Washington taxable estate? **No.**

## **III. STATEMENT OF THE CASE**

### **A. Factual Background**

In 2008 and 2010, Barry Ackerley made substantial lifetime gifts for which he paid more than \$5.5 million in federal gift taxes (there is no state gift tax). AR 15, 16 (2008 and 2010 federal gift tax returns). Mr.

Ackerley died on March 21, 2011. As discussed in further detail below, because Mr. Ackerley died within three years of having made those gifts, as required by federal law, 26 U.S.C. § 2035(b), the Estate included the \$5.5 million paid in federal gift taxes when calculating its taxable estate for purposes of the federal estate tax. AR 12a (federal estate tax return).

The Estate did not, however, include the \$5.5 million in its taxable estate for purposes of the Washington Estate Tax. AR 10 (Washington estate tax return). In a statement submitted with its tax return, the Estate explained to the DOR that it excluded the federal gift taxes from its Washington taxable estate because the payment of those federal taxes did not constitute a “transfer of property” upon death, as is required by the Washington Estate Tax, RCW 83.100.040(1). AR 11.

## **B. Procedural Background**

In September 2013, the DOR issued a notice of assessment to the Estate, claiming that it owed Washington Estate Tax on the amount of federal gift taxes Mr. Ackerley paid within three years of his death. AR 20.<sup>1</sup> The Estate filed an administrative appeal, *see* AR 22-25, which the DOR summarily rejected—informing the Estate that the only means to challenge its “final agency order” was to file a petition for review in

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<sup>1</sup> The assessment also related to Mr. Ackerley’s interest in a club located in California, but the Estate waived its objection to the payment of Estate Tax on that interest, and it is not at issue in this appeal.

superior court under the Administrative Procedures Act (“APA”). AR 27, 29. The Estate thereafter filed a timely petition for review. CP 4-5.

The trial court recognized that the “only dispute is a legal one.” CP 93. The Estate argued that the amount a decedent pays in federal gift taxes within three years of death cannot be included in the Washington taxable estate because, unlike the unified federal gift and estate tax regime, the Washington Estate Tax is imposed only on the “transfer of property” upon death, *see* RCW 83.100.040(1)—and, to be sure, a federal gift tax that the decedent pays on lifetime gifts is not property that passes to the decedent’s beneficiaries upon his or her death. CP 13-20.

The DOR largely ignored the Washington Estate Tax’s “transfer of property” requirement, arguing that “[t]he starting and ending place to determine Washington’s taxable estate tax begins with the federal taxable estate.” CP 23. According to the DOR, because federal gift taxes paid on lifetime gifts made within three years of death are automatically included in the federal taxable estate under 26 U.S.C. § 2035(b), they must be included in the Washington taxable estate as well. CP 21-30; *see* RP (3/20/15) at 17 (“it comes as part of the total package of the federal taxable estate, and then as part of the federal taxable estate it becomes part of the Washington taxable estate”). Indeed, at oral argument, the DOR conceded that the federal gift taxes paid on Mr. Ackerley’s lifetime gifts

could not be considered “property” transferred at death. RP (3/20/15) at 17 (“It does not include property, that is correct, Your Honor.”).

In a March 26, 2015 letter ruling, the trial court concluded that Washington Estate Tax was due on the federal gift taxes paid by Mr. Ackerley within three years of his death, “consistent with federal estate tax law.” CP 93. The court concluded that the federal gift taxes fell within the scope of the recently amended definition of “transfer” because “[o]ur Legislature defined transfer as synonymous with the federal definition, and the federal definition includes this gift tax provision.” CP 95. The trial court denied the Estate’s petition for review and affirmed the DOR’s assessment of additional estate taxes in a subsequent Order Affirming Agency Action. CP 96-100. The Estate appealed. CP 101-108.

#### IV. ARGUMENT

##### A. The Standard of Review Is *De Novo*.

This appeal arises from the trial court’s review of an “other agency action” under RCW 34.05.570(4). This Court sits in the same position as the trial court and applies the APA standards directly to the agency’s administrative record. *Wash. Indep. Tel. Ass’n v. Wash. Utils. & Transp. Comm’n*, 149 Wn.2d 17, 24, 65 P.3d 319 (2003). The Court may reverse the DOR’s assessment if it acted “[o]utside [its] statutory authority.” RCW 34.05.570(4)(c)(ii). Whether an agency has exceeded its statutory

authority, and the proper interpretation of a statute, are questions of law this Court reviews *de novo*. *Chicago Title Ins. Co. v. Wash. State Office of Ins. Comm'r*, 178 Wn.2d 120, 133, 309 P.3d 372 (2013); *Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002).

The objective of statutory construction is to carry out legislative intent. *HomeStreet, Inc. v. Dep't of Revenue*, 166 Wn.2d 444, 451-52, 210 P.3d 297 (2009). “Where statutory language is plain and unambiguous, courts will not construe the statute but will glean the legislative intent from the words of the statute itself, regardless of contrary interpretation by an administrative agency.” *Id.*; *In re Estate of Bracken*, 175 Wn.2d 549, 575, 290 P.3d 99 (2012) (“An agency’s interpretation that is not plausible or that is contrary to legislative intent is not entitled to deference.”). Tax statutes, in particular, “must be construed most strongly against the taxing power and in favor of the taxpayer.” *Id.* at 563 (quoting *Lamtec Corp. v. Dep't of Revenue*, 170 Wn.2d 838, 842-43, 246 P.3d 788 (2011)).

**B. The DOR Exceeded Its Statutory Authority When It Assessed Washington Estate Tax On The Federal Gift Taxes Paid By Mr. Ackerley Within Three Years Of His Death.**

The trial court erred when it agreed with the DOR that the federal estate tax is the “starting and ending place” to determine whether the Washington Estate Tax applies to federal gift taxes. Federal law may be a starting point, but it is not the ending point. As discussed below, the

Estate Tax may be imposed only upon a “transfer of property” upon death. RCW 83.100.040(1). And while the legislature recently expanded the statutory definition of “transfer,” it did not (and constitutionally could not) eliminate it. Thus, the Washington Estate Tax aligns with the federal estate tax only if there is a “transfer of property.”

There was no “transfer of property” here. Federal gift taxes paid on gifts made during life are not property passed to one’s beneficiaries at death—no matter how broadly “transfer” is defined. The federal gift tax is a debt, and the funds required to pay that debt were no longer property of the Estate capable of being transferred to Mr. Ackerley’s beneficiaries. Federal gift taxes are included in the federal estate solely as a result of a statutory “gross-up” provision, 26 U.S.C. § 2035(b), for which there is no Washington analog. Critically, federal authorities agree that this gross-up provision does not reflect a “transfer” of property.

**1. The Washington Estate Tax Is An Excise Tax That May Be Imposed Only Upon A “Transfer Of Property.”**

The legislature passed the Estate and Transfer Tax Act in 2005. Laws of 2005, ch. 516, § 1. “Like the federal estate tax, the [Washington Estate Tax] is not a property tax, but a tax imposed on the transfer of the taxable estate.” *Bracken*, 175 Wn.2d at 559, superseded by statute as recognized in *In re Estate of Hambleton*, 181 Wn.2d 802, 335 P.3d 398 (2014). The Washington Estate Tax applies only to the “transfer of

property located in Washington.” RCW 83.100.040(1); WAC 458-57-105(2) (“The Estate tax is neither a property tax nor an inheritance tax. It is a tax imposed on the transfer of the entire taxable estate ...”).

The Washington Estate Tax relies on federal estate tax principles. *Id.*; RCW 83.100.020(15) (defining ‘Washington taxable estate’ as the ‘federal taxable estate’). That reliance “is qualified, however, by the proviso that the Act ‘incorporates only those provisions of the internal revenue code ... that do not conflict with the provisions of this chapter.’” *Bracken*, 175 Wn.2d at 560 (quoting RCW 83.100.040(3)). Thus, while the Washington Estate Tax looks to federal law, “[t]he tax imposed under this chapter is independent of any federal estate tax obligation[.]” RCW 83.100.040(3). As discussed further below, and dispositive of this appeal, a key distinction between the federal and Washington estate taxes is whether federal gift taxes are to be included in the taxable estate. Under federal law, they are; under Washington law, they are not.

Consistent with RCW 83.100.040(1)’s plain meaning, the Supreme Court has held that the Washington Estate Tax allows the DOR “to tax only transfers,” noting that the “requirement for a transfer is constitutionally grounded and long standing.” *Bracken*, 175 Wn.2d at 563-64. This requirement “arises from the distinction between an excise tax, which is levied upon the use or transfer of property (even though it

might be measured by the property's value), and a tax levied upon the property itself," *i.e.*, a direct tax. *Id.* at 564. "Whether a tax is an excise tax or a direct tax is significant because the Washington State Constitution imposes a uniformity requirement on direct taxes, but the uniformity requirement does not apply to excise taxes." *Hambleton*, 181 Wn.2d at 811 (citing WASH. CONST., Art 7, § 1).

For this reason, the courts recognize that the Washington Estate Tax is an excise tax, which can be imposed only if there is a transfer of property upon death. *Bracken*, 175 Wn.2d at 563-66; *see also In re Lloyd's Estate*, 53 Wn.2d 196, 199, 332 P.2d 44 (1959) ("An estate tax is a tax upon the transfer of property, and not on the property itself."); *In re McGrath's Estate*, 191 Wash. 496, 503, 71 P.2d 395 (1937) ("It is ... impossible for an estate or inheritance tax to be exacted with respect to something in which the decedent did not own or have some kind of right at the time of his death, for in such a case there is no transfer."). In other words, without some kind of "transfer" of property upon death, there simply is no taxable event. *See In re Leuthold's Estate*, 310 P.2d 872, 873 (1957) ("A taxable event occurs for inheritance tax purposes when a death causes property to pass from a decedent to someone else.").

**2. The 2013 Washington Estate Tax Amendments Did Not Eliminate The “Transfer Of Property” Requirement.**

In *Bracken*, the Supreme Court considered whether the Washington Estate Tax applied to qualified terminable interest property (“QTIP”) upon the death of a surviving spouse. A QTIP trust is created by a deceased spouse and gives a surviving spouse a life interest in the income or use of property. *Bracken*, 175 Wn.2d at 555-56; 26 U.S.C. § 2056(b)(7)(B). Under federal law, if a QTIP election is made, the property is not taxed as part of the first spouse’s estate, but deferred to the surviving spouse’s estate. *Id.* The *Bracken* court held that, federal law notwithstanding, the DOR had no authority to apply the Washington Estate Tax to QTIP property upon the death of the surviving spouse because the only “transfer of property” occurred when the first spouse created the QTIP trust. *Id.* at 566-76; *Hambleton*, 181 Wn.2d at 812.

In so holding, the Supreme Court rejected the DOR’s argument that QTIP property must be included in the Washington taxable estate simply because it was part of the federal taxable estate:

The problem with DOR’s justification for its position—the Act’s definition of “Washington Taxable Estate”—is that it elevates a single component of one incorporated definition over both the operative taxing provision of the Act, which imposes the tax on transfers, and the Act’s clearly intended (and, the taxpayers argue, its constitutionally required) prospective operation. The principal purpose of the Act is to create a state estate tax whose calculation parallels the method for calculating the federal estate. ***But because the***

***operative provision of the Act imposes tax only on ... the transfer of property, the federal definition of “taxable estate” cannot be used without modification necessary to conform to the Act: the definition must be read to exclude items that are not transfers.***

*Bracken*, 175 Wn.2d at 570-71 (emphasis added; footnote omitted). The Court also held that the DOR’s interpretation of the Washington Estate Tax was not entitled to deference because it was contrary to the statute’s unambiguous “transfer” requirement. *Id.* at 575-76. The dissent disagreed with the majority’s narrow reading of term “transfer” (although not the requirement of a transfer), and noted that the legislature could amend the Washington Estate Tax to include QTIP property in the surviving spouse’s estate, “so long as the amendments did not offend the constitution.” *Hambleton*, 181 Wn.2d at 813 (citing *Bracken*, 175 Wn.2d at 594-95).

The legislature did just that. In 2013, it amended the definition of “Washington taxable estate” to include QTIP property, regardless of when the QTIP trust was created. RCW 83.100.020(15). It also expanded the definition of “transfer” to include a “shifting upon death of the economic benefit in property or any power or legal privilege incidental to the ownership or enjoyment of property.” RCW 83.100.020(14). In short, the legislature reacted to *Bracken* by “broadening the meaning of ‘transfer’ to its ‘broadest possible meaning,’” *Hambleton*, 181 Wn.2d at 813 (quoting Laws of 2013, 2d Spec. Sess., ch. 2, § 1), but did not—and constitutionally

could not—eliminate the Washington Estate Tax’s operative provision that there be a “transfer of property.” RCW 83.100.040(1).

The Court’s consideration of the 2013 amendments in *Hambleton* did nothing to erode the Washington Estate Tax’s transfer requirement, nor did it retreat from *Bracken’s* central holding that the federal taxable estate can be used to define the “Washington taxable estate” only insofar as it reflects a “transfer of property.” The sole issue in *Hambleton* was the constitutional validity of the amendments’ retroactive effect. *Hambleton*, 181 Wn.2d at 816-37. On that score, in dispensing with the challengers’ tax uniformity argument, the Court reiterated that the Washington Estate Tax was an “excise tax,” which can be imposed only upon the transfer of some beneficial or economic interest in the property upon death. *Id.* at 832-33. A QTIP trust reflects a “transfer” because “upon the surviving spouse’s death, the remainder beneficiaries of the trust gained a present interest in the assets and income.” *Id.* As explained below, the same cannot be said about federal gift taxes paid on a decedent’s lifetime gifts.

### **3. Payment Of Federal Gift Taxes On Lifetime Gifts Does Not Reflect A “Transfer Of Property” Upon Death.**

The DOR’s assessment exceeded its statutory authority because the federal gift taxes paid on Mr. Ackerley’s lifetime gifts did not result in a

“transfer of property” upon his death. The Washington Estate Tax defines “transfer” in relevant part as:

... “transfer” as used in section 2001 of the internal revenue code and includes any shifting upon death of the economic benefit in property or any power or legal privilege incident to the ownership or enjoyment of property.

RCW 83.100.020(14). The trial court recognized that the amendments were intended to broaden the concept of “transfer” in response to *Bracken*, but, ironically, the court relied entirely on the definition’s reference to “transfer” under federal law, *see* CP 94-95—which was unchanged from the prior version. *Former* RCW 83.100.020(11). No matter. Both federal estate tax principles and the plain meaning of the Washington Estate Tax’s transfer requirement demonstrate that federal gift taxes paid on lifetime gifts do not result or reflect a “transfer of property” at death.

**a. Federal Gift Taxes Included In The Taxable Estate Under Section 2035(b) Do Not Result In A “Transfer” Of Property Under Federal Law.**

For purposes of the federal estate tax, Congress determined that the gross taxable estate must include an amount equivalent to the federal gift taxes paid on certain gifts made within three years of the decedent’s death.

*See* 26 U.S.C. § 2035(b). Section 2035(b) reads:

The amount of the gross estate (determined without regard to this subsection) shall be increased by the amount of any tax paid under chapter 12 by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent’s death.

*Id.* Because Section 2035(b) results in an automatic increase in the gross estate, it is often called the “gross-up” rule. *Estate of Armstrong v. United States*, 277 F.3d 490, 497 (4th Cir. 2002). The trial court simply assumed that because the Washington Estate Tax incorporates the federal meaning of “transfer,” and the federal taxable estate includes federal gift taxes, then any federal gift tax subject to Section 2035(b)’s gross-up rule must reflect a “transfer” of property. CP 95. The trial court was wrong.

Section 2035(b)’s gross-up rule is not derived from, and is not dependent upon, the existence of a “transfer.” Rather, Congress included federal gift taxes in the federal taxable estate to eliminate disparate tax rates under its unified gift and estate tax regime.<sup>2</sup> Specifically, Section 2035(b) was intended “to recoup any advantage gained by so-called ‘death-bed’ transfers in which a taxpayer ... transfers property out of her estate in order to reduce tax liability. Although these *inter vivos* transfers incur gift tax liability, opting to transfer assets prior to death still carries a tax advantage. ... [Section 2035(b)] presumes that gifts made within three years of death are made with tax-avoidance motives and eliminates the tax

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<sup>2</sup> It was “cheaper” to pay gift taxes than estate taxes because the “[g]ift tax is calculated using a tax exclusive method (the applicable rate is applied to the *net* gift, exclusive of gift taxes), whereas estate taxes are calculated on a tax inclusive method (the applicable rate is applied to the *gross* estate, before taxes are deducted).” *Brown*, 329 F.3d at 668 & n. 4.

advantage for those death bed transactions.” *Brown v. United States*, 329 F.3d 664, 667-68 (9th Cir. 2003) (citation omitted).

Critically, and contrary to the trial court’s attempt to link Section 2035(b)’s gross-up rule to the Estate Tax transfer requirement, the United States Tax Court has expressly rejected the argument that Section 2035(b) reflects or results in a “transfer.” In *Estate of Armstrong v. Comm’r*, 119 T.C. 220 (2002), the court considered whether 26 U.S.C. § 2043(a), which applies to “transfers ... described in sections 2035 to 2038,” applies to federal gift taxes included in the federal taxable estate under Section 2035(b). In holding that it did not, the court reasoned:

***[Section 2035(b)] ... does not describe a “transfer” but merely requires that the gross estate be grossed up by the amount of gift taxes paid on gifts made within 3 years of the decedent’s death. [¶] The estate suggests that even though [Section 2035(b)] does not explicitly refer to a “transfer,” it nevertheless must be understood to describe a “transfer” so as to implicate section 2043(a). After all, the estate observes, the estate tax is a tax on the privilege of transfer. ... Therefore, [Section 2035(b)] ... must describe “transfers” within the meaning of section 2043(a). We disagree.***

[T]he estate tax is sometimes characterized as a tax on the privilege of transferring property at death. As the Supreme Court has made clear, however, this does not mean that the estate tax may be imposed only on “transfers.” [¶] Technically, the Code imposes the estate tax on a single “transfer”—the “transfer of the taxable estate.” Sec. 2001(a). ... The gross estate includes ... the value at the time of a decedent’s death of “all property, real or personal, tangible or intangible, wherever situated.” Sec. 2031(a).

***This does not mean, however, as the estate implies, that each constituent element of the gross estate, so defined, necessarily constitutes, depends upon, or presupposes a separate and distinct “transfer” of property.***

*Id.* at 228-29 (emphasis added; citations and footnote omitted). All the same can be said here. In another equally analogous context, the IRS’s Office of Chief Counsel similarly advised that, “payment of gift tax ... under § 2035(b) is not a transfer within the meaning of §§ 2035 to 2038.” Chief Counsel Advisory 201020009, 2010 WL 2020507 (May 21, 2010).<sup>3</sup>

Because inclusion of federal gift taxes in the taxable estate does not involve a “transfer” upon death under federal law, contrary to the trial court’s conclusion, payment of those taxes do not reflect a “transfer” under the Washington Estate Tax’s incorporated definition of that term either. RCW 83.100.020(14) (transfer means “‘transfer’ as used in section 2001 of the internal revenue code”). And, unlike the federal combined gift and estate tax structure, Washington does not have a gift tax, nor does our Estate Tax have a similar automatic gross-up rule that would permit inclusion of gift taxes in the taxable estate without a “transfer.” At bottom, federal law supports the Estate’s position, not the DOR’s.

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<sup>3</sup> Although not binding on courts, both Tax Court opinions and IRS Chief Counsel Advisories serve as helpful and persuasive authority. *Hubbard v. U.S.*, 359 F. Supp. 2d 1123, 1127 n. 5 (W.D.Wash. 2005); *Estate of Smith v. U.S.*, 103 Fed. Cl. 533, 565-55 (2012).

**b. Payment Of Federal Gift Taxes Does Not Result In A Shifting Of Economic Benefit Under The Amended Definition Of “Transfer.”**

Beyond the erroneous assumption that Section 2035(b) somehow reflects a “transfer” under federal law, neither the DOR nor the trial court could explain how federal gift taxes paid on lifetime gifts otherwise would satisfy the Washington Estate Tax’s amended definition of “transfer” — *i.e.*, a “shifting upon death of the economic benefit in property or any power or legal privilege incident to the ownership or enjoyment of property.” RCW 83.100.020(14). And for good reason. Mr. Ackerley’s liability for federal gift taxes on lifetime gifts *removed* property from the Estate; as a consequence, there was nothing left to transfer to the beneficiaries, and no shifting of economic benefit to them.

Here, too, federal law is clear that federal gift taxes are a “debt” owed to the United States. *Diedrich v. Comm’r*, 457 U.S. 191, 197 (1982). Mr. Ackerley incurred that debt, and once he did, the Estate’s beneficiaries no longer had any interest in the funds used to pay it. Those funds were not transferred, and were not capable of transfer, to Mr. Ackerley’s beneficiaries. For the same reason, there could be and was no “economic benefit” or “legal privilege” incident to the federal gift taxes that “shifted” from Mr. Ackerley to his beneficiaries at his death. Indeed,

the beneficiaries received no benefit whatsoever from the federal gift taxes paid on the lifetime gifts. In short, there was no property, and no transfer.

This reality can be contrasted with the QTIP trust that was at issue in *Bracken* and *Hambleton*. Unlike here, although the legal title to the QTIP property was transferred during the decedent's life, the economic benefit of the property was later transferred to the beneficiaries upon the decedent's death. *Hambleton*, 181 Wn.2d at 832-33 (“upon the surviving spouse's death, the remainder beneficiaries of the trust gained a present interest in the assets and income”); *Bracken*, 175 Wn.2d at 578 (there is a “transfer of the property from the surviving spouse to the third party remainder beneficiaries”) (Madsen, C.J., dissenting). The DOR cannot point to any similar transfer of economic benefit to beneficiaries arising from a decedent's payment of federal gift taxes. There is none.

## V. CONCLUSION

The federal gross-up rule does not trump the Washington Estate Tax's “transfer of property” limitation. The payment of federal gift taxes on Mr. Ackerley's lifetime gifts did not result in any “transfer of property” or shifting of economic benefit to his beneficiaries upon death. The trial

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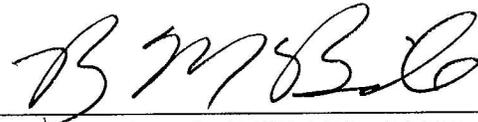
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court's judgment must be reversed, with instructions to grant the Estate's petition for review and order the DOR to cancel the assessment.

RESPECTFULLY SUBMITTED this 24th day of July, 2015.

LANE POWELL PC

By



Scott M. Edwards, WSBA No. 26455

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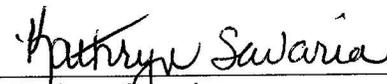
*Attorneys for Appellant Estate of Barry A.  
Ackerley*

**CERTIFICATE OF SERVICE**

I hereby declare under the penalty of perjury of the laws of the State of Washington that on July 24, 2015, I caused a copy of the **Brief of Appellant** to be served in the manner indicated below to the following person at the following address:

David M. Hankins Assistant Attorney General Attorney General's Office 7141 Cleanwater Drive SW Olympia, WA 98504-0123 DavidH1@ATG.WA.GOV <u>juliej@atg.wa.gov</u>	<input type="checkbox"/> by <b>CM/ECF</b> <input checked="" type="checkbox"/> by <b>Electronic Mail</b> <input type="checkbox"/> by <b>Facsimile Transmission</b> <input checked="" type="checkbox"/> by <b>U.S. First-Class Mail</b> <input type="checkbox"/> by <b>Hand Delivery</b> <input type="checkbox"/> by <b>Overnight Delivery</b>
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DATED: July 24, 2015

  
\_\_\_\_\_  
Kathryn Savaria

# LANE POWELL PC

**July 24, 2015 - 10:38 AM**

## Transmittal Letter

Document Uploaded: 3-475189-Appellant's Brief.pdf

Case Name: Estate of Barry Ackerley v. Wash. Dept. of Revenue

Court of Appeals Case Number: 47518-9

**Is this a Personal Restraint Petition?**  Yes  No

### The document being Filed is:

- Designation of Clerk's Papers  Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: \_\_\_\_\_
- Answer/Reply to Motion: \_\_\_\_\_
- Brief: Appellant's
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_  
Hearing Date(s): \_\_\_\_\_
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Petition for Review (PRV)
- Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Ryan P McBride - Email: [mcbriider@lanepowell.com](mailto:mcbriider@lanepowell.com)

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