

COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD

ESTATE OF ROSE M. DEBAN

v.

COMMISSIONER OF REVENUE

Docket No. C347717

Promulgated:
February 26, 2026

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 62C, § 39 from the refusal of the Commissioner of Revenue (“appellee” or “Commissioner”) to abate estate tax and associated interest assessed against the Estate of Rose M. Deban (“estate” or “appellant”).

Chairman DeFrancisco heard the appeal. Commissioners Good, Elliott, Metzger, and Bernier joined him in the decision for the appellee.

These findings of fact and report are made at the request of the appellant pursuant to 831 CMR 1.34.

Luke C. Bean, Esq., for the appellant.

Brett M. Goldberg, Esq., and *Eugene Langner, Esq.*, for the appellee.

FINDINGS OF FACT AND REPORT

Based on a Statement of Agreed Facts and documents advanced by the parties to this appeal, the Appellate Tax Board (“Board”) made the following findings of fact.

Rose M. Deban (“Mrs. Deban” or “decedent”) died on May 1, 2020 at the age of 104. On January 27, 2021, the estate made a Massachusetts estate tax payment of \$21,000. Then on March 11, 2021, the estate filed its Form M-706 Massachusetts Estate

Tax Return (“Form M-706”) with the Commissioner. The Form M-706 showed a total tax due of \$16,006 and an overpayment of \$4,994.

After having issued a Notice of Intent to Assess dated August 12, 2021, the Commissioner issued to the appellant a Notice of Assessment dated November 14, 2022 for additional tax due of \$90,806.24 plus interest. After applying what the appellant had indicated as an overpayment on its Form M-706, the total outstanding assessment was \$93,736.47, inclusive of interest. The basis of the assessment was the denial of a \$1,450,000 deduction for purported loans made to the decedent, which the Commissioner found not to be bona-fide debt of the estate. On January 5, 2023, the appellant timely submitted an abatement application, which the Commissioner denied on January 10, 2023. On February 14, 2023, the appellant seasonably filed an appeal with the Board. Based on the information herein, the Board found and ruled that it had jurisdiction over this appeal.

At the time of her death, the decedent had four children: Joan, Priscilla, Gerald (also known as Jerry), and Anthony (collectively, the “siblings”). On December 7, 2019, pursuant to a Fidelity Investments (“Fidelity”) form entitled Durable Power of Attorney (the “Fidelity DPA”), Mrs. Deban appointed Gerald to act as her Attorney-in-Fact with respect to a Fidelity account in her name (“Mrs. Deban’s Fidelity account”). The Fidelity DPA gave Gerald certain prescribed powers with respect to Mrs. Deban’s Fidelity account, one of which was “the right to borrow on margin.”

On April 28, 2020, three days prior to the decedent’s death, transfers totaling \$1,250,000 were made from two Fidelity accounts held in Gerald’s name (“Gerald’s Fidelity accounts”) to Mrs. Deban’s Fidelity account. On that same day, transfers totaling

\$1,250,000 were made from Mrs. Deban's Fidelity account to a Fidelity account held in the names of the four siblings as tenants in common (the "siblings' Fidelity account"). Then on April 29, 2020, two days prior to the decedent's death, a transfer of \$200,000 was made from one of Gerald's Fidelity accounts to Mrs. Deban's Fidelity account. On that same day, a transfer of \$200,000 was made from Mrs. Deban's Fidelity account to the siblings' Fidelity account. The parties stipulated that, at the time of these transfers, Mrs. Deban was not competent to conduct her own financial affairs.

The above transfers from Gerald to Mrs. Deban - totaling \$1,450,000 - are not evidenced by loan agreements or promissory notes that outline a repayment schedule, a stated interest rate, or a maturity date, and are unsecured. The appellant relies on three contemporaneous documents in support of its position that the transfers created deductible claims against the estate. The first two documents are e-mail messages dated April 28, 2020 to Gerald from Rob Patton, a Fidelity employee, regarding the transactions made that day. Mr. Patton's messages ask Gerald to confirm that the April 28 transfers from Gerald's Fidelity accounts to Mrs. Deban's Fidelity account were "Non-Gift" transfers and ask Gerald to confirm that the April 28 transfers from Mrs. Deban's Fidelity account to the siblings' Fidelity account were gifts. There is no evidence of a response from Gerald to either of these messages.

The third document that the appellant relies upon is a communication dated April 15, 2020, addressed to the siblings and signed by each (the "sibling letter"), which states:

As you know, Mom is tired and ready to go to her final resting place and wants to make sure that she gifts her assets to her family.

Jerry is willing to loan Mom money so that she can make these gifts as soon as possible.

This will please Mom and also provide us time to figure out how to handle her stocks and house. Of course, the Net Proceeds will go to her heirs, primarily us.

For Jerry's sake, we should agree and assure Jerry that the loan will have to be repaid before the remaining assets are distributed to us and the rest of the family per Mom's wishes.

If you agree with this loan and plan, please sign below.

After Mrs. Deban's death, several transfers to Gerald totaling \$1,459,699 were made from the siblings' Fidelity account as follows:

<u>Date</u>	<u>Amount</u>
June 24, 2020	\$ 944,475
February 4, 2021	\$ 100,725
February 16, 2021	\$ 200,000
June 9, 2021	\$ 9,064
September 20, 2021	\$ 100,000
December 8, 2021	\$ 100,000
December 31, 2021	\$ 4,825
December 31, 2021	\$ 610
Total	\$1,459,699

For personal income tax purposes, Gerald treated the payment on June 9, 2021 and the second payment on December 31, 2021 as interest income earned on his April 28 and 29 transfers to Mrs. Deban's Fidelity account, and he treated the remaining payments as principal payments related to those same transfers. On his income tax returns, Gerald reported total interest income of \$9,674 received from Rose Deban Estate in calendar years 2020 and 2021. The Commissioner credibly calculated this amount to represent an annual interest rate of 1.386493 percent.

On the date of her death, Mrs. Deban's tax bases in her securities and real estate were far below their fair market values. The appellant conceded that those assets were highly appreciated, so that gifting them outright prior to death would have resulted in passing them on with significant built-in capital gain. Instead, the transfers of cash totaling

\$1,450,000 from Gerald to Mrs. Deban were reported on the estate's Form M-706 as a deduction for a debt of the decedent, and the transfers totaling \$1,450,000 from Mrs. Deban to the siblings were treated by the estate as lifetime gifts not includible in the decedent's taxable estate, hence eliminating an estate tax on property worth \$1,450,000.

The appellant claimed there were non-tax reasons for the transfers to Mrs. Deban. Couching the loans from Gerald to Mrs. Deban as having been made in the ordinary course of business, the appellant maintained that the siblings previously made loans to Mrs. Deban during her life and which were reflected on the estate's returns. The appellant further argued that Gerald made the purported loans because he wanted a safe investment for his cash that would earn him income. The appellant further maintained that making gifts to the decedent's children with borrowed funds, rather than liquidating assets to do so, was prudent for the decedent, because it kept intact the source of income that would ensure her comfort for however long she continued to live, while also enabling the siblings to have accelerated access to their anticipated shares of the estate.

In reviewing the facts, the Board ultimately found and ruled that the Commissioner properly denied the tax consequences of the purported loan transactions. First, the funds transferred to Mrs. Deban were from Gerald, not a broker, and the purported loans were not secured. As will be explained more fully in the following Opinion, the Board found that the purported loans thus did not constitute borrowing "on margin" and were, therefore, not authorized by the Fidelity DPA. The appellant advanced no other authority under which Gerald, purporting to act on behalf of Mrs. Deban, caused Mrs. Deban to borrow from him. Consequently, the Board found that the purported loans from Gerald to Mrs. Deban were void from the start, or *void ab initio*.

The Board also found that the transfers were not negotiated at arm's length in the ordinary course of business. While purporting to act under a power of attorney on behalf of the decedent, Gerald was instead acting as both lender and borrower. As he could not negotiate with himself, and there was no evidence of anyone else negotiating on behalf of the decedent as borrower, there was no negotiation of the loan terms or repayment schedule. Additionally highlighting the level of self-dealing at issue with the transfers, Gerald was a co-owner of the siblings' Fidelity account and thus maintained some control over the repayment to himself of the purported loan transfers,

The Board further found that, as evidenced by the sibling letter, the purported loans were related to a claim or expectation of inheritance and thus donative in nature, which is the antithesis of a bona-fide loan between family members.

Finally, the transfers lacked sufficient substantiation to qualify as loans. The Board found that the two emails from the Fidelity employee to Gerald regarding the purported loans, to which there is no evidence that Gerald ever responded, were simply instructions for Fidelity. Notwithstanding that these transfers were described as "Non-Gift" in the emails, that label is self-serving and does not affect the characterization of the transfers for tax purposes. The emails do not even include the total amount of the purported loans; they never mention the transfer made on April 29 and thus fail to account for \$200,000 of the purported loans.

In summary, and as will be further explained in the following Opinion, the Board found and ruled that the purported loans from Gerald to Mrs. Deban did not constitute bona-fide claims against the estate and thus were properly disregarded for tax purposes.

Accordingly, the Board issued a decision for the appellee in this appeal.

OPINION

General Laws c. 65C, § 2A imposes a tax on the transfer of the estate of a decedent who, at the time of death, was a Massachusetts resident. General Laws c. 65C, § 3(b) provides that the deductions allowable in computing the Massachusetts taxable estate are those which are allowable in determining the federal taxable estate. Internal Revenue Code (“Code”) § 2053 allows a deduction for certain claims against the estate. However, there is an important caveat: “[t]he deduction allowed by this section in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded on a promise or agreement, be **limited to the extent that they were contracted bona fide and for an adequate and full consideration** in money or money’s worth.” Code § 2053(c) (emphasis added).

The issue presented in this appeal is whether purported loans totaling \$1,450,000 to a mother from her son, pursuant to a durable power of attorney with certain prescribed powers, constituted bona-fide claims against the estate for purposes of computing the appellant’s Massachusetts estate tax liability. If not challenged by the Commissioner, the effect of the transactions at issue would be to transfer \$1,450,000 out of the taxable estate, thereby significantly reducing the appellant’s estate tax, while at the same time preserving tax benefits resulting from a “step-up in basis” at the decedent’s death, as provided under Code § 1014(a)(1).¹

¹ Massachusetts imposes an estate tax on property owned by a decedent at death but does not impose a tax on gifts made by a decedent prior to death. Thus, a person anticipating death has an incentive to gift away property prior to death. However, complicating this matter is the interplay of Code § 1015, which provides that the basis of gifted property is the same in the hands of the donee as it was in the hands of the donor, and Code § 1014, which provides that the basis of property owned by a decedent at death is “stepped up” to fair market value, thus eliminating capital gains tax on built-in gain. As a result of these different incentives, a tax professional might advise that an individual anticipating death should gift away cash (to reduce the Massachusetts estate tax) but not gift away appreciated assets (to preserve the step-up in basis for the recipients).

The Board found that the transfers from Gerald to Mrs. Deban did not constitute bona-fide claims against the estate and thus must be disregarded for tax purposes.

1. The purported loans from Gerald to Mrs. Deban were not authorized by the Fidelity POA and were thus *void ab initio*.

The purported loans from Gerald to Mrs. Deban were *void ab initio* and should be treated “as if [they] had never been made” because they were never authorized by the decedent. ***Barbetti v. Stempniewicz***, 490 Mass. 98, 115 (2022) (quoting ***Massachusetts Municipal Wholesale Elec. Co. v. Danvers***, 411 Mass. 39, 55 (1991)). Gerald’s specified powers under the Fidelity DPA related to the borrowing of funds were limited to “the right to borrow on margin,” which the Fidelity.com website defines as follows:²

Simply put, borrowing on margin means taking an interest bearing loan secured by securities you own in your brokerage account (the securities are pledged as collateral for the loan). Using margin as a secured line of credit could be used as a supplement to, or instead of, getting a loan or financing from traditional sources—such as bank loans and credit cards.

The United States Securities and Exchange Commission website similarly instructs that “[m]argin’ is borrowing money from your broker to buy a stock and using your investment as collateral.”³

A power of attorney is “subject to a rule of strict construction.” ***Barbetti***, 490 Mass. at 112. Even where a power of attorney contains a general grant of authority, the Supreme Judicial Court has “declined to interpret such grant to provide more authority than absolutely necessary to effectuate the purpose of the power, absent some additional express authorization.” ***Id.*** The rule of strict construction is crucial with respect to

² <https://www.fidelity.com/learning-center/trading-investing/trading/margin-borrowing> (last visited January 8, 2026)

³ <https://www.sec.gov/about/reports-publications/investorpubsmarginhtm> (last visited January 8, 2026)

borrowing money on the principal's behalf. The Supreme Judicial Court stated in **Williams v. Dugan**, 217 Mass. 526, 527 (1914) that:

The power to borrow money or to execute and deliver promissory notes is one of the most important which a principal can confer upon an agent. It is fraught with great possibilities of financial calamity. It is not lightly to be implied. It either must be granted by express terms or flow as a necessary and inevitable consequence from the nature of the agency actually created.

Particularly when a power of attorney is used as a tool in elder planning, the Supreme Judicial Court has strictly ruled against expanding powers to borrow by implication, where "given the broad powers they may confer on an agent, they may be used as tools of abuse against the very people they are intended to assist." **Barbetti**, 490 Mass. at 114.

Under the facts of this appeal, the transactions by which Gerald caused Mrs. Deban's Fidelity account to accept money from Gerald's Fidelity account did not involve borrowing money from Mrs. Deban's broker, and the transfers were not secured by assets in Mrs. Deban's Fidelity account. The transactions thus failed to constitute borrowing "on margin" pursuant to the terms of the Fidelity DPA. The Fidelity DPA, which must be read as written to effect only the powers specifically granted, and cannot be extended beyond its express terms, particularly where the decedent at the time of the transfers was unable to conduct her own financial affairs.

Based on the foregoing, the Board found and ruled that transactions at issue were *void ab initio* and thus should be treated "as if [they] had never been made." **Barbetti**, 490 Mass at 115.

2. The purported loans from Gerald to Mrs. Deban were not bona-fide claims against the estate under Code § 2053.

Code § 2053 at paragraph (c)(1)(A) limits the deductibility of claims against the estate, providing that claims are deductible only if "founded on a promise or agreement"

and further, that they are “limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money’s worth.” The purpose of Code § 2053(c) is to prevent estate deductions under the guise of claims that are either gifts or testamentary dispositions. See ***Estate of MacElhenny v. Commissioner of Internal Revenue***, T.C. Memo 2023-33 (March 15, 2023). A deduction is not permissible to the extent that it is founded on a transfer that is donative in nature. See ***Estate of Huntington v. Commissioner***, 16 F.3d 462, 468 (1st Cir. 1994); see also ***Estate of Derksen***, 2012 U.S. Dist. LEXIS 161432 at *14 (“[T]he value of the claim settled by the estate may not be deducted if the agreement on which the claim was based was not bargained at arm’s length.”).

In ***Estate of MacElhenny***, the Tax Court held that a purported debt of the estate owed to the decedent’s children was not deductible under Code § 2053. Like in the instant appeal, the son there acted as both the agent of the decedent borrower and as the lender for a loan. The Tax Court cautioned that “[t]ransactions within a family group are subject to special scrutiny.” T.C. Memo 2023-33 at *9 (quoting ***Harwood v. Commissioner***, 82 T.C. 239, 259 (1984), *aff’d*, 786 F.2d 1174 (9th Cir. 1986) (unpublished), *cert. denied*, 479 U.S. 1007 (1986)); see also ***United States v. Allison***, 587 F. Supp. 3d 1015, 1030 (E.D. Cal. 2022) (“[I]ntra-family agreements are scrutinized closely by courts due to their potential for abuse.”).

The Tax Court in ***Estate of MacElhenny*** was informed by Treasury regulations at 26 CFR § 20.2053-1(b)(2)(ii), which provide various factors for analyzing whether intrafamily claims against an estate are bona fide. Like the transfers in ***Estate of MacElhenny***, the transfers in the instant appeal failed several of these tests.

First, the transfers were not negotiated at arm's length in the ordinary course of business, free from donative intent, and thus failed under 26 CFR § 20.2053-1(b)(2)(ii) paragraph (A). Of particular concern to the Tax Court was that the son, while acting as lender, was simultaneously acting on behalf of the decedent as borrower and thus "was on both sides of the transaction." ***Estate of MacElhenny***, 82 T.C. Memo 2023-33 at *12. The transactions underlying bona-fide claims against an estate require arm's-length negotiations, but the Tax Court found that clearly, the son could not negotiate "at arm's length" with himself. ***Id.*** Likewise here, it was conceded by the parties that the decedent was incapable of handling her own financial affairs as of the time of the transfers and thus had no bargaining power. As Gerald could not negotiate with himself, and there was no evidence of anyone else negotiating on behalf of the decedent as borrower, the transfers were not negotiated at arm's length. Further highlighting the level of self-dealing at issue is the evidence of record indicating that repayment of the purported loans came not from the estate but rather the siblings' Fidelity account, of which Gerald was a co-owner.

Second, the purported loans were related to a claim or expectation of inheritance in violation of 26 CFR § 20.2053-1(b)(2)(ii) paragraph (B). In ***Estate of Derksen***, 2012 U.S. Dist. LEXIS 161432 (E.D. Pa. 2012), the wife's estate, which was the taxpayer in that case, claimed that while both husband and wife were alive, they had agreed to pass on their assets to their heir in a manner which would minimize their collective estate tax liability. ***Id.*** at *3. However, the husband and wife failed to make transfers during their lives to achieve balance of their respective estates, so shortly before the husband's death, the wife signed a promissory note agreeing to pay him \$200,000, an amount which her estate later sought to deduct as a debt on its federal estate tax return. ***Id.*** at *5. In denying the

deduction, the court relied in part upon the fact that “a husband and wife apparently entered into a cooperative plan to pass on their assets to their heir in a manner which minimized estate tax liability.” *Id.* at *16. The court concluded that a transfer made in accordance with that agreement to maximize their heir’s sum “served a donative intent and was related to an expectation of inheritance” and thus violated Code § 2053. *Id.* (citing 26 CFR § 20.2053-1(b)(2)(ii)(B)).

Likewise here, as demonstrated by the evidence of record, the purported loans funded the gifts made by Mrs. Deban to the siblings in anticipation of her death. Regardless of the appellant’s recitation of supposed non-tax reasons for the loans, the Board found that the purported loans “served only as a cloak for a gift from the decedent to [her] children” in the form of reduced estate taxes, and thus were related to a claim or expectation of inheritance in contravention of § 2053. ***Estate of MacElhenny***, 82 T.C. Memo 2023-33 at *12 (citing 26 CFR § 20.2053-1(b)(2)(i)).

Finally, the purported loans were not “substantiated with contemporaneous evidence” and thus violated 26 CFR § 20.2053-1(b)(2)(ii) paragraph (C). The transfers did not originate pursuant to any agreement, written or otherwise, between the decedent or her representative and Gerald, the purported lender. The transfers were not evidenced by loan agreements or promissory notes. There was no stated repayment schedule, interest rate, or maturity date, and there was no negotiation of loan terms. The claimed documentary evidence of two emails from Fidelity regarding the April 28 transfers are facially lacking in terms, and there is no evidence that Gerald ever responded to these messages. The Board found that the self-serving emails lacked any persuasive value. Furthermore, the appellant produced no evidence relating to the April 29 transfers. For a

claim against an estate to be deductible, it must originate from an agreement with the decedent, and the taxpayer bears the burden of proving the existence of that agreement. See *Estate of Spirzziri v. Commissioner*, 136 F.4th 1336, 1343 (11th Cir. 2025) (citing 26 CFR § 20.2053-1(b)(2)(ii)(C)). The appellant failed to demonstrate such substantiation.

Based on the foregoing, the Board found and ruled that the transfers failed to qualify as bona-fide claims against the estate under Code § 2053.

Conclusion

The purported loans at issue were *void ab initio* and not properly deductible under Code § 2053. The Board thus ruled that the assessment at issue was proper.

Accordingly, the Board issued a decision for the appellee.

THE APPELLATE TAX BOARD

By: 

Mark J. DeFrancisco, Chairman

A true copy,

Attest: 

Clerk of the Board