

visions of this chapter, without interest; and the executor or trustee shall immediately upon the happening of such contingencies or conditions apply to the probate court of the proper county, upon a verified petition setting forth all the facts, and giving at least ten days' notice by mail to all interested parties, for an order modifying the temporary order of said probate court so as to provide for a final assessment and determination of the taxes in accordance with such ultimate succession. Such refunder shall be made in the manner provided by Section 5339 of the General Code."

The facts here presented likewise suggest a consideration of the question as to whether the provisions of Section 5336, General Code, apply exempting said successions from an assessment of inheritance taxes until the named beneficiaries shall come into actual possession or enjoyment of such successions. As to this, it is to be observed that although the successions to the nephews and the niece of the testator above named, are dependent upon the happening of a contingency or future event, and such successions were not, therefore, vested at the death of the decedent, yet it does not appear that by reason of this character of such successions the actual market value of such successions cannot be ascertained at the time of the death of the testator. It must be held, therefore, that the provisions of Section 5336, General Code, do not apply, to the question here presented. *Tax Commission vs. Oswald, Executrix*, 109 O. S. 36; *Wonderly vs. Tax Commission*, supra.

It does not appear from your communication whether the inheritance taxes assessed against the successions of the nephews and niece of the testator above named were so assessed by temporary order, subject to refunders in the manner provided by Section 5343, General Code, or otherwise. It is apparent from the provisions of this section of the General Code, that the assessments of inheritance taxes on said successions should have been made by temporary order, subject to refunders and not by permanent order. See *Tax Commission of Ohio vs. Trust & Savings Bank*, 24 O. A., 331.

In this connection, it is further suggested that the order imposing the inheritance taxes on the successions of the two nephews and the niece of the testator should recite that said taxes are imposed under the provisions of Section 5343, General Code, at the highest possible rate on the assumption that Helen Caroline Damon will die without leaving child or children surviving her, or if she die leaving child or children, that all of such children die before any of them attain the age of twenty-five years. Obviously, these recitals should go into the order for the benefit of the persons who may hereafter seek a refunder of said taxes in the event that said nephews and niece do not come into possession of their contingent interests under this last will and testament.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2475.

APPROVAL, BONDS OF PARMA VILLAGE SCHOOL DISTRICT, CUYA-HOGA COUNTY, OHIO—\$37,000.00.

COLUMBUS, OHIO, October 22, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.