

ESTATE TAX

The basic Ohio estate tax is levied against the value of a resident decedent's gross estate less deductions and exemptions. Graduated rates range through six taxable estate brackets from two percent on taxable values of under \$40,000 to \$23,600 plus seven percent on that portion of taxable value which exceeds \$500,000. Each estate also receives a \$500 tax credit. Large estates may also be subject to an "additional" tax which is levied solely to ensure full benefit to Ohio of credits the federal government allows taxpayers against federal estate tax liability for their payment of state death taxes. Ohio also taxes nonresident estates on property values attributable to Ohio.

The total liability on the basic resident estate tax amounted to \$270.2 million on 24,833 taxable estates in fiscal year 1998, compared to \$277.5 million on 25,849 taxable estates in fiscal year 1997. In fiscal year 1998, 2,879 estates, 11.6 percent of the total number of estates generating tax, had net taxable value of \$500,000 or more and yielded approximately \$171.3 million in aggregate taxes, or 63.4 percent of the statewide total for the basic resident estate tax.

Additional revenues of \$29.6 million were attributable to net interest and penalties, the "additional" tax, nonresident returns, the inheritance tax, and amounts paid by installment estates in fiscal year 1998.

The Estate Tax Division also completed audits and finalized returns for 24,771 non-taxable estates in fiscal year 1998.

Data on number of estates, gross and net valuations, and tax paid for the basic resident estate tax are shown by net taxable value bracket in Table 27. These statistics are presented by fiscal year in Table 28 and by county of probate in Table 30. Total revenue produced by Ohio's estate tax is shown in Table 29 with the breakdown of monies distributed to local governments and the remainder retained by the state.

TAX BASE:

Resident: The "net taxable estate," i.e., value of a decedent's gross estate, less deductions (R.C. 5731.15-17). In general, the gross estate equals the aggregate market value at time of death, or on the alternate valuation date (see **SPECIAL PROVISIONS**), of all property, wherever situated, held by the decedent, except real and tangible personal property situated outside of Ohio, and "qualified farm property," which may be valued according to its "actual qualified use" (R.C. 5731.01, 5731.011, 5731.03-13).

The "net taxable estate" equals the gross estate less the following deductions:

- Marital deduction, where there is a surviving spouse;
- Funeral expenses and costs of administering the estate;
- Outstanding and unpaid claims against the estate at time of decedent's death;
- Unpaid mortgage or other indebtedness against property where total value is included within the gross estate valuation;
- Charitable deductions.

Nonresident: That portion of a nonresident decedent's estate which is attributable to Ohio (i.e. in general, real property and tangible personal property located or having a situs in Ohio, and intangible personal property used in business within Ohio unless exempt pursuant to R.C. 5731.34).

Tax is determined (for both nonresident estate and nonresident additional taxes) by (1) calculating tax which would be due from the estate, at rates applicable to resident estates, if decedent had died a resident of Ohio with all property situated or located in Ohio, and (2) multiplying the resultant amount by a fraction representing the ratio of gross estate value attributable in Ohio to gross estate value wherever situated.

RATES (R.C. 5731.02):

Rates are generated through six “taxable estate” brackets, as shown in **EXHIBIT 3 -- ESTATE TAX** (page 41).

NON-FILING REQUIREMENTS (R.C. 5731.21):

Resident estates with gross values under \$25,000 and no real property are exempt from filing returns.

MARITAL DEDUCTION:

Unlimited marital deductions allowed.

TAX CREDITS (R.C. 5731.02):

\$500 or the full amount of tax, whichever is less

SPECIAL PROVISIONS:

1. ***Additional Tax (R.C. 5731.18):*** The Ohio additional tax is a pick-up tax that captures any unused portion of the allowable federal estate tax credit. This additional tax is for state death taxes paid where the federal credit actually exceeds the Ohio estate taxes assessed. The tax is levied in an amount equal to the difference between the maximum allowable federal credit for state death taxes paid and state death taxes actually paid to Ohio or to any other U.S. state, territory, or the District of Columbia. Due to the interaction of the federal state death tax credit schedule and the Ohio estate tax rate structure, this tax in general affects only large estates.
2. ***Alternate Valuation Date (R.C. 5731.01):*** An alternate valuation date may be elected, which is the date six months after the decedent's death, or, in the case of its earlier disposition, on such dates of disposition. If the alternate evaluation date is elected, the election is required to be made within one year from the time the return is required to be filed.
3. ***Undue Hardship Provision (R.C. 5731.25):*** Under certain conditions, an extension of time to pay Ohio estate tax because of undue hardship

applies. An estate may receive an extension of the time to pay the estate tax not to exceed one year beyond the time the tax would otherwise be due if conditions exist caused by undue hardship as defined in R.C. 5731.25. In the case of continuing undue hardship, the estate may apply for an additional extension(s). The total of all extensions granted may not exceed 14 years.

4. ***Qualified Farm Property Valuation and Recapture Provision (R.C. 5731.011):*** Under certain conditions, an estate may elect to have farm property passed to a qualified heir valued at its agricultural use value. A prospective supplemental tax lien remains on the property for four years when this election is used; the lien is equal to the tax savings due to the election and becomes effective if the farm property is disposed of (other than to another qualified heir), or ceases to be devoted exclusively to agricultural use within the four year limitation.

TAXPAYER:

Administrator, executor, other estate representative, or person in possession of the property subject to tax

FILING AND PAYMENT DATES:

In general, as follows:

Tax Return (R.C. 5731.21): To be filed within nine months of decedent's death with probate court of county in which estate is administered, unless an extension is granted

Tax Payment (R.C. 5731.23): Due within nine months of decedent's death, to treasurer of county in which decedent resided

DISPOSITION OF REVENUE (R.C. 5731.48-5731.51):

Sixty-four percent of gross taxes levied and paid to municipal corporation or township in which tax originates (50 percent if derived from estates of decedents dying prior to July 1, 1983). In general, for revenue distribution purposes, the tax on the

transfer of real and tangible personal property located within Ohio originates in the municipal corporation(s) or township(s) in which such property is physically located. In the case of a resident decedent's intangible or tangible personal property located outside of Ohio, domicile of the decedent is determinative; in the case of intangibles of a nonresident decedent, origin is derived from Ohio domicile, location or place of business or custody of the person, bank, institution, or other entity having such property in possession or custody.

Thirty-six percent, less costs of administration, to state General Revenue Fund (50 percent if date of death was prior to July 1, 1983).

ADMINISTRATION (R.C. 5731.29, 5731.44, 5731.45, 5731.46):

The Tax Commissioner is responsible for the administration. The tax is collected locally by the treasurer of the county in which the decedent was a resident.

OHIO REVISED CODE CITATIONS:

Chapter 5731

RECENT SIGNIFICANT COURT DECISIONS:

In Re Estate of Baughman, 81 Ohio St. 3d 302 (1998). A claim against an estate is not rejected by an executor's silence pursuant to Section 2117.11 R.C. unless the creditor plainly invokes the statute's five-day response period. The aim of the provision permitting rejection by silence is to enable those creditors faced with a dilatory executor to hasten resolution of their claims against the estate. A creditor may invoke the rejection by silence provision of R.C. 2117.11, deem the claim rejected after five days, and move forward to bring suit in the court of common pleas.

In Re Estate of Sherer, 116 Ohio App. 3d 345 (1997). Decedent's will containing no tax clause for the apportionment of federal and Ohio estate taxes, the taxes are apportioned in accordance with Section 2113.86 R.C. Where decedent's will provided for both specific devices and a residuary clause, Section 2113.86 (B) controls with estate taxes first being

equitably apportioned to the residuary estate. It is only where the tax apportioned to the residue exceeds the value of the residue is there apportionment among specific and other nonresiduary bequests.

Hamilton v Hector, 117 Ohio App. 3d 816 (1997).

A will contestant claiming undue influence bears the burden of demonstrating the following four elements: (1) a susceptible testator, (2) another's opportunity to exert influence on the testator, (3) the fact that improper influence was exerted or attempted, and (4) a result showing the effect of the improper influence. In addition, undue influence must be present or operative at the time of execution of the will resulting in dispositions which testator would not otherwise have made.

In Re Schwechlek, 89 Ohio Misc. 2d 10 (1997).

A woman who declined decedent's marriage proposal was not the beneficiary of a joint and survivorship account established by decedent, which identified beneficiary as person with woman's first name and decedent's last name. As a result of *Wright v. Bloom*, 69 Ohio St. 3d 596 (1994), courts are no longer called upon to decide issues of intent, since *Bloom* makes the very opening of a survivorship instrument conclusive evidence of intent. Therefore, the plain words of the joint and survivor certificate of deposit control and because the contractual arrangement attempted by decedent failed, the proceeds of the survivorship instrument are deemed to be predictable in nature and thus remain an asset of decedent's estate.

In Re Estate of Haller, 116 Ohio App. 3d 866 (1996).

Section 2113.36 R.C. providing that fees paid by executor of estate to attorney employed in administration of estate are to be allowed as an administration expense gives exclusive original jurisdiction to probate court to determine reasonableness of attorney fees. Reasonable must be reasonable from the standpoint of the attorney rendering the services and from the standpoint of the estate out of which payment is being made. The ultimate determination of reasonableness must take into consideration all the factors relating to reasonableness of the fees in the particular case.

Church v. Morgan, 115 Ohio App. 3d 477 (1996). Where language of will is clear and unambiguous, testator’s intent must be ascertained from express terms of will itself. It is only when the language of the will creates doubt as to its meaning may extrinsic evidence be introduced to determine testator’s intent. Thus, testator’s niece, who was to receive all funds in a specific bank account under testator’s will was only entitled to funds remaining in account at testator’s death, and funds testator had removed from account and reinvested in certificate of deposit, which was not explicitly dispose of by will, became part of the residuary estate.

In Re Estate of Dawson, 117 Ohio App. 3d 51 (1996). Payment of attorney fees is proper in will contest actions, even if party defending the will is unsuccessful. Although estate fiduciary does not have duty to defend a will contest, he may nonetheless undertake to do so. While an estate fiduciary should generally remain neutral in disputes between beneficiaries, where testamentary purposes of decedent are manifest in validly executed will, fiduciary has responsibility to make reasonable efforts to carry out those purposes.

Bank One Ohio Trust Co., N.A. v. Hiram College, 115 Ohio App. 3d 159 (1996). Neither sections 2109.371 nor 2109.372 which authorize investment of principle in securities or investment of principle in short term investment funds were successor statutes to 2109.37 which limited investment of principle to government obligations, mortgage-backed securities, and investment company securities. Therefor, testators will authorizing trustee to invest principle in “those investments permitted to fiduciaries under Section 2109.37 R.C. or any successor statute” did not permit investments of the type permitted by the later statutes. Intention of testator is to be ascertained, not by what occurred long after execution of the will but what was presumably in his contemplation at the time he was making it.

EXHIBIT 3 -- ESTATE TAX	
Taxable Estate Brackets (R.C. 5731.02)	
Taxable Estates of:	Tax Rate Imposed:
Not over \$40,000	2% of taxable estate
Over \$40,000 but not over 100,000	\$800 + 3% of excess over \$40,000
Over 100,000 but not over 200,000	2,600 + 4% of excess over 100,000
Over 200,000 but not over 300,000	6,600 + 5% of excess over 200,000
Over 300,000 but not over 500,000	11,600 + 6% of excess over 300,000
Over \$500,000	23,600 + 7% of excess over 500,000

Table 27
Distribution of Taxable Estates, Gross and Net Values, and Tax Liability by
Net Taxable Value Brackets, Fiscal Year 1998 (Resident Estates Only)

Net Taxable Value		Number of Estates	Aggregate Gross Value	Aggregate Net Taxable Value	Aggregate Tax Liability
Under	\$40,000	3,160	\$158,654,140	\$86,620,782	\$687,622
\$40,000 -	100,000	7,454	729,442,969	499,590,851	8,464,285
100,000 -	200,000	5,794	1,126,833,428	827,664,423	22,221,581
200,000 -	300,000	2,837	856,987,663	693,641,425	23,665,230
300,000 -	500,000	2,709	1,335,506,531	1,042,847,650	43,874,177
500,000 -	1,000,000	2,183	2,114,832,300	1,425,771,453	73,870,010
Over	1,000,000	<u>696</u>	<u>1,913,814,467</u>	<u>1,514,204,929</u>	<u>97,403,906</u>
Total		24,833	\$8,236,071,500	\$6,090,341,512	\$270,186,809

Note: Data shown here represent returns finalized by the Estate Tax Division during this fiscal year. This data differs from Table 30 due to reporting complications.

Table 28
Number of Estates, Aggregate Gross and Net Value, and Aggregate Tax Liability
Fiscal Years 1995-1998 (Resident Estates Only)

Fiscal Year	Number of Estates	Aggregate Gross Value	Aggregate Net Taxable Value	Aggregate Tax Liability
1995	24,405	\$7,224,381,194	\$5,421,040,969	\$227,790,386
1996	24,746	7,277,073,724	5,374,985,890	229,566,104
1997	25,849	8,417,303,414	6,254,613,767	277,452,464
1998	24,833	8,236,071,500	6,090,341,512	270,186,809

Note: This data differs from Table 30 due to reporting complications.

Table 29
Estate Tax Collections and Distributions, Fiscal Year 1996-1998
(in millions)

Fiscal Year	Total Collections	State General Revenue	Local Governments
1996	\$257.9	\$89.9	\$168.0
1997	299.1	102.0	197.1
1998	323.8	114.8	209.0

Source: State General Revenue Fund figures based on receipts reported by the Office of Budget & Management. Local Government figures based on the certified local shares (including fees) from the semi-annual settlements that occur in each fiscal year.

Table 30
Number of Estates, Aggregate Gross and Net Taxable Values, and Tax Liability, by County of Probate, Fiscal Year 1998* (Resident Estates Only)

County	Number of Estates	Gross Estate Value	Net Taxable Value	Tax Liability	County	Number of Estates	Gross Estate Value	Net Taxable Value	Tax Liability
Adams	38	\$6,777,825	\$6,076,352	\$199,001	Logan	98	\$23,566,331	\$18,934,972	\$715,303
Allen	221	69,552,590	58,528,628	2,692,172	Lorain	550	166,692,456	123,820,027	5,340,995
Ashland	118	35,796,008	27,691,783	1,219,513	Lucas	1,108	403,648,974	280,952,425	12,693,248
Ashtabula	197	38,516,621	30,531,671	1,044,322	Madison	68	16,915,383	13,838,474	588,624
Athens	81	17,808,930	14,907,679	558,296	Mahoning	584	165,337,877	127,405,735	5,312,226
Auglaize	130	35,208,799	24,678,765	932,886	Marion	127	32,315,996	25,957,738	1,036,466
Belmont	189	34,115,911	29,637,454	1,045,619	Medina	255	81,602,490	63,314,464	2,751,278
Brown	83	20,397,230	16,982,677	706,549	Meigs	47	10,306,530	7,881,500	283,465
Butler	523	197,235,606	140,057,683	6,343,029	Mercer	110	33,168,824	26,594,943	1,103,750
Carroll	36	7,390,522	6,653,102	253,127	Miami	236	64,942,936	47,046,607	1,839,005
Champaign	82	33,654,293	25,471,539	1,237,814	Monroe	27	4,342,618	3,899,552	122,173
Clark	317	93,714,735	64,301,110	2,687,307	Montgomery	1,242	404,587,815	304,166,005	13,288,821
Clermont	229	57,463,830	47,338,035	1,945,111	Morgan	32	7,807,655	6,250,427	228,917
Clinton	76	30,597,933	22,001,873	1,031,331	Morrow	52	11,483,596	9,891,515	383,160
Columbiana	208	43,390,509	34,135,906	1,217,500	Muskingum	180	34,657,597	27,566,529	912,261
Coshocton	72	14,473,470	11,348,970	387,247	Noble	22	3,616,580	3,098,297	109,588
Crawford	133	43,172,322	35,868,973	1,615,647	Ottawa	111	41,045,150	36,003,362	1,822,989
Cuyahoga	3,692	1,293,305,339	967,704,451	43,093,003	Paulding	49	10,020,871	8,530,788	316,627
Darke	153	41,440,492	30,465,677	1,179,450	Perry	49	8,483,360	7,628,266	262,697
Defiance	86	21,074,057	18,282,752	719,805	Pickaway	103	41,148,588	27,215,493	1,214,595
Delaware	134	34,084,716	28,597,451	1,140,693	Pike	48	9,847,895	8,661,855	352,349
Erie	191	64,435,180	49,375,882	2,211,679	Portage	246	76,241,028	57,839,497	2,418,073
Fairfield	198	51,599,185	39,342,521	1,518,273	Preble	72	19,077,313	15,899,364	617,742
Fayette	79	19,309,009	16,750,468	652,813	Putnam	83	22,652,069	16,240,646	592,400
Franklin	1,720	681,495,915	473,749,542	21,205,177	Richland	273	74,863,107	56,745,563	2,262,987
Fulton	132	31,028,120	26,238,253	992,230	Ross	138	50,636,335	25,513,966	959,858
Gallia	53	15,608,889	13,435,678	609,368	Sandusky	146	42,902,078	35,575,219	1,503,537
Geauga	169	79,931,409	46,983,680	2,032,185	Scioto	128	25,901,779	19,869,512	736,259
Greene	276	88,179,182	65,039,332	2,807,082	Seneca	150	43,637,957	32,723,344	1,328,470
Guernsey	83	15,306,127	13,560,331	490,084	Shelby	116	37,601,732	29,739,386	1,298,086
Hamilton	2,096	1,221,464,993	861,633,515	44,701,482	Stark	844	291,815,167	211,894,319	9,355,979
Hancock	184	72,006,841	46,973,278	2,037,444	Summit	1,131	401,892,050	304,797,201	13,901,872
Hardin	68	13,416,080	10,995,698	374,035	Trumbull	490	136,767,678	102,095,367	4,227,844
Harrison	44	6,538,588	5,759,037	188,873	Tuscarawas	213	60,138,366	50,718,942	2,213,109
Henry	97	25,975,979	20,582,114	834,696	Union	72	26,639,915	18,378,886	779,155
Highland	78	23,378,265	18,304,496	757,281	Van Wert	87	26,939,964	20,512,225	844,549
Hocking	51	12,814,506	10,842,554	459,283	Vinton	24	4,907,464	4,057,722	146,757
Holmes	59	16,203,936	12,919,522	499,938	Warren	203	66,479,594	55,146,926	2,538,314
Huron	115	27,113,882	22,931,378	876,014	Washington	138	91,210,560	44,378,260	2,247,048
Jackson	60	8,369,504	7,172,525	212,885	Wayne	233	70,579,988	54,022,607	2,199,194
Jefferson	183	34,001,660	28,030,611	1,031,112	Williams	114	47,236,022	32,063,127	1,506,449
Knox	120	27,266,798	23,427,564	893,052	Wood	253	82,193,760	60,615,735	2,534,354
Lake	436	124,916,908	95,280,508	3,855,474	Wyandot	58	<u>14,448,232</u>	<u>12,100,534</u>	<u>454,176</u>
Lawrence	89	17,991,702	15,811,291	587,384	Total	23,958	\$8,209,414,230	\$6,065,080,981	\$268,982,669
Licking	269	71,588,157	59,091,350	2,560,655					

* Statistics are derived from returns on which audits were completed and final certificates were issued in fiscal year 1998. This data differs from Table 27 and 28 due to reporting complications.