

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.

Total revenue produced by Ohio's estate tax is shown in Table 27 with the breakdown of monies distributed to local governments and the remainder retained by the state. Data on the number of estates, gross and net valuations, and tax paid for the basic resident estate tax are not presented (in the 2000 Annual Report) because FY 2000 data was not available.

Senate Bill 108 (effective September 29, 2000) results in significant tax cuts to the Ohio estate tax. Currently, the estate tax credit is \$500. For dates of death on or after January 1, 2001, but before January 1, 2002, the estate tax credit is increased to \$6,600. For dates of death on or after January 1, 2002, the estate tax credit increases to \$13,900.

Senate Bill 108 also changes the distribution of the estate tax revenue. Current revenue distribution results in 64 percent going to the local governments and 36 percent (less costs of administration) to the state General Revenue Fund. For estates with dates of death from January 1, 2001 to December 31, 2001 (**See Disposition of Revenue**), the revenue distribution will be 70 percent going to local governments and 30 percent (less costs of administration) to the state General Revenue Fund. Revenue from estates with dates of death after December 31, 2001 will be distributed 80 percent to local governments and 20 percent (less administration costs) to the state General Revenue Fund.

In addition to the credit increases, Senate Bill 108 also enacts Section 5731.20 which permits a deduction for qualified family business interests. As long as the family business meets the qualifications set forth in Section 2057 IRC, the estate may claim an Ohio deduction for that family-owned business. The maximum deduction allowed cannot exceed \$675,000. The election for Ohio can be made even though no election is made at the federal level.

TAX BASE:

Resident: The "net taxable estate," is the 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;
- For estates with dates of death on or after January 1, 2001, a deduction for the decedent's qualified interest in a family owned business.

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 54).

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

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

For dates of death on or after January 1, 2001, but before January 1, 2002, resident estates with gross values under \$200,000, and no real property are exempt from filing returns.

For dates of death on or after January 1, 2002, resident estates with gross values under \$338,000, and no real property are exempt from filing returns.

MARITAL DEDUCTION:

Unlimited marital deductions allowed.

TAX CREDITS (R.C. 5731.02):

\$500 for estates with dates of death prior to January 1, 2000 or the full amount of tax, whichever is less.

\$6,600 for estates with dates of death from January 1, 2001 to December 31, 2001, or the full amount of the tax, whichever is less.

\$13,900 for estates with dates of death on or after January 1, 2002, or the full amount of the 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 valuation 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, or other estate representative, 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):

Estates with dates of death from July 1, 1983 to December 31, 2000, 64 percent of gross estate tax revenues are distributed to the municipal corporations or townships in which the tax originates (50 percent if derived from estates with dates of death 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.

Estates with dates of death from July 1, 1983 to December 31, 2000, 36 percent of gross estate tax revenues (less costs of administration) are distributed to the state General Revenue Fund (50 percent if derived from estates with dates of death prior to July 1, 1983).

Estates with dates of death from January 1, 2001 to December 31, 2001, 70 percent of gross estate tax revenues will be distributed to the municipal corporations or townships in which the tax originates and 30 percent (less costs of administration) will be distributed to the state General Revenue Fund.

Estates with dates of death on or after January 1, 2002, 80 percent of gross estate tax revenues will be distributed to the municipal corporations or townships in which the tax generates and 20 percent (less costs of administration) will be distributed to the state General Revenue Fund.

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 LEGISLATION:

Senate Bill 108; effective September 29, 2000.

R.C. 5731.02 - Estates with dates of death from January 1, 2001 to December 31, 2001, will receive a \$6,600 credit. Estates with dates of death on or after January 1, 2002, will receive a \$13,900 credit.

R.C. 5731.20 - For estates with dates of death on or after January 1, 2001, creates a deduction for decedent's qualified interest in a family owned business.

R.C. 5731.48 - Estate tax revenue from estates with dates of death from January 1, 2001 to December 31, 2001, will be distributed 70 percent to local governments and 30 percent to the state General Revenue Fund. Estates with dates of death on or after January 1, 2002, will be distributed 80 percent to local governments and 20 percent to the state General Revenue Fund.

R.C. 1339.412 - A trustee of a trust which qualifies for the estate tax marital deduction and which is the beneficiary of an individual retirement account has a fiduciary duty to withdraw and distribute to the surviving spouse the income of the individual retirement account, at least annually.

House Bill 313; effective August 29, 2000.

R.C. 2113, 5731, et al. - Permits transfer of titled assets of a decedent to persons who pay or are eligible to pay for decedent's funeral expenses.

House Bill 59; effective October 29, 1999

R.C. 1340, 2103, et. al. - Various changes to probate law.

House Bill 366; effective March 18, 1999.

R.C. 2106.13 - Increases from \$25,000 to \$40,000 the amount of property or money that a surviving spouse and/or minor children of the decedent can claim as an allowance for support.

R.C. 2113.03 - Increases from \$85,000 to \$100,000 the maximum value of a decedent's estate that can be relieved from administration, but only where the surviving spouse is entitled to inherit all assets of estate.

RECENT SIGNIFICANT COURT DECISIONS:

State Ex Rel. Lee v Montgomery, 88 Ohio St. 3d 233 (2000). Absent an abuse of discretion, mandamus cannot compel a public official to act in a certain way on a discretionary matter. Consequently, the Attorney General had no legal duty under Section 109.24 to institute any action to further define other beneficiaries of a charitable trust. Not only is a charitable trust permitted to have vague, undefined and uncertain beneficiaries, but it is required to have such beneficiaries since the very essence of a charitable or public trust lies in the indefiniteness of the charitable trust beneficiaries.

Fifth Third Bank v Simpson, 134 Ohio App. 3d 71 (1999). The express language of a trust guides a court in determining the intentions of the settlor. In order to abuse its discretion, a court must have acted unreasonably, arbitrarily, or unconscionably. Thus,

the probate court acted within its discretion by refusing to amend a testamentary trust to grant special powers of appointment to settlor's sons who were both unmarried and without issue and who were trust beneficiaries, even though such powers would have allowed the sons to appoint trust corpus to qualified charities which would have minimized taxes on assets passing under the trust. While the settlor probably did not contemplate his sons not having issue, the trust language did not create a duty to avoid taxation or provide for special testamentary powers of appointment.

In Re Estate of York, 133 Ohio App. 3d 234 (1999). The doctrine of ademption is applicable where property specifically bequeathed by a testator is no longer in existence at his death or has been given away during his lifetime. Thus, ademption would have no application to a specific bequest of real property that was never legally possessed by the testator due to the legal malpractice of an attorney in failing to transfer an interest in that property to the testator during his lifetime; because the testator could not have conveyed the property during his life, he could not adeem that same property.

Gotthardt v Candle, 131 Ohio App. 3d 831 (1999). Where a fiduciary relationship exists (in this instance, a power of attorney) between a creator of a joint and survivorship account and a surviving beneficiary, there is a suspicion that the transaction resulted from undue influence, and a presumption of undue influence arises; once the presumption arises, the burden of going forward with evidence shifts to the beneficiary to show that her conduct was free of undue influence. However, the party attacking the transaction retains the ultimate burden of proving undue influence by clear and convincing evidence.

In Re Testamentary Trust of Hasch, 131 Ohio App. 3d 143 (1999). Under the doctrine of merger, a trust need not be continued where all equitable and legal interests in trust realty are held by the same person. However, the doctrine of merger did not warrant termination of a testamentary trust with respect to certain real estate where the settlor's son had not acquired all present and future equi-

table and legal interests in the real property he claimed.

In Re Estate of Tyler, 100 Ohio Misc. 2d 17 (1999). Following the death of the testator, an individual who had been appointed in the will as executor of the estate declined to accept appointment. The daughter of the testator, who was named as devisee in the will and would have been the person entitled to administer the estate if the testator had died intestate was appointed by the court as the administratrix with will annexed. In appointing the daughter over a bank which was also named in the will as a beneficiary trustee, the court stated that lack of expertise in a specialized area is not the equivalent of unsuitability to serve as executor of the estate since the appointment of a fiduciary is not necessarily a question of expertise.

In Re Estate of Carpenter, 129 Ohio App. 3d 717 (1998). When a testator devises a parcel of real property to a beneficiary, the beneficiary takes the property subject to its encumbrances, such as tax liens and mortgages. However, a provision in decedent's will directing that any real estate owned at death be sold and the proceeds given to her nephew, did not constitute a devise in realty, but

rather, was a bequest of personalty. Consequently, the nephew, who was also named as executor, never obtained an interest in property as beneficiary of the will, and was not required to utilize his own funds during pendency of sale to cover the mortgage for the property or incidental expenses of its management.

Armstrong v Armstrong, 128 Ohio App. 3d 393 (1998). Surviving spouse who had been omitted from her deceased husband's will, and who elected to take her statutory distributive share of the husband's estate, was also entitled to her dower interest in husband's one-half interest in the marital residence, and was not required to make an election between the two, where husband prior to his death quitclaimed his interest in the marital residence, and wife had not consented to the transfer or waived her dower interest in the property.

Burkholder v Haller, 127 Ohio App. 3d 618 (1998). If a testator desires that estate taxes be paid in a manner different from the appointment statute as defined under Section 2113.86, such intent must be clearly, specifically, and unambiguously expressed. Consequently, and pursuant to Section 2113.87, both an objection and a request are required to be filed with the court in order to challenge the apportionment of tax to an estate which is made by the fiduciary. If no such objection and request are filed, the statute becomes self-executing and all parties become bound by the manner of apportionment determined by the fiduciary.

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
Estate Tax Collections and Distributions, Fiscal Years 1996-2000
(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
1999	407.1	144.5	262.6
2000	434.7	140.0 ⁽¹⁾	294.7 ⁽¹⁾

⁽¹⁾ State General Revenue Fund figures are based on actual receipts reported by the Office of Budget and Management. Local government figures represent a liability because it is based on the certification of the local share (including fees) from the semi-annual settlements that occur each year.