

ESTATE TAX

The basic Ohio estate tax is levied against the value of a resident decedent's gross estate less deductions and exemptions. Effective January 1, 2001, graduated rates range up to \$23,600 plus seven percent on that portion of taxable value which exceeds \$500,000. 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 2001 Annual Report) because FY 2001 data were not available.

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

Senate Bill 108 also changed the distribution of the estate tax revenue. Current revenue distribution results in 70 percent going to the local governments and 30 percent (less costs of administration) to the state General Revenue Fund. For estates with dates of death from January 1, 2002, (**See Disposition of Revenue**), the revenue distribution will be 80 percent going to local governments and 20 percent (less costs of administration) 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;
- 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 “taxable estate” brackets, as shown in **EXHIBIT 3 -- ESTATE TAX** (page 54).

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

For dates of death prior to January 1, 2001, resident estates with gross values under \$25,000 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 are exempt from filing returns.

For dates of death on or after January 1, 2002, resident estates with gross values under \$338,000, 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, 2001 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. However, an automatic six month extension is granted to all estates.

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. 5731.44, 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:

House Bill 85; Effective October 31, 2001.

R.C. 2106, 2107, and 2109 - Makes changes relative to the surviving spouse's election to take under the will, will contest, and the final and distributive account of estates administration.

Senate Bill 152; Effective March 22, 2001.

R.C. 2105, 2106, and 2101 - Adopts provisions of the uniform Probate Code regarding elective share of surviving spouse in augmented estates.

House Bill 94; Effective September 6, 2001.

Biennial Budget Bill.

R.C. 5731.21 - Technical correction to Senate Bill 108 (123rd General Assembly)

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:

Polen v. Baker, 92 Ohio St. 3d 563 (2001).

Testator's will directed that her residuary estate pass to five designated beneficiaries "or to the survivors thereof". In constructing the language of that phrase to result in the manner of a *per capita* distribution and not a *per stirpes* distribution, the Court determined distribution of the

residuary estate to the four beneficiaries who survived the testator and not a *per stirpes* distribution that would have included the heirs of the fifth named beneficiary who predeceased the testator. Consequently, the language of the testator's will avoided the operation of the antilapse statute contained in Section 2107.52(B)O.R.C.

McDonald & Company Securities, Inc., Gradison Division v. Alzheimer's Disease & Related Disorders Assn., Inc., 140 Ohio App. 3d 358 (2000).

Because the phrase "Alzheimer's Research Center" was ambiguous, extrinsic evidence was admissible for purposes of determining which charitable organizations should receive money from settlor's individual retirement account (IRA) whose designated beneficiary was Alzheimer's Research Center. Since that phrase did not, standing alone, identify any particular entity, as no organization solely used that phrase as its name, that particular designation could reasonably apply to any one of numerous organizations. The cy pres doctrine did not apply since the court was able to ascertain that settlor had demonstrated general intent to benefit patients with Alzheimer's Disease, but was merely unable to ascertain which organization he intended to benefit.

Miller v. Miller, 139 Ohio App. 3d 512 (2000).

Even though the preparer of husband's inter vivos trust in which husband was both the settlor and trustee was not a licensed attorney, the trust was a valid instrument through which husband could circumvent dower rights of his wife. Consequently, a valid, nontestamentary trust executed by a settlor and in existence at the time of death bars the settlor's spouse from claiming a distributive share in the trust assets under the statute of descent and distribution, even though the settlor is the trustee, derives all income from the trust, and reserves the right to revoke or amend the trust and to withdraw and deposit assets.

Dykes v. Grayton, 139 Ohio App. 3d 395 (2000).

There was no “special circumstances” exception to attorney’s immunity from third-party negligence claims asserted against attorney by intended beneficiaries of will that was denied admission to probate due to lack of statutorily required signature of one of two attesting witnesses. The beneficiaries’ lack of privity with the testatrix and the fact that the attorney did not act with malice precluded recovery. In a like manner, the court-appointed administrator of testatrix’s estate lacked the required privity with testatrix to permit administrator’s assertion of negligence claim against testatrix’s attorney.

Bajurczak v. Estate of Bajurczak, 139 Ohio App. 3d 78 (2000).

Where two marriages have been lawfully solemnized and the record is silent as to whether there has been a divorce of the parties to the first marriage, there is a presumption that the status of the parties to the first marriage continues, and the burden is upon the parties claiming the validity of the second marriage to overcome the presumption. It cannot be presumed that parties once married have been divorced in the absence of proof, and there is no presumption of divorce in support of the legality of a later marriage.

Yardley v. W. Ohio Conference of the United Methodist Church, Inc., 138 Ohio App. 3d 872 (2000).

A creditor who had been named special administrator of decedent’s estate by the probate court was entitled to bring a wrongful death action in his name and capacity as special administrator, even if beneficiaries of the estate chose not to pursue that claim. Nothing in Section 2113.06 O.R.C. precludes a creditor from serving as a special administrator. The statutory requirement that a wrongful death action be brought in the name of the personal representative of the deceased is proper even though the statutory beneficiaries are the real parties in interest and the personal representative acts merely as a nominal party.

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 1997-2001
(in millions)

Fiscal Year	Total Collections	State General Revenue⁽¹⁾	Local Governments⁽¹⁾
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	294.7
2001	451.6	166.0	285.6

⁽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.