

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 up to \$23,600 plus 7 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 real and tangible personal property situated in Ohio.

Total revenue produced by Ohio's estate tax amounted to \$357.7 million in FY 2003, as shown in the table in this chapter. The table displays the breakdown of monies distributed to local governments and the remainder retained by the state.

S.B. 108 (123rd General Assembly) resulted in significant tax cuts to the Ohio estate tax. For dates of death on or after January 1, 2002, every estate receives a tax credit of \$13,900.

S.B. 108 also changed the distribution of the estate tax revenue. For estates with dates of death on or after January 1, 2002 (see **Disposition of Revenue**), the revenue distribution is 80 percent to local governments and 20 percent (less costs of administration) to the state General Revenue Fund.

In addition to the credit increases, S.B. 108 also enacted R.C. 5731.20, which permits a deduction for qualified family business interests. As long as the family business meets the qualifications set forth in Internal Revenue Code (I.R.C.) 2057, 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:

1. 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. Excepted are 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:

- a) Marital deduction, where there is a surviving spouse;

- b) Funeral expenses and costs of administering the estate;
- c) Outstanding and unpaid claims against the estate at time of the decedent's death;
- d) Unpaid mortgage or other indebtedness against property where the value of that property is included in the gross estate valuation;
- e) Charitable deductions; and
- f) A deduction for the decedent's qualified interest in a family-owned business.

2. Nonresident:

The nonresident estate tax base is comprised of real 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 for both nonresident estate and nonresident additional taxes is determined by (1) calculating tax which would be due from the estate, at a rate applicable to resident estates, if the 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 the **exhibit** at the end of this chapter. The rates range from not less than 2 percent to not more than 7 percent plus \$23,600.

FILING REQUIREMENTS (R.C. 5731.21):

For dates of death prior to January 1, 2001, estates with gross values over \$25,000 were required to file an estate tax return.

For dates of death on or after January 1, 2001 through December 31, 2001, estates with gross values over \$200,000 were required to file an estate tax return.

For dates of death on or after January 1, 2002, estates with gross values over \$338,333 are required to file an estate tax return.

MARITAL DEDUCTION (R.C. 5731.15):

A marital deduction is allowed in an amount equal to the net value of any asset passing from the decedent to the surviving spouse to the extent that the asset is included in the value of the gross estate.

TAX CREDITS (R.C. 5731.02):

For estates with dates of death prior to January 1, 2001, \$500 or the full amount of the tax, whichever was less.

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

For estates with dates of death on or after January 1, 2002, \$13,900 or the full amount of the tax, whichever is less.

SPECIAL PROVISIONS:

1. The Ohio additional tax (R.C. 5731.18) 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 and state death taxes actually paid to Ohio or 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 larger estates. Under the Economic Growth and Tax Relief Reconciliation Act of 2001, the federal credit for state death taxes was reduced incrementally beginning in 2002, and is fully repealed in 2005. Ohio law, however, does not allow for a credit reduction.
2. An alternate valuation date (R.C. 5731.01) may be elected, which is the date six months after the decedent's death, or, in the case of the property's 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. Under certain conditions, an extension of time to pay Ohio estate tax because of undue hardship (R.C. 5731.25) 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 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. A qualified farm property valuation and recapture provision (R.C. 5731.011) applies to some estates. Under certain conditions, an estate may elect to have farm property that passes 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 realized 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 the decedent's death with the probate court of the county in which the 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 the decedent's death, regardless of any extension of time to file, to the treasurer of the county in which the decedent resided.

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

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, the 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.

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

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

The Tax Commissioner is responsible for administration of the estate tax. 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:**H.B. 242, 124th General Assembly (effective May 16, 2002). R.C. 2105.31 through 2105.39 —**

Shortened the amount of time that another person must survive a decedent in order to inherit. Also expands the presumptive order of death to include probate and nonprobate transfers.

H.B. 85, 124th General Assembly (effective October 31, 2001). R.C. 2106, 2107, and 2109 —

Made changes relative to the surviving spouse's election to follow the terms of the will, and also reduced the time period for the filing of a final and distributive account where no estate tax return is required to be filed.

S.B. Bill 152, 123rd General Assembly (effective March 22, 2001).**R.C. 2105, 2106, and 2101 —**

Adopted provisions of the uniform Probate Code regarding elective share of the surviving spouse in augmented estates.

S.B. 108, 123rd General Assembly (effective September 29, 2000).

R.C. 5731.02 –

Estates with dates of death from January 1, 2001 to December 31, 2001, received a \$6,600 credit. Estates with dates of death on or after January 1, 2002, received a \$13,900 credit.

R.C. 5731.20 –

For estates with dates of death on or after January 1, 2001, created a deduction for the 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, was distributed 70 percent to local governments and 30 percent to the state General Revenue Fund. Revenue from estates with dates of death on or after January 1, 2002 is distributed 80 percent to local governments and 20 percent to the state General Revenue Fund.

R.C. 1339.412 –

A trustee's duty to distribute income at least annually to a surviving

spouse from an IRA marital deduction trust was satisfied so long as the language is in place to require that distribution.

H.B. 313, 123rd General Assembly (effective August 29, 2000). R.C. 2113, 5731, et al. –

Permitted transfer of titled assets of the decedent to persons who pay or are eligible to pay for the decedent's funeral expenses.

RECENT SIGNIFICANT COURT DECISIONS:

PNC Bank, Ohio, N.A. v Roy (2003), 152 Ohio App. 3d 439.

R.C. 2113.87 provides that a fiduciary may apply to the court that has jurisdiction of an estate to request the court to determine the apportionment of the estate tax. However, any intent on the part of the testator that estate taxes are to be paid in a manner contrary to the apportionment guidelines set forth in RC 2113.86 must be clearly expressed in the will. Thus, the apportionment statute will apply unless the clear intent of the testator is shown to have been otherwise. Because a bequest of "money and/or property in an amount equal to eighteen (18%) percent of the gross estate..." was deemed a pecuniary gift of a specified amount, the beneficiaries of said bequest were not determined to be residuary beneficiaries and thus not required to share in the apportionment of the estate tax.

Table
Estate Tax Collections and Distributions,
Fiscal Years 1999-2003
(figures in millions)

Fiscal Year	Total Collections	State General Revenue*	Local Governments*
1999	\$407.1	\$144.5	\$262.6
2000	434.7	140.0	294.7
2001	451.6	166.0	285.6
2002	375.4	116.3	259.2
2003	357.7	100.8	256.9

* 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 the figures are based on the certification of the local share (including fees) from the semi-annual settlements that occur each year.

Exhibit – Estate Tax
Taxable Estate Brackets
(RC. 5731.02)

Taxable Estates:		Tax Rate:	
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