



## 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 7.0 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 \$290.3 million in Fiscal Year 2004, as shown in the table in this chapter. The table displays the breakdown of monies distributed to local governments and that retained by the state.

Senate Bill 108, 123<sup>rd</sup> 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.

In addition to the credit increases, S.B. 108 also enacted Ohio Revised Code 5731.20, which permits a deduction for qualified family business interests. 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.

### Taxpayer (Ohio Revised Code 5731.02, 5731.19):

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

### Tax Base (R.C. 5731.15-19, 5731.19-20):

#### 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:

- (a) 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
- (b) 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**. The rates range from not less than 2.0 percent to not more than 7.0 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 from July 1, 1983 through December 31, 2000, \$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) captures any unused portion of the allowable federal estate tax credit for state death taxes paid. The additional tax comes into play where the federal credit allowed for state death taxes actually exceeds the Ohio basic estate tax assessed. In these instances, the additional tax picks up the difference between the federal estate tax credit for state death

taxes and the basic state estate tax liability (inclusive of any estate taxes paid to Ohio, 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.

Liability for the additional tax is calculated as shown in the example below:

Item	Ohio Liability
Gross Estate Value	\$5,100,000
Less Deductions	(100,000)
Net Taxable Value	5,000,000
Tax Before Credits	338,600
Unified/State Credit	(13,900)
Estate Tax	324,700
Less Federal Credit for	
State Death Taxes	391,600
Ohio Additional Tax	66,900
Net Ohio Liability	\$391,600

- 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.
- 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.

- 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.

## 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:

### S.B. 189, 125<sup>th</sup> General Assembly (effective June 29, 2004). R.C. 5731.47 and 5731.48:

Expands the requirement of sharing the costs of administering the estate tax to include both local governments and the state in proportion to their respective share of gross estate tax revenues received. Local governments will pay 80 percent of the fees and expenses incurred, with the state paying the remaining 20 percent of expenses.

### S.B. 64, 125<sup>th</sup> General Assembly (effective October 21, 2003). R.C. 1337, 1339, and 2109:

Implements procedures for the distribution of a trust estate when a probate court terminates a trust with a fair market value of less than \$100,000. The bill also expands the prohibition of trusts from permitting the accumulation for more than one year of any income interest granted to a surviving spouse where that income interest is eligible for a qualified terminable interest property deduction.

### House Bill 242, 124<sup>th</sup> General Assembly (effective May 16, 2002). R.C. 2105.31-2105.39:

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

## Recent Significant Court Decisions:

***PNC Bank, Ohio, N.A. v Roy* (2003), 152 Ohio App. 3d 439. R.C. 2113.87**

provided 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 paid in a manner contrary to the apportionment guidelines set forth in R.C. 2113.86 must be clearly expressed in the will. Thus, the apportionment statute applies 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 were not required to share in the apportionment of the estate tax.

Table  
Estate Tax Collections and Distributions, Fiscal Years 2000-2004  
(figures in millions)

Fiscal Year	Total Collections	State General Revenue*	Local Governments*
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
2004	290.3	64.2	226.1

\* 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 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 (R.C. 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