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he 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 non-resident estates on real and tangible personal property situated in Ohio.

Total revenue produced by Ohio's Estate tax amounted to \$375.4 million in Fiscal Year 2002, as shown in the table in this chapter. The table contains the breakdown of monies distributed to local governments and the remainder retained by the state.

Senate Bill 108 (effective September 29, 2000) 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.

Senate Bill 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, Senate Bill 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 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:

- 1) Marital deduction, where there is a surviving spouse;
- 2) Funeral expenses and costs of administering the estate;
- 3) Outstanding and unpaid claims against the estate at time of decedent's death;
- 4) Unpaid mortgage or other indebtedness against property where the value of that property is included in the gross estate valuation;
- 5) Charitable deductions;
- 6) A deduction for the decedent's qualified interest in a family-owned business.

### 2. Non-resident:

The non-resident 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 non-resident estate and non-resident additional taxes is determined by (1) calculating tax which would be due from the estate, at a rate 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 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 are required to file an Estate tax return.

For dates of death on or after January 1, 2001, but before January 1, 2002, estates with gross values over \$200,000 are 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 a 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 is less.

For estates with dates of death from January 1, 2001 to December 31, 2001, \$6,600 or the full amount of the tax, whichever is 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. **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 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. Under the Economic Growth and Tax Relief Reconciliation Act of 2001, the federal credit for state death taxes is reduced incrementally beginning in 2002, and is fully repealed in 2005. Ohio law, however, does not allow for a credit reduction.
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 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. **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 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 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 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, 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 non-resident 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 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 242; Effective May 16, 2002. R.C. 2105.31 through 2105.39 –**

Shortens 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 non-probate transfers.

**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 estate's 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.

**Senate Bill 108; Effective September 29, 2000.****R.C. 5731.02 –**

Estates with dates of death from January 1, 2001 to December 31, 2001, receive a \$6,600 credit. Estates with dates of death on or after January 1, 2002, 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, is 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 is satisfied so long as the language is in place to require that distribution.

**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 the decedent's funeral expenses.

**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:****In re: Estate of Roberts (2002), 94 Ohio St. 3d 311.**

In interpreting the second paragraph of R.C. 5731.09(A), the Court determined that the statutory language at issue was a tax-exemption provision rather than a taxing provision. Therefore any doubt as to the meaning of the statute must be resolved in favor of taxation and against the applicability of the exemption. Consequently, the Court stated that although R.C. 5731.09(A) exempts from Estate tax the value of an annuity (or similar payment to a surviving beneficiary) attributable to contributions by a decedent's former employer to an employee's trust or fund, the value of the gross estate does include the proceeds of a rollover IRA that the decedent purchased and to which the decedent's former employer did not directly contribute by reason of the decedent's employment. The decedent's contributions to the rollover IRA's purchase price were a contract between the decedent and his investment company and not a contract or agreement between the decedent and his former employer.

**State ex rel. Sladoje v. Belskis (2002), 149****Ohio App. 3d 190.**

R.C. 2101.24(B)(1)(b), (C) unambiguously provides the probate court with concurrent jurisdiction with the court of common pleas to address inter vivos trusts, and thus, the power to remove a trustee. Accordingly, the trustee's writ of prohibition to be reinstated was denied. Prohibition tests and determines "solely and only" the subject matter jurisdiction of the lower court. If the court has such jurisdiction, prohibition is not available to prevent or correct an erroneous decision, nor is it available as a remedy for an abuse of discretion.

**In re: Estate of Duffy (2002), 148 Ohio App. 3d 574.**

It is well settled under Ohio law that a local rule of a court will be declared invalid if it conflicts with a state statute. Thus, an estate attorney, who acted as both attorney and executor of a will, was entitled to attorney fees, even though he had received a fiduciary fee for his work as executor. The attorney was able to establish that the fees charged were reasonable and that the fees were for legal services which differed from the work he had done as executor. Consequently, under R.C. 2113.36, the attorney was not required to have his contract for legal services pre-approved by the probate court as required under local law.

**In re: Estate of Platt (2002), 148 Ohio App. 3d 132.**

In a Payable on Death (POD) bank account, the depositor of the funds

**Table**  
**Estate Tax Collections and Distributions,**  
**Fiscal Years 1998-2002**  
**(in millions)**

<b>Fiscal Year</b>	<b>Total Collections</b>	<b>State General Revenue*</b>	<b>Local Governments*</b>
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
2002	375.4	116.3	259.2

\*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.

retains both the legal and equitable interest in the account. The beneficiary's interest does not vest until the death of the owner. Thus, assets in a POD account belonged to the beneficiary, rather than to the estate of the account owner, even though the assets were generated solely by the owner. The beneficiary, as holder of a power of attorney, had opened the POD account by transferring assets from a Certificate of Deposit (CD) account with right of survivorship in the name of the owner and beneficiary. Because the owner intended to give the beneficiary a survivorship interest in the CD account, the beneficiary conferred no additional benefit upon himself by depositing assets from the CD account into the POD account.

**In re: Estate of Geanangel (2002), 147 Ohio App. 3d 131.**

An order granting the beneficiary's motion to remove the executor of the decedent's estate was a final appealable order. However, removal of a fiduciary is discretionary with the probate court and an order removing a fiduciary will not be overturned on appeal absent a clear showing of an abuse of discretion. Removing an executor for failing to reimburse the

beneficiary for the decedent's funeral expenses was not an abuse of discretion. The beneficiary's exceptions to the executor's account and her motion for contempt and removal of the executor put the executor on notice of her demand for payment, such that the executor was obligated to take some action on the beneficiary's claim once it was filed.

**Dunkel v. Hilyard (2001), 146 Ohio App. 3d 414.**

The interpretation of wills is a question of law requiring a de novo standard of review. In the construction of a will, the sole purpose of the court should be to ascertain and carry out the intention of the testator. Words contained in a will, if technical, must be taken in their technical sense, and if not technical, in their ordinary sense, unless it appears from the context that they were used by the testator in some secondary sense. Therefore, in order to create a devise of less than a fee simple absolute followed by a remainder in a will, the first devise must contain some language indicating that a life estate or trust was intended. The mere existence of a remainder provision does not suffice to prove the testator's intent to devise less than a fee simple absolute.

**Exhibit — Estate Tax  
Taxable Estate Brackets (RC. 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

