



Peter A. Cooper

*Bill Analysis*  
*Legislative Service Commission*

**H.B. 260**  
123rd General Assembly  
(As Introduced)

Rep. Tiberi

---

**BILL SUMMARY**

- Replaces the existing estate tax with a "pick-up" tax that takes advantage of the federal credit for estate taxes paid to a state, beginning January 1, 2000.
- Under the pick-up tax, the state collects as much tax from the estate as the estate can receive as a credit against the federal tax.
- Estates valued for taxation at less than \$650,000 in 1999 (rising to \$1 million in 2006) are effectively excluded from taxation.
- Earmarks all revenue from the remaining estate tax to townships and municipal corporations; no revenue is earmarked for the state.
- Makes various technical corrections and conforming changes in the estate tax law.

---

**CONTENT AND OPERATION**

**Current estate tax law**

(Chapter 5731.)

The current Ohio estate tax consists of four separate levies: the main levy on Ohio residents' estates; a levy on the portion of a nonresident's estate that is located in Ohio; and two "pick-up" taxes equal to the credits that the federal government gives for estate taxes paid to a state. One of the pick-up taxes is for residents' estates (explained below), and the other is for generation-skipping transfers (transfers of property that skip at least one generation, such as from a grandparent to a grandchild).

The existing levies on resident and nonresident estates are levied on the value of the taxable estate. The taxable estate generally is the value of all property in which the decedent had an interest on the date of death (the "gross estate"), less a number of deductions for certain kinds of transfers, including property transferred directly to a surviving spouse; certain debts; transfers to governments or certain charitable organizations; funeral expenses; expenses of administering the estate; and property in which the surviving spouse has an income interest for life and over which no one has a power to appoint to anyone but the surviving spouse ("qualified terminable interest property").

The taxes on residents' and nonresidents' estates are levied at marginal rates ranging from 2% for taxable estates of \$40,000 or less, to 7% for estates of over \$500,000. There is a credit against the estate tax liability of Ohio residents equal to \$500 or the amount of estate taxes due, whichever is less. In effect, this credit excludes estates valued at \$25,000 or less from bearing any tax liability.

### **Federal credit for state death taxes**

(Internal Revenue Code sec. 2011)

Under federal law, a credit is given against the federal estate tax for any estate tax (or other death tax) paid to a state or the District of Columbia. The credit is subject to limits that increase as the value of the estate increases. For example, an estate with a taxable value of \$1 million is entitled to a federal credit of up to \$33,200; an estate with a federal taxable value of \$4 million is entitled to a credit of up to \$280,400. These are *maximum* credits: if the amount of estate tax paid to a state is less than the maximum allowable credit, then the credit equals the amount of tax paid.

### **Ohio's current "pick-up" tax**

(sec. 5731.18)

Ohio takes advantage of the federal credit for state estate taxes by imposing a "pick-up tax" on the estates of deceased Ohio residents. The pick-up tax on an estate is equal to the difference between the state tax liability and the estate's maximum federal credit. In effect, the pick-up tax allows Ohio to collect more tax from the estate without necessarily increasing the estate's combined federal/state tax liability; the federal tax liability is reduced by the amount of the additional Ohio tax liability.<sup>1</sup> The amount of tax paid under the main Ohio estate tax and the

---

<sup>1</sup> *Pick-up taxes are also known as "sponge" taxes, because they allow the state to "absorb" as much revenue from an estate as is permitted by the federal credit.*

amount of estate or other death taxes paid to another state are credited toward the pick-up tax.

**Proposed repeal of resident estate tax; retention of pick-up taxes**

(secs. 5731.02 and 5731.19)

The bill repeals the existing main estate tax on residents' estates and retains the pick-up tax, with modification. The modified pick-up tax equals the federal credit *minus* any estate or other death taxes paid to another state or the District of Columbia "because of any property owned by the deceased person or subject to such taxes as a part of or in connection with" the estate.

The existing generation-skipping pick-up tax and the nonresident estate tax are retained. The tax on nonresident estates are computed in generally the same fashion as under current law--by computing the tax as if the estate were a resident estate, then prorating the tax on the basis of the proportion of property in Ohio versus elsewhere--but it is modified to reflect the elimination of the main estate tax levy.

The repeal of the main estate levy and the retention of the pick-up tax has significant effects on the taxation of estates by Ohio, as described below.

**Exclusion of smaller estates from taxation**

The bill has the effect of releasing many smaller estates from paying any Ohio estate tax. In effect, the bill exempts estates valued at \$650,000 or less in 1999 (valued *after* the marital deduction and other deductions), because these estates do not incur any federal estate tax liability and thus the federal credit, and the Ohio tax, is zero. (Under federal law, this exclusion is scheduled to gradually increase to \$1 million by 2006 and thereafter.)

**Reduced tax for estates valued at less than \$3.6 million**

The bill also has the effect of reducing the total Ohio tax on estates valued at less than about \$3.6 million (and in excess of the \$650,000 exclusion). Currently, the federal credit fully offsets the Ohio estate tax liability on estates valued at about \$3.6 million or more; thus, these estates pay a tax to Ohio equal to the maximum federal credit, and no more. For estates valued at less than about \$3.6 million, the federal credit does not completely offset the Ohio tax--these less valuable estates pay Ohio tax equal to the maximum federal credit *plus* the difference between the main Ohio tax and the federal credit.

With the repeal of the main Ohio estate levy and the retention of the pick-up tax, estates valued at less than about \$3.6 million generally will pay less in Ohio tax than they currently do; the tax on more valuable estates generally will not change.

### **Elimination of separate Ohio valuation**

Another effect of the bill is to eliminate the process of valuing estates for Ohio tax purposes. Presently, estates must be valued by Ohio in order to compute the Ohio tax; to a large extent, the Ohio valuation is based on federal valuation principles. But under the bill, since the Ohio tax is computed solely on the basis of the maximum federal credit and the amount of death taxes paid to other states, no separate determination of value is necessary to compute the Ohio tax. The federal credit is determined by the value of the estate as determined for federal tax purposes.

### **All revenue earmarked for local governments**

(sec. 5731.48)

Currently, revenue from estate taxes is divided between the state and townships and municipal corporations. Townships and municipal corporations are entitled to 64% of the revenue from estates that have property assigned to the township or municipal corporation. (The assignment is based on where the property is located and where the decedent was domiciled at the time of death.) The state receives the remainder of the revenue (net of the cost of administering the estate tax).

Under the bill, townships and municipal corporations are entitled to all of the estate tax revenue (net of administrative costs). None goes to the state.

### **Returns**

(secs. 5731.21, 5731.25, and 5731.90(A)(2)(c))

Since, under the bill, the pick-up tax levied on estates depends entirely on the federal estate tax liability, estates no longer have to be valued for Ohio tax purposes. Therefore, the bill requires executors to file a copy of the federal estate tax return in lieu of the return filed under existing law, which lists all property in the estate and its value. If a federal filing extension is granted, an Ohio extension must automatically be granted for the same period. Further, the certificate that must be filed under current law, representing notice of the release of the lien for estate taxes on real property, no longer must be filed.

The bill strikes current language requiring the Tax Commissioner to determine whether returns correctly reflect the property that should be included in the return and the value of that property. But the Tax Commissioner retains the authority to make adjustments to returns and to convene a conference with an executor to review the adjustments. Existing language allowing the Tax Commissioner and an executor to agree to use federal determinations is stricken by the bill, reflecting the fact that, under the bill, the pick-up tax must be based on federal determinations.

**Refund claims**

(sec. 5731.28)

Currently, estate tax refunds must be applied for within three years after the return is due. Under the bill, refunds must be applied for within two years after it is determined that the federal credit for state death taxes is less than originally determined. (The federal credit determines the amount of the pick-up tax that is due from an estate.)

**Technical corrections and conforming changes**

The bill contains various technical corrections and conforming changes, including the following sections that are amended for no other reason than to make corrections in existing language or to conform the section with substantive changes made by the bill: sections 129.55, 129.63, 129.73, 1339.411, 1339.412, 1555.12, 1709.07, 2101.141, 2113.03, 2113.86, 5528.36, 5709.76, 5731.23, 5731.27, 5731.33, 5731.36, 5731.37, 5731.38, 5731.45, and 5747.01(S)(8).

**Effective date**

(Section 3)

The bill takes effect January 1, 2000.

---

**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	03-22-99	pp. 329-330

H0260-I.123/jc