



Bethany Boyd

Bill Analysis
Legislative Service Commission

S.B. 257
123rd General Assembly
(As Introduced)

Sen. White

BILL SUMMARY

- Grants an exemption from the estate tax for the real property of a family farm that will continue to be operated as such by the qualified heirs of a decedent.
- Imposes a recapture tax if the exemption is elected, but the property is later transferred to someone who is not a member of the decedent's family, or if the property ceases to be used as a farm.

CONTENT AND OPERATION

Existing law

(sec. 5731.011; secs. 5713.30 and 5731.01, not in bill)

"Taxable estate"

Ohio's estate tax is imposed on the transfer of the taxable estate of a decedent who, at the time of death, was a resident of or owned property in Ohio. To ascertain the taxable estate, the value of the decedent's gross estate first is determined, from which certain personal and charitable deductions are deducted to compute the taxable estate.

Favorable valuation of qualified farm property

Family farm property passed through an estate is taxable under existing law, but it receives favorable tax treatment if it passes to a "qualified heir" and continues to be used exclusively for agriculture.¹ (Family farm property in an

¹ A "qualified heir" is an ancestor or lineal descendent of the decedent, a lineal descendent of any of the decedent's grandparents, the spouse of any of those descendants,

estate is "qualified farm property" for estate tax purposes.) Whereas most kinds of estate property is valued on the basis of its fair market value, family farm property may be valued at fair market value or at its current agricultural use value ("CAUV").² The person who files the estate tax return elects whether the property is to be valued at fair market value or current agricultural use value.

A recapture tax is imposed if qualified farm property is valued at its current agricultural use value, but the property is sold by the qualified heir to someone who is not a qualified heir or ceases to be used exclusively for agriculture within four years of the decedent's death. The recapture tax equals the tax savings resulting from the favorable valuation.

Deduction from the taxable estate of the value of qualified farm property

(sec. 5731.012(A))

The bill grants even more favorable estate tax treatment for qualified farm property--the value of the property may be exempted altogether from estate taxation by deducting its value from the taxable estate. To exempt qualified farm property from taxation, all of the qualified heirs must file an election, at or before the filing of the estate tax return. A member of the decedent's family with a contract to purchase an heir's interest is treated as the qualified heir with respect to the interest. The amount of tax that would have been imposed in relation to the interest of each qualified heir must be calculated and filed in the records of the estate.

Recapture tax

(sec. 5731.012(B))

The bill provides that if an election is made to have the value of qualified farm property deducted from the value of the taxable estate, and if a qualified heir, within 20 years after the decedent died, transfers an interest to someone who is not a member of the decedent's family or ceases using any part of the property for a qualified use, a recapture tax must be imposed. The tax equals the estate tax savings realized by exempting the value of the interest disposed of or the part of the property no longer used for a qualified use. If the recapture tax is not paid

the decedent's spouse, or a stepchild or foster child of the decedent, any of whom inherit or acquire qualified farm property.

² *But, the difference between the fair market value and the more favorable value cannot be more than \$500,000.*

before conveyance to someone who is not a member of the decedent's family or the cessation of a qualified use, the tax becomes a lien on the property until it is paid. The recapture tax, plus interest computed at the rate per annum determined by the Tax Commissioner from nine months after the date of the decedent's death, is due and payable on the day that is nine months after the date of disposition of the interest in, or cessation of its use as, qualified farm property, and must be paid by the qualified heir who disposed of the interest or ceased the use.

Administration; rules

(sec. 5731.012(C))

The bill requires the Tax Commissioner to prescribe rules and forms to implement the bill. The rules must require any qualified heir who disposes of an interest in exempt property to someone who is not a member of the decedent's family, or ceases using any part of the property for a qualified use, to report the sale to the Commissioner. The report must be filed within a prescribed number of days after the sale, after a petition for partition of the land is filed, or after a qualified use ceases.

The rules may require that a qualified heir be designated to file an annual report with the Commissioner, establishing whether qualified farm property has been disposed of to a person other than a member of the decedent's family or is no longer used for a qualified use.

Any qualified heir who holds qualified farm property as tenant in common or joint tenant with other qualified heirs but wants to dispose of the interest to someone who is not a member of the decedent's family or ceases using part of the property for a qualified use must seek partition of the jointly owned tract under existing land partition procedures. The court may refuse to permit a tract to be partitioned in circumstances that would unduly hamper the operation of the remaining property as an integrated family farm. If the court orders the property to be sold pursuant to a partition action, the recapture tax must be paid from the plaintiffs' share of the sale proceeds, and the tax is a lien on the property until it is paid.

HISTORY

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