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Bill Analysis
Legislative Service Commission

H.B. 3

127th General Assembly
(As Introduced)

Reps. Latta, R. McGregor, Schlichter, Wachtmann, Setzer, Webster, Collier, Combs, Stebelton, Hughes

BILL SUMMARY

- Terminates the statewide estate tax on December 31, 2007.
- Raises the minimum taxable estate from \$338,333 to \$500,000 for 2007.
- Authorizes townships and municipal corporations to levy, with voter approval, a local estate tax beginning January 1, 2008.
- Establishes new tax rates and minimum taxable estate thresholds for townships and municipal corporations choosing to levy an estate tax.
- Distributes all revenue from a township or municipal corporation estate tax to the township or municipal corporation levying the tax.

CONTENT AND OPERATION

Overview of the Ohio estate tax

(Chapter 5731.)

The Ohio estate tax consists of two separate levies: a levy on the estates of Ohio residents, and a levy on the portion of a nonresident's estate that is located in Ohio.¹

¹ Two other estate taxes, described as "pick-up" or "sponge" taxes, were constructively repealed by H.B. 66 of the 126th General Assembly. Taxes owed under these provisions equaled the maximum credits allowed under federal estate tax law for estate taxes paid to a state. In 2002, the federal government began to phase out the credits. As of 2005, the credits no longer existed. H.B. 66 incorporated this phase-out, and thus effectively eliminated the taxes.

The tax on Ohio residents' estates is levied on the value of the taxable estate, which generally is the value of all property in which the decedent had an interest on the date of death, minus certain deductions for marital transfers, debts, charitable donations, and administration expenses, among other things. The tax is levied at graduated rates, through six tax brackets, ranging from 2% for taxable estates of \$40,000 or less, to \$23,600 plus 7% of the excess over \$500,000 for estates of more than \$500,000.

A credit is allowed in the amount of \$13,900, which equates to a deduction of \$338,333. Thus, taxable estates worth \$338,333 or less owe no tax. If the gross estate does not exceed that threshold, no tax return must be filed.

The nonresident estate tax is levied on the portion of a nonresident's estate that is located in Ohio. The tax is determined by dividing the gross value of the property located in Ohio by the entire gross estate, wherever located. That fraction is then multiplied by the tax the estate would owe if the decedent had been an Ohio resident.

Intangible personal property located in Ohio owned by a nonresident is not taxed unless it is used to carry on a business within Ohio. If it is used to carry on a business within Ohio, it will not be taxed if the state where the nonresident was domiciled would not tax the intangible personal property of decedents domiciled in Ohio.

Estate tax revenues are divided between the state and the local government where the tax is deemed to have originated: 80% is distributed to the local government, and 20% is distributed to the state General Revenue Fund. Origination of a tax depends upon the type of property, its location when the decedent died, and whether it is owned by a resident or nonresident. Property owned by a nonresident that is not located in Ohio is not taxable.

For real estate located in Ohio, the tax originates in the township or municipal corporation where the property is located. Real estate not located in Ohio is not subject to estate taxation even if it was owned by a resident decedent.

For tangible personal property located in Ohio, the tax originates in the township or municipal corporation where the property is located when the decedent dies. If the property is not located in Ohio but it was owned by a resident decedent, the tax originates in the township or municipal corporation where the decedent was domiciled.

For intangible personal property of a resident, the tax originates in the township or municipal corporation where the resident was domiciled. If the property is owned by a nonresident and is taxable (because it is used in business in

Ohio and is not exempted under a reciprocal provision as explained above), origination depends upon whether the property is evidenced by a document, such as notes, securities, and bonds, or is money on deposit. For property evidenced by a document, the tax originates where the document is located. For money on deposit, the tax originates where the institution has its principal place of business or resides.

Repeal of statewide estate tax

(R.C. 5731.02(A) and 5731.48(A))

For estates of persons dying after the bill's effective date but before 2008, the bill raises the minimum estate taxable threshold from \$338,333 to \$500,000. The tax on estates worth more than \$500,000, however, remains the same--\$23,600 plus 7% of the excess over \$500,000--as does the distribution of revenues between the state and local governments.² For estates of persons dying in 2008 and thereafter, no statewide estate tax would apply.

Local government estate tax

(R.C. 5731.02(B), 5731.19(B), 5731.21(A)(3), and 5731.48(A))

The bill authorizes boards of township trustees and municipal corporation legislative authorities to propose the levy of a local estate tax on estate property deemed to have originated in the township or municipal corporation under the existing origination rules.

The local estate tax may be levied only if approved by voters at the November 6, 2007 election. The ordinance or resolution proposing the tax must be certified to the county board of elections by August 23, 2007. If approved, the tax takes effect January 1, 2008.

The bill establishes exemption thresholds below which estate values would not be subject to local taxes. For 2008, the exemption amount is \$400,000; for 2009, \$500,000; and for 2010 and thereafter, \$600,000. The bill permits a township or municipal corporation to establish its own tax rates, up to certain maximum rates. For 2008, the maximum rate is 4.8%; for 2009 and thereafter the maximum rate is 5.6%.

The nonresident tax would be calculated in a manner analogous to the way it is currently calculated. The value of estate property located in the township or

² The existing \$13,900 credit was inadvertently stricken by the bill, which would have the effect of increasing the tax on estates by \$13,900 in 2007 only.

municipal corporation is divided by the entire gross estate, wherever located. That fraction is then multiplied by the tax that would have been owed had the decedent been a resident of the township or municipal corporation.

Local estate taxes would be administered in the same manner as the current statewide tax. Returns would be filed with the probate court, as under current law, and the Tax Commissioner would continue to be responsible for overseeing the administration of the taxes. All revenue from each local tax, less expenses owed to the county, would be distributed to the township or municipal corporation levying the tax.

Nonresidents' intangible personal property

(R.C. 5731.34)

The bill retains the substance of an existing rule governing how a nonresident's intangible personal property is taxed. Under the existing rule, such property is taxable only if the property is used to carry on a business in Ohio. Similarly, under the bill, intangible personal property owned by a nonresident of the taxing township or municipal corporation may not be taxed unless the property is used to carry on business within the taxing township or municipal corporation. And, even if the property is used to carry on a business within the taxing township or municipal corporation, it may not be taxed if the nonresident was domiciled in a state, territory, or country that would not tax the intangible personal property of decent domiciled in the taxing township or municipal corporation.³

HISTORY

ACTION	DATE
Introduced	02-20-07

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³ The bill's amendments to R.C. 5731.34 should refer to R.C. 5731.19 (the nonresident tax), not the resident tax in R.C. 5731.02. This error will be corrected.