Ohio Legislative Service Commission

Bill Analysis

Stephen Estelle

H.B. 61

128th General Assembly
(As Introduced)

Reps. Hottinger and Grossman, J. Adams, Huffman, Boose, Jordan, Uecker, Coley, Hackett, Stebelton, Bubp, Sears

BILL SUMMARY

- Increases the existing estate tax credit from $13,900 to $15,575 beginning July 1, 2009.
- Increases the credit thereafter in proportion to consumer price inflation.
- Requires all estate tax revenue to be distributed to the municipal corporations and townships where estate assets are located.
- Authorizes municipal corporations and townships to exempt from the estate tax any estate assets located in the municipal corporation or township, and authorizes electors residing in those political subdivisions to propose the exemption by initiative.
- Authorizes subdivisions where a local estate tax exemption has been enacted to repeal the exemption, and authorizes electors to repeal the exemption by initiative.

CONTENT AND OPERATION

Estate tax overview

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.

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.

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.

Estate tax credit increased

(R.C. 5731.02 and 5731.21(A)(3))

The bill increases the estate tax credit from $13,900 to $15,575 for the estates of decedents dying on or after July 1, 2009. The increased credit would effectively exempt from taxation estates valued at $366,250 or less. An estate tax return would not have to be filed if the estate's gross value is less than that amount. (The gross value is the value before the various deductions.)

The bill requires the Tax Commissioner to adjust the $15,575 credit for consumer price inflation every year beginning in 2010. The adjustment would be made in December of each year and would apply to the estates of decedents dying in the ensuing calendar year.

Estate tax distributions

(R.C. 5731.48)

The bill requires 100% of estate tax revenues derived from the estates of decedents dying on or after July 1, 2009, to be credited to the municipal corporation or township in which the taxes originate, unless the municipal corporation or township in which the tax originates has adopted an ordinance or resolution exempting property located in the municipal corporation or township from the estate tax.

Local option estate tax exemption

(R.C. 5731.55 and 5731.56)

Exempting estates

The bill authorizes the legislative authority of a municipal corporation or a board of township trustees to adopt an ordinance or resolution exempting property located in the municipal corporation or township from the estate tax. Alternatively, the electors of a municipal corporation or township may propose an ordinance or resolution exempting property from the estate tax by initiative petition. But an exemption may not be enacted by a legislative authority or board of township trustees if a previous exemption was repealed by initiative petition (as explained below).

The bill prescribes the form of the ballot for presenting the question of the exemption at an election. Procedures for proposing the exemption by initiative petition are identical to those in continuing law that govern initiative petitions undertaken in municipal corporations. Regardless of whether the local estate tax exemption is initiated by a governing body or the electors, the exemption would take effect as provided in the ordinance or resolution, but the exemption cannot take effect sooner than the first day of the first month following adoption of the ordinance or resolution.

Within ten days after adopting the resolution or ordinance, the legislative authority or board of township trustees must provide written notice of its adoption to the Tax Commissioner. The Commissioner is required to keep a record of every municipal corporation and township that has provided the notice. The Commissioner must make the record available for public inspection and must publish it in a manner convenient to the Commissioner.

Repealing an existing exemption

An ordinance or resolution exempting property from the estate tax may be repealed by the legislative authority or board of township trustees. A resolution or ordinance repealing the exemption also may be proposed by initiative petition by the same procedures for enacting an exemption by initiative petition (see above). In either case, the repeal takes effect as provided in the ordinance or resolution creating it; however, a repeal can take effect no sooner than the first day of the first month following the adoption of the ordinance or resolution.

Within ten days after the exemption is repealed, the legislative authority or board of township trustees must provide written notice of the repeal to the Tax Commissioner. The Commissioner must remove the name of the municipal corporation or township from the record of municipal corporations and townships that have adopted estate tax exemptions.

Returns to show exempted property

(R.C. 5731.21(A)(1)(b)(vi))

The bill requires every estate tax return to list any property in the decedent's property inventory that originates in a municipal corporation or township that has adopted an estate tax exemption. The return also must identify the municipal corporation or township in which the exempted property originates.

HISTORY

ACTION	DATE
Introduced	03-04-09

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