

ENGROSSED SENATE
BILL NO. 227

BY: HENDRICK of the SENATE

and

VAUGHN (Ray) of the HOUSE

AN ACT RELATING TO PROBATE PROCEDURE AND REVENUE AND
TAXATION; AMENDING 58 O.S. 1981, SECTIONS 240, 333,
AS AMENDED BY SECTION 8, CHAPTER 228, O.S.L. 1988,
AND SECTION 18, CHAPTER 228, O.S.L. 1988 (58 O.S.
SUPP. 1990, SECTIONS 333 AND 632.3), WHICH RELATE
TO CERTAIN DETERMINATIONS OF HEIRS, DEVISEES AND
LEGATEES, PRESENTATION OF CERTAIN CLAIMS TO
PERSONAL REPRESENTATIVES AND CERTAIN FINAL DECREES,
AND AMENDING 68 O.S. 1981, SECTION 2103, AS LAST
AMENDED BY SECTION 6, CHAPTER 240, O.S.L. 1988 (68
O.S. SUPP. 1990, SECTION 2103), WHICH RELATES TO
CERTAIN TAX ON TRANSFERS OF CERTAIN VEHICLES;
MODIFYING STATUTORY REFERENCES; AUTHORIZING
PETITIONS TO DETERMINE IDENTITY OF HEIRS, DEVISEES
AND LEGATEES AFTER CERTAIN NOTICE; AUTHORIZING
APPOINTMENT OF ADMINISTRATOR UNDER CERTAIN
CIRCUMSTANCES AFTER CERTAIN NOTICE; CLARIFYING
EFFECT OF CERTAIN DETERMINATIONS; CLARIFYING CLAIMS
WHICH MUST BE PRESENTED BY PRESENTMENT DATE;
DECLARING MARKETABILITY OF TITLE TO BE UNAFFECTED
BY CERTAIN REQUIREMENTS; EXCLUDING CERTAIN
TRANSFERS BETWEEN AN INDIVIDUAL AND CERTAIN EXPRESS

TRUSTS FROM CERTAIN TRANSFER TAXES; AND PROVIDING
AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 58 O.S. 1981, Section 240, is amended to read as follows:

Section 240. A. If a petition is filed for the appointment of a personal representative and the petitioner requests that the identity of the heirs, devisees and legatees be determined at the initial hearing and the notice of hearing such petition reflects such request, then at the first hearing on a petition to admit a will to probate or a petition for the appointment of a personal representative in an intestate proceeding, the court may determine the identity of all heirs, devisees and legatees, and any guardian or conservator of any minor or incompetent heir, devisee or legatee. ~~Such determination~~

B. If the petition filed for the appointment of a personal representative or the notice of hearing such petition does not contain or reflect a request that the identity of the heirs, devisees and legatees be determined at the initial hearing, the personal representative may, at any time during the course of administration, file with the court a petition requesting that the identity of the heirs, devisees and legatees be determined. Such petition shall be heard following at least ten (10) days' prior notice to the heirs, devisees and legatees.

C. If the petition requests the appointment of an administrator and the court determines that the petition can be heard without notice pursuant to the provisions of Section 128 of this title, and the petition also contains a request that the identity of the heirs of the intestate decedent be determined, the court may proceed to

appoint the administrator without notice and set such petition for hearing, following at least ten (10) days' prior notice to the heirs, with respect to the request that the identity of the heirs, legatees and devisees be determined.

D. Any determination of heirs, legatees and devisees made pursuant to this section shall be conclusive for the purpose of acting upon any petition or application purporting to include waivers or consents of all heirs, devisees and legatees, but shall not establish the proportional interest of any person entitled to receive any distribution of assets or property from the estate; nor shall it prevent any person or entity from later establishing identity or rights as an heir, devisee or legatee.

SECTION 2. AMENDATORY 58 O.S. 1981, Section 333, as amended by Section 8, Chapter 228, O.S.L. 1988 (58 O.S. Supp. 1990, Section 333), is amended to read as follows:

Section 333. All claims arising upon contracts entered into prior to the decedent's death, whether the same be due, not due or contingent, must be presented on or before the presentment date as provided in the notice, and any claim not so presented is barred forever; provided, however, that when it is made to appear by the affidavit of the claimant, to the satisfaction of the personal representative and the judge of the district court, as duly noted on the claim, that the claimant had no notice by reason of being out of the state and that a copy of the notice to creditors was not mailed to said claimant, the claim may be presented at any time before a final decree of distribution is entered; provided, further, that nothing in this section, nor in this chapter contained, shall be construed to prohibit the right or limit the time of foreclosure of mortgages upon real property of decedents, but every such mortgage may be foreclosed within the time and in the mode prescribed in civil procedure, except that no balance of the debt secured by such

mortgage remaining unpaid after foreclosure shall be a claim against the estate, unless such debt was presented as required by this code.

SECTION 3. AMENDATORY Section 18, Chapter 228, O.S.L. 1988 (58 O.S. Supp. 1990, Section 632.3), is amended to read as follows:

Section 632.3 ~~1.~~ A. At the hearing on the final account of any personal representative who has given notice to creditors as provided in this title, the judge shall conduct an inquiry to judicially determine whether the personal representative has complied with the provisions of Sections ~~3~~ 243 and ~~4~~ 331 of this ~~act~~ title.

~~2.~~ B. The final decree shall contain a finding in substantially the following form: that notice to creditors as required by Sections ~~3~~ 243 and ~~4~~ 331 of this ~~act~~ title was given by the personal representative, including notice by mail to all creditors, if any, known to the personal representative as of the date said notice was filed with the district court clerk for the county in which the probate is pending, at their respective last-known addresses; and that all claims not filed within the time permitted for the presentation of claims are nonsuited, void and forever barred, except as otherwise provided in this title or any claim for which payment is approved in this decree pursuant to Section 335 of ~~Title 58 of the Oklahoma Statutes~~ this title.

~~3.~~ C. A final decree which fails to contain the finding required by this section shall be voidable.

~~4.~~ D. If the affidavits required by Section 332 of ~~Title 58 of the Oklahoma Statutes~~ this title are filed in the probate proceeding for the decedent's estate prior to the entry of the final decree or prior to the entry of the order confirming a sale of any property, real or personal, sold during the administration of such estate and the final decree or such order confirming such sale contains the findings required by this section, the failure of a personal

representative to give actual notice to a creditor shall not impair the marketability of the title to any property, real or personal, distributed from the estate or sold during the administration of such estate.

E. Marketability of the title to any property, real or personal, sold during the administration of an estate shall not be impaired or affected by the requirements of this title for giving notice to creditors of a decedent.

SECTION 4. AMENDATORY 68 O.S. 1981, Section 2103, as last amended by Section 6, Chapter 240, O.S.L. 1988 (68 O.S. Supp. 1990, Section 2103), is amended to read as follows:

Section 2103. A. 1. Except as otherwise provided in Sections 2101 through 2108 of this title, there is hereby levied an excise tax upon the transfer of legal ownership of any vehicle registered in this state and upon the use of any vehicle registered in this state and upon the use of any vehicle registered for the first time in this state. The excise tax shall be levied at three and one-fourth percent (3 1/4%) of the value of each vehicle, except; for any truck or truck-tractor registered under the provisions of subsection A of Section 1133 of Title 47 of the Oklahoma Statutes, for a laden weight or combined laden weight of 54,001 pounds or more, and for any trailer or semitrailer registered under subsection C of Section 1133 of Title 47 of the Oklahoma Statutes, which is primarily designed to transport cargo over the highways of this state and generally recognized as such, the excise tax shall be Ten Dollars (\$10.00). Provided further, this exception shall not apply to special mobilized machinery, trailers, or semitrailers manufactured, modified or remanufactured for the purpose of providing services other than transporting cargo over the highways of this state.

2. The tax hereby levied shall be due at the time of the transfer of legal ownership or first registration in this state of

such vehicle, and shall be collected by the Tax Commission at the time of the issuance of a certificate of title for any such vehicle. In the event an excise tax is collected on the transfer of legal ownership or use of the vehicle during any calendar year, then an additional excise tax must be collected upon all subsequent transfers of legal ownership. The excise tax levied by this section shall be delinquent from and after the thirtieth day after the legal ownership or possession of any vehicle is obtained. Any person failing or refusing to pay the tax as herein provided on or before date of delinquency shall pay in addition to the tax a penalty of twenty-five cents (\$0.25) per day for each day of delinquency, but such penalty shall in no event exceed the amount of the tax.

B. The excise tax levied in subsection A of this section assessed on all commercial vehicles registered pursuant to Section 1120 of Title 47 of the Oklahoma Statutes, as amended, shall be in lieu of all sales and use taxes levied under Articles 13 and 14 of this title. The transfer of legal ownership of any motor vehicle as used in this section and Articles 13 and 14 of this title shall include the lease, lease purchase or lease finance agreement involving any truck in excess of eight thousand (8,000) pounds combined laden weight or any truck-tractor provided the vehicle is registered in Oklahoma pursuant to Section 1120 of Title 47 of the Oklahoma Statutes or any trailer, semitrailer or open commercial vehicle registered pursuant to Section 1133 of Title 47 of the Oklahoma Statutes, as amended. The excise tax levied herein shall not be subsequently collected at the end of the lease period if the lessee acquires complete legal title of said vehicle.

C. The provisions of this section shall not apply to transfers made without consideration between husband:

1. Husband and wife ~~or parent~~;
2. Parent and child; or

3. An individual and an express trust in which the transferor has a right to revoke.

D. 1. There shall be a credit allowed with respect to the excise tax paid for a new vehicle which is a replacement for:

- a. a new original vehicle which is stolen from the purchaser/registrant within ninety (90) days of the date of purchase of the original vehicle as certified by a police report or other documentation as required by the Commission, or
- b. a defective new original vehicle returned by the purchaser/registrant to the seller within six (6) months of the date of purchase of the defective new original vehicle as certified by the manufacturer.

~~Said~~ 2. The credit allowed pursuant to paragraph 1 of this subsection shall be in the amount of the excise tax which was paid for the new original vehicle and shall be applied to the excise tax due on the replacement vehicle. In no event will said credit be refunded.

SECTION 5. This act shall become effective September 1, 1991.

Passed the Senate the 13th day of March, 1991.

President of the Senate

Passed the House of Representatives the ____ day of

_____, 1991.

Speaker of the House of Representatives