

ENROLLED 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, 581, AS AMENDED BY SECTION 1, CHAPTER 106, O.S.L. 1986 AND 721 (58 O.S. SUPP. 1990, SECTIONS 333 AND 581), WHICH RELATE TO CERTAIN DETERMINATIONS OF HEIRS, DEVISEES AND LEGATEES, PRESENTATION OF CERTAIN CLAIMS TO PERSONAL REPRESENTATIVES, INVESTMENT OF FUNDS, CERTAIN FINAL DECREES AND APPEALABLE JUDGMENTS AND ORDERS; 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; AUTHORIZING CERTAIN INVESTMENTS WITHOUT COURT ORDER; MODIFYING STATUTORY REFERENCES; MODIFYING APPEALABLE JUDGMENTS AND ORDERS; 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; 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 58 O.S. 1981, Section 581, as amended by Section 1, Chapter 106, O.S.L. 1986 (58 O.S. Supp. 1990, Section 581), is amended to read as follows:

Section 581. A. Pending the settlement of any estate on the petition of the personal representative or any heir, legatee or devisee of the decedent, the court may order any money in the hands of the personal representative to be invested for the benefit of the estate, in United States Government obligations, ~~either directly or~~ in the form of securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940; provided, that the portfolio of such investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by such United States Government obligations, and provided further, that any such investment company or investment trust shall take delivery of such collateral, either directly or through an authorized custodian. Such order can only be

made after such notice of the petition to the heirs, legatees, devisees, or personal representative as the court may direct.

B. Pending the settlement of any estate, the personal representative, unless expressly provided to the contrary in the will of the decedent, may invest estate funds in United States government obligations directly and in accounts fully insured by the United States government, without any order of the court.

SECTION 4. AMENDATORY 58 O.S. 1981, Section 721, is amended to read as follows:

Section 721. An appeal may be taken from the following judgments or orders of the district court:

1. Granting, or refusing, or revoking letters testamentary or of administration, or of guardianship, or conservatorship;
2. Admitting, or refusing to admit, a will to probate;
3. Against or in favor of the validity of a will or revoking the probate thereof;
4. Against or in favor of setting apart property, or making an allowance for a widow or child;
5. Against or in favor of directing the partition, sale or conveyance of real property;
6. Settling an account of an executor, or administrator or guardian;
7. Refusing, allowing or directing the distribution or partition of an estate, or any part thereof or the payment of a debt, claim, legacy or distributive share;
8. Refusing or allowing the release of estate tax liability; ~~or~~
9. An order determining liability for estate taxes made pursuant to Section 268 of this title; or
10. From any other judgment, decree or order of the court in a probate cause, or of the judge thereof, affecting a substantial right.

SECTION 5. 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 which that individual or the spouse, child or parent of that individual 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 6. This act shall become effective September 1, 1991.
Passed the Senate the 25th day of April, 1991.

President of the Senate

Passed the House of Representatives the 8th day of April, 1991.

Speaker of the House of
Representatives