

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL NO. 1111

By: Price, Shurden, Rubottom,
Fair, Gustafson and
Muegge of the Senate

and

Pope (Clay), Askins,
Beutler, Blackburn,
Bonny, Bryant, Coleman,
Davis, Deutschendorf,
Ervin, Fields, Graves,
Greenwood, Hiett,
Langmacher, Maddux,
Miller, O'Neal,
Pettigrew, Plunk, Pope
(Tim), Ramsey, Reese,
Staggs, Vaughn and Webb
of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 1991, Sections 802.1, 804, 809, 812, as last amended by Section 1, Chapter 110, O.S.L. 1993 and 815, as last amended by Section 10, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1995, Sections 812 and 815), which relate to estate taxes and Section 1, Chapter 304, O.S.L. 1994 (60 O.S. Supp. 1995, Section 674.2), which relates to property; clarifying certain tax credit; clarifying additional tax to absorb federal credit; allowing additional exemption from estate taxes for certain estates; specifying amount of additional exemption; defining terms; providing for certain qualifications; modifying amounts which may be released or paid out by financial institutions under certain circumstances without notifying Tax Commission; providing for extension of time to file certain estate tax return; modifying value of property which Tax Commission may pay over or deliver without probate proceeding; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 802.1, is amended to read as follows:

Section 802.1 A credit to the tax levied by Section 802 of Title 68 of the Oklahoma Statutes shall be allowed for all or a part of the Oklahoma estate tax paid with respect to the transfer of property, including property passing as a result of the exercise or nonexercise of a power of appointment, to the present decedent by or from a person who died within ten (10) years before, or within two (2) years after, ~~him~~ the present decedent. The credit shall be computed in the same manner as provided by Section 2013 of the Internal Revenue Code of 1954, as amended.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 804, is amended to read as follows:

Section 804. In case the tax levied upon the ~~net~~ value of the property of the estate in Oklahoma and transfers by Section 801 et seq. of this Article title is less than the credit allowed by the federal government on estate tax imposed upon the ~~net~~ value of the property of the estate in Oklahoma, for state estate and inheritance taxes imposed upon the ~~net~~ value of the property of the estate in Oklahoma, ~~under Title III, Estate Tax of the federal "Revenue Act of 1926", approved February 26, 1926, and all amendments thereto pursuant to 26 U.S.C. Section 2011, then, in that event, there is hereby shall be~~ levied an additional tax which shall be ~~and is hereby~~ imposed upon the value of the ~~net~~ property of the estate in Oklahoma, as of the date of the determination of ~~such~~ the Federal Estate Tax, equal to the difference between such credit and the Oklahoma Estate Tax levied upon the ~~net~~ value of the property of the estate in Oklahoma and transfers by this Article. Such credit allowed by the federal government shall be the percentage of such credit which is the percentage which the value of the property of the estate ~~taxable~~ in Oklahoma bears to the total value of the estate of the decedent. Such additional tax to absorb ~~said~~ the credit shall be determined, assessed, collected and paid ~~under~~ pursuant to the provisions of Section 801 et seq. of this Article title.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 809, is amended to read as follows:

Section 809. A. If any portion of ~~said~~ the net estate, as herein determined, in excess of the deductions allowed in Section 808 of this title passes to the father, mother, child, child of husband or wife, adopted child or any lineal descendant of decedent or of such adopted child, there shall be deducted from such net estate the portion of ~~said~~ the net estate passing to ~~said~~ such person or persons to the extent of and not exceeding a total aggregate exemption of One Hundred Seventy-five Thousand Dollars (\$175,000.00), and the tax shall be paid on the remainder at the rates herein set out.

B. In addition to the exemption provided pursuant to subsection A of this section, for the estate of a decedent who dies on or after January 1, 1997, there shall be deducted the value of the assets used in a qualifying family business or farm passing to one or more qualifying heirs of the decedent to the extent of and not exceeding a total aggregate exemption of the amounts specified in this subsection. The exemption shall be in an amount not exceeding Four Hundred Twenty-five Thousand Dollars (\$425,000.00). In no event shall the total exemption allowed pursuant to subsection A of this section and this subsection exceed a total of Six Hundred Thousand Dollars (\$600,000.00) for any estate. For purposes of this subsection:

1. "Assets of a qualifying family business or farm" means real or tangible personal property owned by a qualifying business or farm and used as a farm or for farming purposes, or in a trade or business other than farming;

2. "Qualifying family business or farm" means any interest in a closely held family corporation, sole proprietorship, partnership, limited liability company, or other unincorporated family business engaged in the trade or business of farming or in a trade or business other than farming, where some or all of the assets thereof are held by a decedent or are held collectively by a decedent and one or more qualifying heirs of the decedent, provided the decedent, or at least one qualifying heir of the decedent, was receiving wages from the business or farm or was

subject to the self employment tax on income earned from the business or farm on the date of the death of the decedent;

3. "Closely held family corporation" means any corporation if at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote, and at least fifty percent (50%) of all other classes of stock of the corporation are owned by the decedent and not more than ten (10) qualifying heirs; and

4. "Qualifying heir" means any heir as set forth in subsection A of this section.

C. In order to qualify for the exemption provided in subsection B of this section, the estate of the decedent shall submit the appropriate tax returns or tax schedules of the qualifying family business or farm for the five (5) taxable years prior to the death of the decedent showing proof of continuous operation of the qualifying family business or farm. The qualifying family business or farm shall also be required to continue the business or farm for a period of five (5) years following the date of death of decedent and shall submit each taxable year the appropriate tax returns or tax schedules to the Oklahoma Tax Commission as proof of continuous operation of the business or farm. If evidence of continuous operation is not submitted, the qualified heirs shall be liable for twenty percent (20%) of the total estate tax which would have been due if the business or farm had not qualified for the exemption provided for in subsection B of this section for each year evidence of continuous operation is not submitted.

D. It is declared to be intended by this section that where a portion of the net estate passes to any of the parties named herein, no greater amount shall be deducted from the net estate than passes to ~~said~~ such person or persons combined and that ~~said~~ the exemption shall in no event exceed the ~~amount of One Hundred Seventy-five Thousand Dollars (\$175,000.00)~~ amounts specified in this section, regardless of the amount of the estate that may pass to any or all of ~~said~~ such person or persons; provided, that when the property comprising the estate of the decedent consists of property within and property without the state, only ~~such~~ the

percentage of the exemptions and deductions enumerated in this section, and in ~~the preceding section~~ Section 808 of this title, shall be allowed as the ratio of the value of the estate within this state bears to the value of the entire estate.

SECTION 4. AMENDATORY 68 O.S. 1991, Section 812, as last amended by Section 1, Chapter 110, O.S.L. 1993 (68 O.S. Supp. 1995, Section 812), is amended to read as follows:

Section 812. A. When the president or managing officer of a safe deposit company, trust company, bank, or other financial institution, or person or persons, holding securities or assets of a decedent receives actual notice, from the person or persons entitled or claiming to be entitled to the securities or assets, from a source deemed reliable by the safe deposit company, trust company, bank, or other financial institution or from the Oklahoma Tax Commission, of the death of the decedent, such safe deposit company, trust company, bank, or other financial institution in this state, or person or persons, holding securities or assets of a decedent shall not deliver or transfer the same except as provided for in subsection (d) of Section 811 of this title, to the beneficiary or joint survivor, executor, administrator, or legal representatives of ~~said~~ the decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the Oklahoma Tax Commission at least ten (10) days prior to the said transfer or delivery. No such safe deposit company, trust company, bank, or other financial institution, person or persons, shall deliver or transfer any securities or assets of the estate of a decedent except as provided for in subsection (d) of Section 811 of this title, without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets pursuant to the provisions of Section 801 et seq. of this article title, unless the Oklahoma Tax Commission consents to such delivery or transfer in writing, and it shall be lawful for the Oklahoma Tax Commission, personally or by representative, to examine ~~said~~ the securities or assets at the time of such delivery or transfer. Failure to serve such

notice of transfer and to retain a sufficient portion of the amount to pay the tax provided for in this section, after having received actual notice of the death of the owner of any such securities or assets, shall render such safe deposit company, trust company, bank, or other financial institution, person or persons, liable for the payment of the tax. In all cases, regardless of the aggregate amount of deposits of money in any safe deposit company, trust company, bank, or other financial institution to the credit of the decedent and any other person or persons not the spouse or a lineal descendant of the decedent, as joint tenants, not more than Two Thousand Five Hundred Dollars (\$2,500.00) or ninety percent (90%) of the amount of deposits of money, whichever is greater, may be released or paid out by such institutions without notifying the Oklahoma Tax Commission. From deposits of money in any safe deposit company, trust company, bank, or other financial institution, to the credit of the decedent and a lineal descendant as joint tenants, not more than One Hundred Seventy-five Thousand Dollars (\$175,000.00) in the aggregate or ninety percent (90%) of the deposits, whichever is greater, may be released or paid out by such institutions ten (10) days after receipt of notification in writing to the Oklahoma Tax Commission. Any funds held jointly as a beneficiary with the surviving spouse only, without limit, may be released or paid out by such institutions without notifying the Tax Commission.

B. No safe deposit company, trust company, bank, or other financial institution, or an officer thereof, or person or persons holding securities or assets of a decedent, shall be held liable for the wrongful release of deposits within the limits of this section.

C. The restrictions of this section shall not be applicable to oil and gas producing monies, received after date of death, whether from royalties, working interests, overriding royalties or otherwise.

D. 1. This section shall not be applicable to deposit accounts and safe deposit boxes held by a trust other than a

grantor trust. The restrictions of this section shall apply to a grantor trust upon the death of a grantor.

2. For purposes of this subsection, a "grantor trust" means a trust for which the grantor is the trustee or a co-trustee and the right to revoke the trust is retained by the grantor or a nonadverse party, or both. A grantor trust includes a trust where a husband and wife are the grantors and the husband or wife is the trustee or a co-trustee and either the husband or wife or a nonadverse party, or both, retain the right to revoke the trust.

3. In all cases, regardless of the aggregate amount of deposits of money in any safe deposit company, trust company, bank, or other financial ~~institutions~~ institution to the credit of decedent's grantor trust, upon request of the trustee of ~~said~~ the grantor trust, not more than Two Thousand Five Hundred Dollars (\$2,500.00) or ninety percent (90%) of the amount of deposits of money, whichever is greater, may be released or paid out by such institution to a person or persons not the spouse or a lineal descendant of the decedent without notifying the Oklahoma Tax Commission. From deposits of money in any safe deposit company, trust company, bank, or other financial institution to the credit of decedent's grantor trust, upon request of the trustee of ~~said~~ the grantor trust as authorized under the terms of ~~said~~ the grantor trust, not more than One Hundred Seventy-five Thousand Dollars (\$175,000.00) in the aggregate or ninety percent (90%) of the deposits, whichever is greater, may be released or paid out to a lineal descendant of the decedent ten (10) days after receipt of notification in writing to the Oklahoma Tax Commission. Any funds held to the credit of the decedent's grantor trust, if paid out or released by the trustee of ~~said~~ the grantor trust as authorized under the terms of ~~said~~ the grantor trust, to the surviving spouse of decedent, may be released or paid out without notifying the Oklahoma Tax Commission.

SECTION 5. AMENDATORY 68 O.S. 1991, Section 815, as last amended by Section 10, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1995, Section 815), is amended to read as follows:

Section 815. ~~(a)~~ A. 1. The executor, administrator, trustee, devisee, heir or transferee shall within nine (9) months after the date of death of the decedent, unless the time has been extended by the Tax Commission, make a detailed return, verified by affidavit, to the Tax Commission upon forms furnished by it, giving all the information called for or that may be necessary to determine the value of the net estate. The provisions of this subsection shall not apply to estates exempt from filing such return by the provisions of subsections ~~(d)~~ D and ~~(e)~~ E of this section.

2. For estate tax returns filed pursuant to this section, an extension of time to file the return may be granted for a period not to exceed six (6) months. The request for the extension shall be made to the Tax Commission before the expiration of the normal filing period as allowed pursuant to paragraph 1 of this subsection.

~~(b)~~ B. Upon receipt of such return the Tax Commission shall proceed to audit the same and may, for the purpose of determining the value of the estate or any transfer, audit the books of account and records of any executor, administrator, trustee, devisee, heir, corporation, bank, trust company or transferee, and may appraise the property transferred or returned and investigate and include any property or transfers which may have been omitted from the return and shall thereupon compute, and by order assess, the tax, together with any interest or penalty which it may find to be due, and shall forthwith notify the administrator, executor, trustee or transferee and their attorney of record of such assessment by furnishing a detailed statement of the values of said estate or transfers, as fixed by the Tax Commission, and the amount of tax assessed. Such notice may be delivered in person or may be by mail addressed to such administrator, executor, trustee, transferee and their attorney of record at their last-known post office addresses, with the postage thereon prepaid, and upon receipt of such notice of assessment, the administrator, executor, trustee, devisee, heir or transferee liable for such tax shall pay the tax to the Tax Commission as provided herein. Provided,

however, that if upon receipt of such notice the administrator, executor, or trustee or any party interested is dissatisfied with such findings or assessment or any appraisement made by the Tax Commission, he shall, within thirty (30) days from the date of mailing of such notice, file with the Tax Commission his objection, in writing, specifically setting forth the grounds of his objections, and thereupon the Commission may grant a hearing, and upon such hearing may adjust the matters in controversy and correct the assessment as justice may require. Provided further, the administrator, executor, trustee or any interested party who finds, within one (1) year from the date of mailing of the notice, an error of omission or inclusion of property on return, may file in writing, an objection with the Tax Commission specifically setting forth the grounds of his objection, and thereupon the Commission shall grant a hearing, and upon such hearing shall adjust the matters in controversy and add to or delete from the return such property as justice may require.

An administrator, executor, trustee or any interested party who fails to file his objection within the thirty-day time period prescribed by this section may, within one (1) year from the date of mailing of the notice, request the Oklahoma Tax Commission to adjust or abate the assessment for reasons other than an error of omission or inclusion of property on return, if the administrator, executor, trustee or any interested party can demonstrate, by a preponderance of the evidence, that the assessment or some portion thereof is clearly erroneous. If the Commission determines that the proper showing has been made, the assessment or portion thereof determined to be clearly erroneous shall be deemed not to have become final and absolute. No hearing to adjust or abate a clearly erroneous assessment may be granted after the denial by the Commission of such a request. An order of the Commission denying a request of an administrator, executor, trustee or any interested party to adjust or abate an assessment alleged to be clearly erroneous is not an appealable order under Section 225 of this title. No proceeding instituted by the Oklahoma Tax Commission to collect a tax liability may be stayed because of a

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request made by a taxpayer to adjust or abate an assessment alleged to be clearly erroneous.

~~(c)~~ C. No assessment of inheritance, estate or transfer tax shall be made hereunder subsequent to the lapse of ten (10) years after the date of the death of any decedent, except that this time limitation on the making of assessments and the beginning of proceedings for collection shall not affect or apply to assessments of inheritance, estate, transfer or gift taxes upon the estates of restricted Indians. If an estate tax return is filed as required by law, additional assessment may be made based upon unreported assets of the estate if such assessment is made not later than ten (10) years from the date of death of the decedent; provided, however, such additional assessment shall be made and any lien applicable thereto shall attach only against such unreported assets.

~~(d)~~ D. When all the property, both real and personal, of a decedent passes to the surviving spouse, no estate tax return shall be required and no order from the Tax Commission exempting such estate, the executor, administrator or beneficiary from payment of estate tax shall be necessary for any purpose, unless there are taxes due under the provisions of Section 804 of this title. However, an estate tax return or affidavit in a form provided by the Oklahoma Tax Commission may be filed which indicates that all the property of the decedent passes to the surviving spouse, and the Tax Commission, upon being satisfied from an examination of said return or affidavit and any other information available to it that all of the property of the decedent passes to the surviving spouse, shall issue an order exempting as nontaxable all property included in such decedent's estate.

~~(e)~~ E. When an order releasing estate tax liability is obtained from the district court, as provided in this act, no estate tax return shall be required and no order from the Tax Commission exempting such estate, the executor, administrator or beneficiaries from the payment of estate tax shall be necessary

for any purpose for any property described in such order of the district court.

~~(f)~~ F. The provisions of this section or Section 205 of this title shall not prevent the Tax Commission from delivering, upon written request, to a duly authorized representative of the taxpayer, or any individual who has judicially been determined to be an heir, devisee, or legatee of the taxpayer by a court of competent jurisdiction, or any individual named as a beneficiary of a trust of the taxpayer, a copy of any return exclusive of distribution schedule, any order assessing tax or any other paper or report filed or issued pursuant to the provisions of Sections 801 et seq. of this title.

SECTION 6. AMENDATORY Section 1, Chapter 304, O.S.L. 1994 (60 O.S. Supp. 1995, Section 674.2), is amended to read as follows:

Section 674.2 If any person claims an interest in any property delivered to the Oklahoma Tax Commission in which the owner of the property is determined to be deceased, the Commission shall pay over or deliver to the claimant the property as provided in Section 651 et seq. of Title 60 of the Oklahoma Statutes upon receipt of the following:

1. A certified copy of letters of administration or letters testamentary from the probate of the estate of the decedent naming the claimant as the personal representative of the estate of the decedent; or

2. A certified copy of the decree of distribution from the probate of the estate of the decedent determining the claimant to be entitled to receive such property through the estate of the decedent; or

3. If the value of the property is ~~Four Hundred Dollars (\$400.00)~~ One Thousand Dollars (\$1,000.00) or less, a signed affidavit executed by the claimant stating that the claimant is entitled to receive such property, the reason the claimant is entitled to receive such property, that there has been no probate of the estate of the deceased owner, that no such probate is contemplated and that claimant will indemnify the state for any

loss, including attorney fees, should another claimant assert a prior right to the property.

SECTION 7. This act shall become effective November 1, 1996.

45-2-10415 JAF