

SHORT TITLE: Revenue and taxation; phasing in increase in estate tax exemption from \$175,000 to \$600,000; phasing out additional exemption for family farms or businesses; modifying amount of money which may be paid out upon notification; effective date.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1079

By: Maddox

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Sections 809, as amended by Section 3, Chapter 334, O.S.L. 1996 and 812, as last amended by Section 4, Chapter 334, O.S.L. 1996 (68 O.S. Supp. 1997, Sections 809 and 812), which relate to estate taxes; modifying amount of exemption from estate; modifying provisions for certain additional exemption; modifying amount of money which may be released or paid out by financial institution after notification to Oklahoma Tax Commission; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 809, as amended by Section 3, Chapter 334, O.S.L. 1996 (68 O.S. Supp. 1997, Section 809), is amended to read as follows:

Section 809. A. If any portion of 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 the net estate passing to 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)~~ in amounts as

follows, and the tax shall be paid on the remainder at the rates herein set out-:

1. For the estate of a decedent who dies before January 1, 1999, the exemption shall be One Hundred Seventy-five Thousand Dollars (\$175,000.00);

2. For the estate of a decedent who dies on or after January 1, 1999, and before January 1, 2000, the exemption shall be Two Hundred Sixty Thousand Dollars (\$260,000.00);

3. For the estate of a decedent who dies on or after January 1, 2000, and before January 1, 2001, the exemption shall be Three Hundred Forty-five Thousand Dollars (\$345,000.00);

4. For the estate of a decedent who dies on or after January 1, 2001, and before January 1, 2002, the exemption shall be Four Hundred Thirty Thousand Dollars (\$430,000.00);

5. For the estate of a decedent who dies on or after January 1, 2002, and before January 1, 2003, the exemption shall be Five Hundred Fifteen Thousand Dollars (\$515,000.00); and

6. For the estate of a decedent who dies on or after January 1, 2003, the exemption shall be Six Hundred Thousand Dollars (\$600,000.00).

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 additional exemption shall be in an amount ~~not exceeding Four Hundred Twenty-five Thousand Dollars (\$425,000.00)~~ as follows:

1. For the estate of a decedent who dies before January 1, 1999, the exemption shall be Four Hundred Twenty-five Thousand Dollars (\$425,000.00);

2. For the estate of a decedent who dies on or after January 1, 1999, and before January 1, 2000, the exemption shall be Three Hundred Forty Thousand Dollars (\$340,000.00);

3. For the estate of a decedent who dies on or after January 1, 2000, and before January 1, 2001, the exemption shall be Two Hundred Fifty-five Thousand Dollars (\$255,000.00);

4. For the estate of a decedent who dies on or after January 1, 2001, and before January 1, 2002, the exemption shall be One Hundred Seventy Thousand Dollars (\$170,000.00);

5. For the estate of a decedent who dies on or after January 1, 2002, and before January 1, 2003, the exemption shall be Eighty-five Thousand Dollars (\$85,000.00); and

6. For the estate of a decedent who dies on or after January 1, 2003, no additional exemption shall be allowed.

C. In no event shall the total exemption allowed pursuant to ~~subsection~~ subsections A and B 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~~ section:

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.~~ D. 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.~~ E. 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 such person or persons combined and that the exemption shall in no event exceed the amounts specified in this section, regardless of the amount of the estate that may pass to any or all

of 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 the percentage of the exemptions and deductions enumerated in this section, and in 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 2. AMENDATORY 68 O.S. 1991, Section 812, as last amended by Section 4, Chapter 334, O.S.L. 1996 (68 O.S. Supp. 1997, 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 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 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 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, or 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)~~ the amount of the exemption allowed pursuant to the provisions of subsection A of Section 809 of this title 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 institution to the credit of decedent's grantor trust, upon request of the trustee of 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 the grantor trust as authorized under the terms of the grantor trust, not more than ~~One Hundred Seventy-five Thousand Dollars (\$175,000.00)~~ the amount of the exemption allowed pursuant to the provisions of subsection A of Section 809 of this title 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 the grantor trust as authorized under the terms of the grantor trust, to the surviving spouse of decedent, may be released or paid out without notifying the Oklahoma Tax Commission.

SECTION 3. This act shall become effective November 1, 1998.

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