

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1317

By: Davis

COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; levying tax on estates of residents and nonresidents; stating amount of tax; defining terms; amending 68 O.S. 2001, Section 802.1, which relates to credit to tax levied; changing statutory reference; amending 68 O.S. 2001, Section 807, as last amended by Section 11, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2003, Section 807), which relates to estate tax exemptions; modifying exemption for certain interest; amending 68 O.S. 2001, Section 809, which relates to certain exemptions; providing exemption for collateral heirs; repealing 68 O.S. 2001, Sections 801, 802, 802.1, as amended by Section 2 of this act, 803, 804, 805, as amended by Section 5, Chapter 458, O.S.L. 2002, 806, 807, as last amended by Section 3 of this act, 808, 809, as amended by Section 4 of this act, 810, 811, 812, 813, 814, 815, as amended by Section 12, Chapter 472, O.S.L. 2003, 815.1, 816, 816.1, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826 and 827 (68 O.S. Supp. 2003, Sections 805 and 815), which relates to the imposition and collection of a tax on decedents' estates; providing for codification; providing effective dates; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 801.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Effective July 1, 2009, a tax in the amount of the federal credit, if any such credit is available pursuant to Section 2011 of Title 26 of the United States Code or equivalent provision, shall be levied on the transfer of every taxable estate of a resident subject, where applicable, to the credit provided in subsection B of this section.

B. If any real property or tangible personal property of a resident is located outside this state and is subject to a death tax imposed by another state for which the federal credit is allowed, the amount of the tax due under this section shall be credited with the lesser of:

1. The amount of the death tax paid the other state and credited against the federal estate tax; or

2. An amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which another state or states have jurisdiction to the same extent this state would exert jurisdiction, pursuant to this act, with respect to real property and tangible personal property located in this state owned by residents of the other state or states and the denominator of which is the gross estate.

C. For purposes of this section:

1. "Federal credit" means the maximum amount of the credit for state death taxes allowable by Section 2011 of the Internal Revenue Code; and

2. "Taxable estate" means taxable estate as defined in Section 2051 of the Internal Revenue Code.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 802.1, is amended to read as follows:

Section 802.1 A credit to the tax levied by Section ~~802~~ 1 of ~~Title 68 of the Oklahoma Statutes~~ this act 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, 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 3. AMENDATORY 68 O.S. 2001, Section 807, as last amended by Section 11, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2003, Section 807), is amended to read as follows:

Section 807. A. The value of the gross estate, used as a basis for a determination of the value of the net estate, shall be determined by including:

1. The value, at the time of the death of the decedent, or the alternate valuation as herein authorized, of all property, real, personal, or mixed, whether tangible or intangible, in which the decedent had an interest, whether vested or contingent, within the jurisdiction of this state, and any interest therein, or income therefrom, which shall pass in possession or enjoyment, present or future, by distribution, by statute, descent, devise, bequest, grant, deed, bargain, sale, gift or contract, to any person or persons, associations or corporations, in trust or otherwise, by testamentary disposition or by the laws of inheritance or succession of this or any other state or country, and including the value of the homestead.

However, in determining the value of the gross estate of a nonresident of this state, there shall be excluded all intangible personal property, except intangible personal property required to be included in such gross estate and subjected to tax under paragraph 7 of this subsection, if:

- a. the transferor at the time of the transfer was a resident of a state or territory of the United States, or of any foreign country, which at the time of the transfer did not impose a transfer tax or death tax of any character in respect of personal property of residents of this state, except tangible personal property having an actual situs in such state or territory or foreign country, or

b. the laws of the state, territory or country of residence of the transferor at the time of the transfer contained a reciprocal exemption provision under which nonresidents were exempted from transfer taxes or death taxes of every character in respect to personal property, except tangible personal property having an actual situs therein, provided the state, territory or country of residence of such nonresident allowed a similar exemption to residents of the state, territory or country of residence of such transferor. For the purpose of this subsection the District of Columbia and possessions of the United States shall be considered territories of the United States;

2. Except as provided in this paragraph, the value of any real or personal property, including the homestead passing by deed, grant, bargain, sale or gift made in contemplation of death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after the death of the decedent. Any transfer made by the decedent of a material part of the estate of the decedent within three (3) years prior to death, without an equivalent in monetary consideration, shall, unless shown to the contrary, be deemed to have been in contemplation of death, and such transfers shall be included at their net value at the date of decedent's death. Except as to gifts with respect to a life insurance policy, this paragraph shall not apply to that portion of a gift which is properly excluded from the decedent's federal taxable gifts or which is treated as a federal taxable gift of the decedent only because the decedent consented to have a gift made by his or her spouse treated as made one-half by the decedent;

3. To the extent of any interest therein of which the decedent has, at any time, made a transfer, in trust or otherwise, where the enjoyment thereof was subject, at the date of the death of the

decedent, to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend or revoke the terms of such trust, or where the decedent relinquished any such power in contemplation of death, or where the decedent reserved to the decedent during the life of the decedent the income from the property included in any such transfer; and to the extent of any interest in property in which the decedent donee has released a general power of appointment in contemplation of the death of the decedent, whether or not the decedent had previously transferred such property;

4. To the extent of the value of any interest of the decedent in any property owned by the decedent and any other person as joint tenants, or tenants by the entirety, including funds or securities deposited with any person, corporation, bank or trust company or held in any safety box kept by the beneficiary or joint survivor, except such part of the property or deposit as may be shown to have originally belonged to such other person and never to have been acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth. Persons claiming to own an interest with the decedent in any property, real or personal, included in the taxable estate of the decedent must support said claim by adequate proof, showing the value of claimant's interest contributed in money or money's worth from separate funds or properties, and provided that a sworn affidavit setting forth the facts supporting such claims shall be considered prima facie evidence of adequate proof;

5. To the extent of the total amount of the proceeds of insurance payable or accruing to the decedent's estate by virtue of policies upon the life of the decedent or the annuities, cash surrender values or options held in life insurance policies upon the lives of others;

6. To the extent of the amount receivable directly, in trust, or as annuities by all other beneficiaries, or under a joint policy by the survivor, of the proceeds of life insurance, by virtue of policies taken out on the life of the decedent and in which, at the time of death, the decedent had the right, directly or indirectly, to change the beneficiary or to convert the policy to decedent's own use, or in which the decedent possessed any other incidents of ownership, exercisable either alone or in conjunction with any other person.

This section shall not operate to include as a taxable asset any interest in any policy or contract of insurance, wherein the insured survives such spouse or beneficiary, belonging to any deceased spouse as such, or to any deceased spouse as beneficiary, or to any deceased beneficiary, claimed or existing on account of payment of premiums from funds of any beneficiary.

Each and every insurance company, association or other institution which has outstanding on the life of a deceased resident of this state policies of insurance in an aggregate amount of Two Thousand Five Hundred Dollars (\$2,500.00) or more, immediately upon being notified of the death of the insured, shall file with the Oklahoma Tax Commission an information return containing complete information pertaining to such insurance, including any information on file with the reporting insurer concerning policies of insurance issued by other insurers on the life of the decedent.

Notwithstanding any provisions of this or other sections, no insurer shall be liable for any part of the tax levied by Section 801 et seq. of this title, and no insurer shall be required to retain any portion of the proceeds of a policy.

The provisions of this section and of Section 801 et seq. of this title shall not apply to the value of an annuity or other payment receivable by any beneficiary under:

- a. an employees' trust, or under a contract purchased by an employees' trust, forming a part of a pension, stock bonus, or profit-sharing plan, where said trust was created for the exclusive benefit of the employee members or their beneficiaries and said purpose had not been altered at the time of the decedent's separation from employment, whether by death or otherwise, or at the time of termination of the plan if earlier, and was a plan described in Section 401(a) of the Internal Revenue Code of 1954, as amended,
- b. a retirement annuity contract purchased by an employer, and not by an employees' trust, pursuant to a plan which, at the time of decedent's separation from employment, by death or otherwise, or at the time of termination of the plan if earlier, was a plan described in Section 403(a) of the Internal Revenue Code of 1954, as amended, or
- c. a retirement annuity contract purchased for an employee by an employer which is an organization referred to in subsection A of Section 2359 of this title, and which is exempt from tax.

If such amounts payable after the death of the decedent under a plan described in subparagraph a or b of this paragraph, under a contract described in subparagraph c of this paragraph, are attributable to any extent to payments or contributions made by the decedent, no exclusion shall be allowed for that part of the value of such amounts in the proportion that the total payments or contributions made by the decedent bear to the total payments or contributions, except that all amounts payable to a surviving spouse shall not be included in the decedent's estate. For purposes of this subsection, contributions or payments made by the decedent's employer or former employer under a trust or plan described in

subparagraph a or b of this paragraph shall not be considered to be contributed by the decedent, and contributions or payments made by the decedent's employer or former employer toward the purchase of an annuity contract described in subparagraph c of this paragraph shall, to the extent excludable from gross income under Section 403(b) of the Internal Revenue Code of 1954, as amended, not be considered to be contributed by the decedent;

7. To the extent of the interest of any decedent, who at the time of death was a nonresident of the State of Oklahoma, in any intangible personal property which is used in connection with any established business, having a business situs in this state including, the interest of such nonresident in a partnership the business of which is conducted in the state or the majority of assets of which are located in this state. None of the intangible personal property subject to tax under this paragraph shall be exempt under the provisions for reciprocity in paragraph 1 of subsection A of this section. No property exempted by paragraph 6 of this subsection shall be subject to tax by reason of this paragraph;

8. If a decedent bequeaths property to one or more executors or trustees in lieu of their commissions or allowance or in any amount exceeding the commission or allowance prescribed by law, the excess in value of the property so bequeathed over the amount prescribed by law; and

9. To the extent of the value of any interest in property within the jurisdiction of this state, over which the decedent at the time of the death of the decedent had possessed a "general power of appointment". A "general power of appointment" as used herein is restricted to one which is exercisable in favor of the decedent, the estate of the decedent, creditors of the decedent, or the creditors of the estate of the decedent.

B. In determining the value of the gross estate under this section there shall be excluded the value of any interest in decedent's estate, beneficial or otherwise, vesting in the surviving spouse, provided that the value of such interest shall be included for the purpose of computing additional tax liability under Section 804 of this title. No deduction or exclusion of the full value of qualified terminable interest property ("QTIP") described in Section 2056(b)(7) of the Internal Revenue Code of 1986, as amended, shall be allowed; however, property over which the decedent's surviving spouse possesses a general power of appointment shall be fully excluded from the decedent's taxable estate pursuant to this section.

Such exclusion shall be limited to that value of the gross estate, beneficial or otherwise, vesting in the surviving spouse, less debts, mortgages, liens, administration charges or other encumbrances chargeable against the value of the gross estate so vested.

C. The gross value of the estate shall not be diminished by any transfers due to the claim of any creditor against the estate arising from a contract payable by its terms at or after the death of the decedent, except insofar as it may be affirmatively shown by competent evidence that such claim was legally due and payable in the lifetime of the decedent or was supported by a consideration of equivalent monetary value; and the forgiveness of any debt or the surrender of any right in any contract or chose in action upon the death of the decedent shall be deemed a transfer to the extent of the value or interest of the decedent therein at the time of death.

The deduction of any right of dower or curtesy claimed or passing under the laws of any other state, territory or foreign country, and the ownership of property, devolution, and succession thereto, the construction of wills, deeds, or transfers of both real and personal property within this state, the taxable situs thereof

and the domicile of the decedent shall be governed by the laws of this state for the purposes of Section 801 et seq. of this title.

D. The term "tangible property," as used in Section 801 et seq. of this title, means and includes all corporeal property such as real estate, goods, wares and merchandise, or any interest therein, or income therefrom. The term "real estate" includes any royalty, ground rental, leasehold interest or income therefrom. The terms "goods, wares, and merchandise" means and includes all property, real, personal or mixed, situated within the State of Oklahoma or within its jurisdiction. The term "intangible property," as used herein, means and includes all incorporeal property other than that named as tangible.

E. Whenever the property within this state of a resident or nonresident decedent is not specifically bequeathed or devised, such property, including all transfers under a residuary clause, shall for the purpose of Section 801 et seq. of this title be deemed to be transferred proportionally to and divided pro rata among all the general legatees and devisees named in the will.

F. There shall be exempt from payment of tax hereunder any estate, the total net value of which, within the State of Oklahoma, does not exceed the sum of One Hundred Dollars (\$100.00).

SECTION 4. AMENDATORY 68 O.S. 2001, Section 809, is amended to read as follows:

Section 809. A. 1. 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 in amounts as follows, and the tax shall be paid on the remainder at the rates herein set out:

- ~~1.~~ a. 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.~~ b. 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 Seventy-five Thousand Dollars (\$275,000.00)~~†~~‡
- ~~3.~~ c. For the estate of a decedent who dies on or after January 1, 2000, and before January 1, 2001, the exemption shall be Four Hundred Seventy-five Thousand Dollars (\$475,000.00)~~†~~‡
- ~~4.~~ d. For the estate of a decedent who dies on or after January 1, 2001, and before January 1, 2002, the exemption shall be Six Hundred Seventy-five Thousand Dollars (\$675,000.00)~~†~~‡
- ~~5.~~ e. For the estate of a decedent who dies on or after January 1, 2002, and before January 1, 2004, the exemption shall be Seven Hundred Thousand Dollars (\$700,000.00)~~†~~‡
- ~~6.~~ f. For the estate of a decedent who dies on or after January 1, 2004, and before January 1, 2005, the exemption shall be Eight Hundred Fifty Thousand Dollars (\$850,000.00)~~†~~‡
- ~~7.~~ g. For the estate of a decedent who dies on or after January 1, 2005, and before January 1, 2006, the exemption shall be Nine Hundred Fifty Thousand Dollars (\$950,000.00)~~†~~‡ and
- ~~8.~~ h. For the estate of a decedent who dies on or after January 1, 2006, the exemption shall be One Million Dollars (\$1,000,000.00).

2. 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 brother or sister of the decedent, 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 in amounts as follows, and the tax shall be paid on the remainder at the rates herein set out:

- a. For the estate of a decedent who dies on or after January 1, 2006, and before January 1, 2007, the exemption shall be Two Hundred Fifty Thousand Dollars (\$250,000.00),
- b. For the estate of a decedent who dies on or after January 1, 2007, and before January 1, 2008, the exemption shall be Five Hundred Thousand Dollars (\$500,000.00),
- c. For the estate of a decedent who dies on or after January 1, 2008, and before January 1, 2009, the exemption shall be Seven Hundred Fifty Thousand Dollars (\$750,000.00), and
- d. For the estate of a decedent who dies on or after January 1, 2009, the exemption shall be One Million Dollars (\$1,000,000.00).

B. 1. 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 as follows:

- a. 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),

- b. 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 Twenty-five Thousand Dollars (\$325,000.00),
- c. for the estate of a decedent who dies on or after January 1, 2000, and before January 1, 2001, the exemption shall be One Hundred Twenty-five Thousand Dollars (\$125,000.00), and
- d. for the estate of a decedent who dies on or after January 1, 2001, no additional exemption shall be allowed.

2. For the estate of a decedent who dies prior to January 1, 2001, the total exemption allowed pursuant to subsection A of this section and this subsection shall not exceed a total of Six Hundred Thousand Dollars (\$600,000.00) for any estate. For purposes of this subsection:

- a. "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,
- b. "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,

- c. "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
- d. "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 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 5. REPEALER 68 O.S. 2001, Sections 801, 802, 802.1, as amended by Section 2 of this act, 803, 804, 805, as amended by Section 5, Chapter 458, O.S.L. 2002, 806, 807, as last amended by Section 3 of this act, 808, 809, as amended by Section 4 of this act, 810, 811, 812, 813, 814, 815, as amended by Section 12, Chapter 472, O.S.L. 2003, 815.1, 816, 816.1, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826 and 827 (68 O.S. Supp. 2003, Sections 805 and 815), are hereby repealed.

SECTION 6. Sections 1, 2 and 5 of this act shall become effective July 1, 2009.

SECTION 7. Section 3 of this act shall become effective July 1, 2004.

SECTION 8. Section 4 of this act shall become effective January 1, 2006.

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

49-2-8566 DLW 02/18/04