STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 679 By: Laughlin

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 802, 802.1, 804, 809 and 825, which relate to estate taxes; providing that certain tax not be levied after certain date; providing that certain credit not be allowed for certain estates; modifying rate of estate tax; restricting tax to certain levy for certain estates; providing for certain credits against estate tax liability; specifying amounts thereof; modifying definition; deleting language prescribing estate tax tables and examples; requiring Tax Commission to promulgate certain rules providing for estate tax tables; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 802, is amended to read as follows:

Section 802. A tax, at the rates prescribed in ~~the following section~~ Section 803 of this title is hereby levied upon the transfer of the net estate of every decedent who dies before January 1, 2006, whether in trust or otherwise, to persons, associations, corporations~~,~~ or bodies politic, of property, real, personal~~,~~ or mixed, whether tangible or intangible, or any interest therein or income therefrom, by will or the intestate laws of this state, by any order setting apart property and/or granting family allowances pursuant to the probate code, 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 such death. Provided, however, that nothing in this article shall be construed as subjecting to payment of such tax the escheat of property to the state for the benefit of its common schools. Such

tax shall be imposed upon the value of the net estate and transfers at the rates, under the conditions, and subject to the exemptions and limitations hereinafter prescribed.

The word "transfer", as used in Section 801 et seq. of this ~~article~~ title, shall be taken to include, but shall not be limited to, the passing of property, or any vested or contingent interest therein, in possession or enjoyment, present or future, by distribution, by statute, descent, devise, bequest, grant, deed, bargain, sale, or gift.

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 of ~~Title 68 of the Oklahoma Statutes~~ this title 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. The credit allowed pursuant to the provisions of this section shall not be allowed for the estate of a decedent who dies on or after January 1, 2006.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 804, is amended to read as follows:

Section 804. In case the tax levied upon the value of the property of the estate in Oklahoma and transfers by Section 801 et seq. of this title is less than the credit allowed by the federal government on estate tax imposed upon the value of the property of the estate in Oklahoma, for state estate and inheritance taxes imposed upon the value of the property of the estate in Oklahoma, pursuant to 26 U.S.C. Section 2011, then, in that event, there shall be levied an additional tax which shall be imposed upon the value of

the property of the estate in Oklahoma, as of the date of the determination of the Federal Estate Tax, equal to the difference between such credit and the Oklahoma Estate Tax levied upon the value of the property of the estate in Oklahoma and transfers by Section 801 et seq. of this ~~Article~~ title. 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 in Oklahoma bears to the total value of the estate of the decedent. Such additional tax to absorb the credit shall be determined, assessed, collected and paid pursuant to the provisions of Section 801 et seq. of this title. For the estate of a decedent who dies on or after January 1, 2006, the only tax levied pursuant to Section 801 et seq. of this title shall be the tax levied pursuant to the provisions of this section.

SECTION 4. AMENDATORY 68 O.S. 2001, 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 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 Seventy-five Thousand Dollars ($275,000.00);

3. For the estate of a decedent who dies on or after January 1, 2000, and before January 1, 2001, the exemption shall be Four Hundred Seventy-five Thousand Dollars ($475,000.00);

4. For the estate of a decedent who dies on or after January 1, 2001, and before January 1, 2002, the exemption shall be Six Hundred Seventy-five Thousand Dollars ($675,000.00);

5. 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. 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); and

7. 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. 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)~~.

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 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. AMENDATORY 68 O.S. 2001, Section 825, is amended to read as follows:

Section 825. ~~A. The following table shall be used in computing taxes upon the net taxable estate and transfers, subject to the tax rates provided in paragraph 1 of Section 803 of this Article, as amended:~~

~~Taxable Estate Equal to or More than~~	~~Taxable Estate Less than~~	~~Tax on Amount in Column 1~~	~~Rate of Tax on Excess Over Amount in Column 1~~
~~$ -0-~~	~~$ 10,000.00~~	~~$ -0-~~	~~0.5%~~
~~10,000.00~~	~~20,000.00~~	~~50.00~~	~~1%~~
~~20,000.00~~	~~40,000.00~~	~~150.00~~	~~1.5%~~
~~40,000.00~~	~~60,000.00~~	~~450.00~~	~~2%~~
~~60,000.00~~	~~100,000.00~~	~~850.00~~	~~2.5%~~
~~100,000.00~~	~~250,000.00~~	~~1,850.00~~	~~3%~~
~~250,000.00~~	~~500,000.00~~	~~6,350.00~~	~~6.5%~~
~~500,000.00~~	~~750,000.00~~	~~22,600.00~~	~~7%~~
~~750,000.00~~	~~1,000,000.00~~	~~40,100.00~~	~~7.5%~~
~~1,000,000.00~~	~~3,000,000.00~~	~~58,850.00~~	~~8%~~
~~3,000,000.00~~	~~5,000,000.00~~	~~18,850.00~~	~~8.5%~~
~~5,000,000.00~~	~~10,000,000.00~~	~~388,850.00~~	~~9%~~
~~0,000,000.00~~		~~838,850.00~~	~~10%~~

~~The total tax shall be the tax imposed at the rates under this article plus any additional tax imposed by Section 804 of this code.~~

~~To determine from the above schedule the amount of tax due on any given net taxable estate passing to a lineal heir, take the specified amount in column 1 nearest the value of the decedent's estate, but less than such value in column 2, and set out the amount of tax therein as indicated in column 3. Upon the remainder, the tax is computed at the rate shown in column 4. These two amounts of tax added together equal the tax due for lineal heirs.~~

~~Thus, for example, on a net estate passing to lineal heirs of $267,525.00, the total tax would be computed as follows:~~

		~~Tax~~
~~$250,000.00~~	~~(Amount in column 1 but less than amount in column 2)~~	~~$6,350.00~~
~~17,525.00~~	~~(Balance of net taxable estate, at 6.5%)~~	~~1,139.13~~
~~$267,525.00~~	~~(Total net taxable estate)~~	
	~~Total Tax~~	~~$7,489.13~~

~~B. The following table shall be used in computing taxes upon the net taxable estate and transfers subject to the tax rates provided in paragraph 2 of Section 803 of this article, as amended:~~

~~Taxable Estate Equal to or More than~~	~~Taxable Estate Less than~~	~~Tax on Amount in Column 1~~	~~Rate of Tax on Excess Over Amount in Column 1~~
~~$ -0-~~	~~$ 10,000.00~~	~~$ -0-~~	~~1%~~
~~10,000.00~~	~~20,000.00~~	~~100.00~~	~~2%~~
~~20,000.00~~	~~40,000.00~~	~~300.00~~	~~3%~~
~~40,000.00~~	~~60,000.00~~	~~900.00~~	~~4%~~
~~60,000.00~~	~~100,000.00~~	~~1,700.00~~	~~5%~~
~~100,000.00~~	~~250,000.00~~	~~3,700.00~~	~~6%~~
~~250,000.00~~	~~500,000.00~~	~~12,700.00~~	~~13%~~

~~500,000.00~~	~~1,000,000.00~~	~~45,200.00~~	~~14%~~
~~1,000,000.00~~	~~115,200.00~~	~~15%~~	

~~The total tax shall be the tax imposed at the rates under this article plus any additional tax imposed by Section 804 of this code.~~

~~To determine from the above schedule the amount of tax due on any given net taxable estate passing to a collateral heir, take the specified amount in column 1 nearest the value of the estate passing to the collateral heir, but less than such value in column 2, and set out the amount of tax thereon as indicated in column 4. Upon the remainder, the tax is computed at the rate shown in column 4. These two amounts of tax added together equal the tax due for collateral heirs.~~

~~Thus, for example, on a net estate passing to collateral heirs of $242,000.00, the tax due would be computed as follows:~~

~~$100,000.00~~	~~(Amount in column 1 but less than amount in column 2)~~	~~$ 3,700.00~~
~~142,000.00~~	~~(Balance of taxable estate at 6%)~~	~~8,520.00~~
~~$242,000.00~~	~~(Total net taxable estate)~~	
	~~Total tax~~	~~12,220.00~~

~~If the estate passes to lineal heirs and also collateral heirs, determine the tax separately as to each under A and B above as if there were two estates. These two amounts of tax would be equal the total tax due on the decedent's estate.~~

~~Unless the will otherwise provides, the tax shall be apportioned among lineal and collateral persons.~~

~~The tax on interests passing to collateral persons shall be apportioned in the proportion that the value of interest received by each collateral person bears to the total of the interests passing to all collateral persons.~~

~~The tax on interests passing to lineal persons shall be apportioned in the proportion that the value of interest received by~~

~~each lineal person bears to the total of all interests passing to lineal persons.~~

The ~~values used in determining the tax shall be used for that purpose~~ Oklahoma Tax Commission shall promulgate rules providing instructions for completion of estate tax returns and prescribing estate tax tables which may be used by taxpayers in computing the amount of tax due under Section 801 et seq. of this title.

SECTION 6. This act shall become effective November 1, 2005.

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