

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 1148, by striking the title, enacting clause and entire body of the bill and substituting the attached floor substitute.

Submitted by:

Senator Anderson

Anderson-JCR-FS-SB1148

STATE OF OKLAHOMA

2nd Session of the 51st Legislature (2008)

FLOOR SUBSTITUTE
FOR
SENATE BILL NO. 1148

By: Anderson of the Senate

and

(Jackson) of the House

FLOOR SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 812 and 815, as last amended by Section 2, Chapter 276, O.S.L. 2006 (68 O.S. Supp. 2007, Section 815), which relate to estate tax; modifying amount of deposit which may be released without certain notice; authorizing the use of a simplified return or affidavit in lieu of certain estate tax return; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 812, is amended to read as follows:

Section 812. A. 1. When the president or managing officer of a safe deposit company, trust company, bank, or other financial institution operating in this state, or person or persons, holding securities or assets of a decedent who was a resident of this state 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 operating in this state, or person or persons, holding securities or assets of such decedent shall not deliver or transfer the same except as provided for in

subsection ~~(d)~~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 ~~said~~ the 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)~~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, person or persons, liable for the payment of the tax.

2. In all cases, regardless of the aggregate amount of deposits of money in such safe deposit company, trust company, bank, or other financial institution:
 - a. 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, or
 - b. to the credit of the decedent individually, with any other person or persons not the spouse or lineal descendant of the decedent as payable-on-death beneficiary or beneficiaries,

not more than ~~Five Thousand Dollars (\$5,000.00)~~ Fifty Thousand Dollars (\$50,000.00) for a decedent whose death occurs during calendar year 2008 and One Hundred Thousand Dollars (\$100,000.00) for a decedent whose death occurs during calendar year 2009, 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.

3. From deposits of money in such safe deposit company, trust company, bank, or other financial institution:

- a. to the credit of the decedent and one or more lineal descendants as joint tenants,
or
- b. to the credit of the decedent individually with one or more lineal descendants as payable-on-death beneficiary or beneficiaries,

not more than Ten Thousand Dollars (\$10,000.00) may be released or paid out by such institutions without notifying the ~~Oklahoma~~ Tax Commission, and a combined total of not more than One Hundred Seventy-five Thousand Dollars (\$175,000.00) or ninety percent (90%) of the deposits, whichever is greater, including any previous release of money to such person or persons after decedent's death, may be released or paid out by such institutions ten (10) days after receipt of notification in writing to the ~~Oklahoma~~ Tax Commission.

4. Any funds held:

- a. jointly by the decedent and the surviving spouse only, or
- b. by the decedent individually with the surviving spouse as the only payable-on-death beneficiary,

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. a. In all cases, regardless of the aggregate amount of deposits of money in such 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 Five Thousand Dollars (\$5,000.00) 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.

b. From deposits of money in such 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 Ten Thousand Dollars (\$10,000.00) in the aggregate may be released or paid out by such institutions to one or more lineal descendants of

the decedent without notifying the ~~Oklahoma~~ Tax Commission and a combined total of 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, including any previous distributions to such person or persons after decedent's death, may be released or paid out to one or more lineal descendants of the decedent ten (10) days after receipt of notification in writing to the ~~Oklahoma~~ Tax Commission.

- c. 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 2. AMENDATORY 68 O.S. 2001, Section 815, as last amended by Section 2, Chapter 276, O.S.L. 2006 (68 O.S. Supp. 2007, Section 815), is amended to read as follows:

Section 815. 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 Oklahoma 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, E and F 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. Upon receipt of such return, the Tax Commission 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 such person's attorney of record of such assessment by furnishing a detailed statement of the values of the 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 such person's attorney of record at the 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, such person shall, within sixty (60) days from the date of mailing of such notice, file with the Tax Commission an objection, in writing, specifically setting forth the grounds of the objections, and thereupon the Tax 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 the objection, and thereupon the Tax 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 an objection within the sixty-day time period prescribed by this section may, within one (1) year from the date of mailing of the notice, request the 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 Tax 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 Tax Commission of such a request. An order of the Tax 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 Tax Commission to collect a tax liability may be stayed because of a request made by a taxpayer to adjust or abate an assessment alleged to be clearly erroneous.

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. 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. 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 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 the 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. 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. When ~~all the property, both real and personal, of a decedent passes to the father, mother, child, child of husband or wife, adopted child or any lineal descendant of decedent or of such adopted child and~~ the net estate of a decedent is equal to or less than the applicable exemption provided in Section 809 of this title, a simplified return or affidavit, on a form prescribed by the Tax Commission, may be filed in lieu of the return required in subsection A of this section. The return shall contain sufficient information to determine that ~~all the property of the decedent passes to one or more of the persons listed in this subsection and that~~ the value of the net estate is equal to or less than the applicable exemption provided in Section 809 of this title. The Tax Commission, upon being satisfied from an examination of the return or affidavit and any other information available to it, shall issue an order exempting as nontaxable all property included in such decedent's estate.

G. 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 3. This act shall become effective July 1, 2008.

SECTION 4. 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.

51-2-3594

JCR

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