

LEGISLATIVE BILL 315

Approved by the Governor May 29, 2019

Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to taxation; to amend sections 77-2002 and 77-2018.02, Reissue Revised Statutes of Nebraska; to provide an exemption relating to life insurance proceeds; to change provisions relating to certain inheritance tax proceedings; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

Section 1. Section 77-2002, Reissue Revised Statutes of Nebraska, is amended to read:

77-2002 (1) Any interest in property whether created or acquired prior or subsequent to August 27, 1951, shall be subject to tax at the rates prescribed by sections 77-2004 to 77-2006, except property exempted by the provisions of Chapter 77, article 20, if it shall be transferred by deed, grant, sale, or gift, in trust or otherwise, and: (a) Made in contemplation of the death of the grantor; (b) intended to take effect in possession or enjoyment, after his or her death; (c) by reason of death, any person shall become beneficially entitled in possession or expectation to any property or income thereof; or (d) held as joint owners or joint tenants by the decedent and any other person in their joint names, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or property, except that when such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or property, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person or, when any property has been acquired by gift, bequest, devise, or inheritance by the decedent and any other person as joint owners or joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint owners or joint tenants.

(2) For the purpose of subsection (1) of this section, if the decedent, within a period of three years ending with the date of his or her death, except in the case of a bona fide sale for an adequate and full consideration for money or money's worth, transferred an interest in property for which a federal gift tax return is required to be filed under the provisions of the Internal Revenue Code, such transfer shall be deemed to have been made in contemplation of death within the meaning of subsection (1) of this section; no such transfer made before such three-year period shall be treated as having been made in contemplation of death in any event.

(3) Proceeds of life insurance receivable by a trustee, of either an inter vivos trust or a testamentary trust, as insurance under policies upon the life of the decedent shall not be subject to inheritance tax. This subsection shall not apply if the decedent's estate is the beneficiary of the trust.

Sec. 2. Section 77-2018.02, Reissue Revised Statutes of Nebraska, is amended to read:

77-2018.02 (1) In the absence of any proceeding brought under Chapter 30, article 24 or 25, in this state, an independent proceeding for the sole purpose of determining proceedings for the determination of the tax may be instituted in the county court of the county where the property or any part thereof which might be subject to tax is situated.

(2) Upon the filing of a the petition to initiate such an independent proceeding referred to in subsection (1) of this section, the county court shall order the petition set for hearing, not less than two nor more than four weeks after the date of filing the petition, and shall cause notice thereof to be given to all persons interested in the estate of the deceased and the property described in the petition, except as provided in subsections (4) and (5) of this section, in the manner provided for in subsection (3) of this section.

(3) The notice, provided for by subsection (2) of this section, shall be given by one publication in a legal newspaper of the county or, in the absence of such legal newspaper, then in a legal newspaper of some adjoining county of general circulation in the county. In addition to such publication of notice, personal service of notice of the hearing shall be had upon the county attorney of each county in which the property described in the petition is located, at least one week prior to the hearing.

(4) If it appears to the county court, upon the filing of the petition, by any person other than the county attorney, that no assessment of inheritance tax could result, it shall forthwith enter thereon an order directing the county attorney to show cause, within one week from the service thereof, why determination should not be made that no inheritance tax is due on account of the property described in the petition and the potential lien thereof on such property extinguished. Upon service of such order to show cause and failure of

such showing by the county attorney, notice of such hearing by publication shall be dispensed with, and the petitioner shall be entitled without delay to a determination of no tax due on account of the property described in the petition, and any potential lien shall be extinguished.

(5) If it appears to the county court that (a) the county attorney of each county in which the property described in the petition is located has executed a waiver of notice upon him or her to show cause, or of the time and place of hearing, and has entered a voluntary appearance in such proceeding in behalf of the county and the State of Nebraska, and (b) either (i) all persons against whom an inheritance tax may be assessed are either a petitioner or have executed a waiver of notice upon them to show cause, or of the time and place of hearing, and have entered a voluntary appearance, or (ii) a party to the proceeding has agreed to pay to the proper counties the full inheritance tax so determined, the court may dispense with the notice provided for in subsections (2) and (3) of this section and proceed without delay to make a determination of inheritance tax, if any, due on account of the property described in the petition.

(6) If a petition is filed to initiate an independent proceeding under this section and the decedent was fifty-five years of age or older or resided in a medical institution as defined in subsection (1) of section 68-919, a notice of the filing of such the petition referred to in subsection (1) of this section shall be provided to the Department of Health and Human Services with the decedent's social security number and, if the decedent was predeceased by a spouse, the name and social security number of such spouse. A certificate of the providing of the notice to the department shall be filed in the independent proceeding inheritance tax proceedings by an attorney for the petitioner or, if there is no attorney, by the petitioner, prior to the entry of an order pursuant to this section. The notice shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivering notice on its web site. Any notice that fails to conform with such manner is void and constitutes neither notice to the department nor a waiver application for purposes of any statute or regulation that requires that a notice or waiver application be provided to the department.

Sec. 3. Original sections 77-2002 and 77-2018.02, Reissue Revised Statutes of Nebraska, are repealed.