

## LEGISLATIVE BILL 456

Approved by the Governor April 8, 1977

Introduced by Judiciary Committee, Barnett, 26, Chmn.;  
 Nichol, 48; Carsten, 2; Cullan, 49; Reutzel,  
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AN ACT to amend sections 77-2004, 77-2005.01, 77-2018.02, 77-2018.04, and 77-2037, Revised Statutes Supplement, 1976, relating to inheritance tax; to change provisions relating to the rate of inheritance tax to immediate relatives; to redefine relatives of the decedent; to provide when a petitioner shall be entitled without delay to a determination of no tax due; to change provisions relating to deductions; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 77-2004, Revised Statutes Supplement, 1976, be amended to read as follows:

77-2004. In the case of a father, mother, husband, wife, child, brother, sister, wife or widow of a son, husband or widower of a daughter, child or children legally adopted as such in conformity with the laws of the state where adopted, any lineal descendant born in lawful wedlock, or any lineal descendant legally adopted as such in conformity with the laws of the state where adopted; ~~7-or-the-spouse-or-surviving-spouse-of-any-of-such-persons~~; or to any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent, or the spouse or surviving spouse of any such persons; Provided, that no one shall be considered a person to whom the deceased stood in the acknowledged relation of a parent unless he shall have been a member of the household of the deceased and shall have had his permanent home in the home of the deceased for at least five continuous years during his minority; the rate of tax shall be one per cent of the clear market value of the property in excess of ten thousand dollars received by each person. Any interest in property, including any interest acquired in the manner set forth in section 77-2002, which may be valued at a sum less than ten thousand dollars shall not be subject to tax. In addition the homestead allowance, exempt property, and family maintenance allowance shall not be subject to tax. The intestate succession interest of any spouse regardless of value shall not be subject to tax. Interests passing by will to the surviving spouse or in the manner set forth in section 77-2002 to the

extent of the value of the succession interest of the spouse shall not be subject to tax. For the purpose of this section the value of all property acquired in the manner set forth in section 77-2002 shall be considered as a part of the decedent's estate for the purpose of determining the value of the succession interest of a surviving spouse. The amount of the intestate succession interest shall be computed for the purpose of this section without regard to the elective share of a surviving spouse in an augmented estate.

Sec. 2. That section 77-2005.01, Revised Statutes Supplement, 1976, be amended to read as follows:

77-2005.01. (1) For the purposes of sections 77-2004 and 77-2005, relatives of the decedent shall include relatives of a former spouse to whom the decedent was married at the time of the death of the former spouse and relatives of a spouse to whom the decedent was married at the time of his or her death.

(2) The computation of any tax due pursuant to sections 77-2004, 77-2005, and 77-2006 shall be made without regard to Nebraska inheritance tax apportionment.

Sec. 3. That section 77-2018.02, Revised Statutes Supplement, 1976, be amended to read as follows:

77-2018.02. (1) In the absence of any proceeding brought under Chapter 30, article 24 or 25, in this state, 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 the petition 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 hereinafter 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 said 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, ~~referred to in subsections (2) and (3) of this section,~~ 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 shall appear 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 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.

Sec. 4. That section 77-2018.04, Revised Statutes Supplement, 1976, be amended to read as follows:

77-2018.04. In all proceedings for the determination of inheritance tax, the following deductions from the value of the property subject to Nebraska inheritance taxation shall be allowed to the extent paid from, chargeable to, or paid with respect to property subject to Nebraska inheritance taxation:

(1) The cost of the funeral of the decedent, including costs for interment and gravesite marker;

(2) All expenses of administration which accrue as a result of the death of the decedent, including, but not limited to, attorney's fees, court costs, and expenses concerning property not subject to probate;

(3) All expenses of the last illness of the decedent which were incurred within six months of the death of the decedent;

(4) All other debts upon which the decedent was liable for payment at the date of his death and which have been paid; and

(5) Any federal estate tax paid, exclusive after deduction of the state death tax credit all applicable credits, which is attributable to property subject to Nebraska inheritance taxation.

Sec. 5. That section 77-2037, Revised Statutes Supplement, 1976, be amended to read as follows:

77-2037. Regardless of any defect in the proceedings in which such inheritance tax was determined, or the jurisdiction of the court to make such determination, the lien of the inheritance tax shall cease upon the first to occur of: (1) Ten years from the date of death of a decedent and no action shall be maintained for the determination, assessment or collection of such tax, unless a determination of the amount of such tax by the court having jurisdiction thereof shall have been made within such ten-year period, in which case such lien and the right to maintain any action for the assessment or collection of any tax shall cease five years after such determination or upon payment of such tax, whichever first occurs; (2) the payment of the amount of inheritance tax finally determined by the county court to be due with respect to property described in such proceedings; or (3) the release or discharge of any lien pursuant to section 77-2102 or 77-2039.

Sec. 6. That original sections 77-2004, 77-2005.01, 77-2018.02, 77-2018.04, and 77-2037, Revised Statutes Supplement, 1976, are repealed.