

LEGISLATIVE BILL 905

Approved by the Governor April 18, 2002

Introduced by Wickersham, 49; Coordsen, 32; D. Pederson, 42; Wehrbein, 2

AN ACT relating to revenue and taxation; to amend sections 77-2101 to 77-2105, 77-2108, and 77-2113, Reissue Revised Statutes of Nebraska; to change calculations relating to estate taxes and generation-skipping transfer taxes; to harmonize provisions; to provide for applicability; to provide an operative date; and to repeal the original sections.

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

Section 1. Section 77-2101, Reissue Revised Statutes of Nebraska, is amended to read:

77-2101. For purposes of sections 77-2101 to 77-2115 and sections 4 and 11 of this act:

(1) Estate tax ~~shall mean~~ means the tax due to the state under section 77-2101.01; with respect to a taxable transfer that gives rise to federal estate tax liability return under Chapter 11 of the Internal Revenue Code, including any credit allowable as a result of the imposition of an additional tax under section 2032A of the Internal Revenue Code;

(2) Generation-skipping transfer tax ~~shall mean~~ means the tax due to the state under section 77-2101.02; with respect to a taxable transfer that gives rise to federal generation-skipping transfer tax liability under Chapter 13 of the Internal Revenue Code; and

(3) Nebraska taxable estate means the federal taxable estate, as determined under Chapter 11 of the Internal Revenue Code, minus one million dollars;

(4) Nebraska taxable transfer means the federal taxable transfer, as determined under Chapter 13 of the Internal Revenue Code, minus one million dollars; and

(5) Transfer tax ~~shall mean~~ means the estate tax and generation-skipping transfer tax.

Sec. 2. Section 77-2101.01, Reissue Revised Statutes of Nebraska, is amended to read:

77-2101.01. In addition to the inheritance taxes imposed by the laws of the State of Nebraska, there is levied and imposed an estate or excise tax upon the transfer of the estate of every resident decedent and upon the value of any interest in Nebraska real estate and tangible personal property situated in Nebraska of a nonresident decedent. The amount of such tax shall be the ~~maximum state tax credit allowance upon the tax imposed by Chapter 11 of the Internal Revenue Code~~ amount calculated in section 4 of this act reduced by the lesser of (1) the aggregate amount of all estate, inheritance, legacy, or succession taxes paid to any state or territory, the District of Columbia, or any possession of the United States in respect of any property subject to such tax or (2) the sum of (a) the amount determined by multiplying the ~~maximum state tax credit allowance~~ amount calculated in section 4 of this act with respect to the taxable transfer by the percentage which the gross value of the transferred property not situated in Nebraska bears to the gross value of the transferred property and (b) the amount of Nebraska inheritance taxes paid.

Sec. 3. Section 77-2101.02, Reissue Revised Statutes of Nebraska, is amended to read:

77-2101.02. There is hereby imposed a generation-skipping transfer tax upon the generation-skipping transfer or distribution of property of every resident of this state and upon the generation-skipping transfer of Nebraska real estate and tangible personal property situated in Nebraska by a nonresident. The amount of the generation-skipping transfer tax shall be the ~~maximum state tax credit allowance upon the tax imposed by Chapter 13 of the Internal Revenue Code~~ amount calculated in section 4 of this act reduced by the lesser of (1) the aggregate amount of all transfer taxes paid to any state or territory, the District of Columbia, or any possession of the United States in respect of any property subject to the generation-skipping transfer tax or (2) the amount determined by multiplying the ~~maximum state tax credit allowance~~ amount calculated in section 4 of this act with respect to the taxable transfer by the percentage which the gross value of the transferred property not situated in Nebraska bears to the gross value of the transferred property.

Sec. 4. (1) The following table shall be used to determine the tax

on the Nebraska taxable estate:

Nebraska taxable estate					Of Excess
At least	But less than	Tax =	+	%	Over
\$ 0	\$ 40,000	\$ 0		0	\$ 0
40,000	90,000	0		.8	40,000
90,000	140,000	400		1.6	90,000
140,000	240,000	1,200		2.4	140,000
240,000	440,000	3,600		3.2	240,000
440,000	640,000	10,000		4	440,000
640,000	840,000	18,000		4.8	640,000
840,000	1,040,000	27,600		5.6	840,000
1,040,000	1,540,000	38,800		6.4	1,040,000
1,540,000	2,040,000	70,800		7.2	1,540,000
2,040,000	2,540,000	106,800		8	2,040,000
2,540,000	3,040,000	146,800		8.8	2,540,000
3,040,000	3,540,000	190,800		9.6	3,040,000
3,540,000	4,040,000	238,800		10.4	3,540,000
4,040,000	5,040,000	290,800		11.2	4,040,000
5,040,000	6,040,000	402,800		12	5,040,000
6,040,000	7,040,000	522,800		12.8	6,040,000
7,040,000	8,040,000	650,800		13.6	7,040,000
8,040,000	9,040,000	786,800		14.4	8,040,000
9,040,000	10,040,000	930,800		15.2	9,040,000
10,040,000		1,082,800		16	10,040,000

(2) Taxable generation-skipping transfers shall be taxed at a rate of sixteen percent of the Nebraska taxable transfer.

Sec. 5. Section 77-2102, Reissue Revised Statutes of Nebraska, is amended to read:

77-2102. The transfer tax imposed under sections 77-2101 to 77-2115 and sections 4 and 11 of this act shall become due and payable to the State Treasurer within twelve months from the date of the death of the decedent in the case of the estate tax and ~~on the due date or dates, including extensions, for paying the related federal generation-skipping transfer tax and filing the related federal return~~ the date of the transfer in the case of the generation-skipping transfer tax. The limitation of time during which a tax return, for the purpose of the transfer tax, shall be open to inspection and examination shall be three years from the date of filing the return. Personal representatives, trustees, grantees, donees, beneficiaries, transferees, surviving joint owners, and other recipients of property subject to tax shall be and remain liable for the tax until it is paid. If the tax indicated by the return of the taxpayer is not paid when due, interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, shall be charged and collected from the date the same became payable. The transfer tax shall be a lien on the real property subject thereto until the first to occur of: (1) Payment; (2) ten years from the date of death of the decedent; or (3) the release or discharge of any lien pursuant to section 77-2039, except that no interest in any property passing from the decedent to the decedent's surviving spouse shall be subject to the lien.

Sec. 6. Section 77-2103, Reissue Revised Statutes of Nebraska, is amended to read:

77-2103. If the amount of the transfer tax imposed by Chapters 11 and 13 of the Internal Revenue Code is increased or decreased as affecting a transfer taxable under sections 77-2101 to 77-2115 and sections 4 and 11 of this act, the tax imposed upon such transfer under such sections shall be changed accordingly. ~~In no event shall the transfer tax payable under such sections exceed the amount, if any, by which the maximum credit allowable to the estate against the federal estate tax or generation-skipping transfer tax exceeds the credits provided for in such sections.~~

Sec. 7. Section 77-2104, Reissue Revised Statutes of Nebraska, is amended to read:

77-2104. The rules and regulations for determining the amount of net transfer upon which the transfer or excise tax imposed under sections 77-2101 to 77-2115 and sections 4 and 11 of this act shall be based, shall, insofar as applicable, be the same rules and regulations adopted by the Commissioner of Internal Revenue for determining the net transfer under Chapters 11 and 13 of the Internal Revenue Code.

Sec. 8. Section 77-2105, Reissue Revised Statutes of Nebraska, is amended to read:

77-2105. The Tax Commissioner shall have charge of the administration of sections 77-2101 to 77-2115 and sections 4 and 11 of this act and shall make such rules and regulations as may be necessary to carry out

such sections. He or she shall have authority to require all persons or corporations liable for the payment of the transfer or excise tax to file returns on such forms and at such times as he or she may require. The county ~~judges~~ attorneys of the state shall furnish the commissioner with such information as he or she may require from time to time with reference to estates pending in the county courts of Nebraska. Any person or corporation who fails to furnish the commissioner with such information or reports as he or she requires under such sections shall be guilty of a Class V misdemeanor.

Sec. 9. Section 77-2108, Reissue Revised Statutes of Nebraska, is amended to read:

77-2108. Whenever it appears upon any accounting or in any appropriate action or proceeding that a personal representative, executor, administrator, trustee, or other person acting in a fiduciary capacity has paid or may be required to pay any transfer tax levied or assessed under sections 77-2101 to 77-2115 and sections 4 and 11 of this act or under the provisions of any federal estate or generation-skipping transfer tax law heretofore or hereafter enacted upon or with respect to any property required to be included in the gross estate of a decedent or total amount of generation-skipping transfer under the provisions of any such law, the amount of the tax so paid or payable, except as otherwise directed in the decedent's will or except in a case when by written instrument executed inter vivos direction is given for apportionment within the fund of the taxes assessed upon the specific fund dealt with in such inter vivos instrument, shall be equitably apportioned and prorated among the persons interested in the estate or transfer. Such apportionment and proration shall be made in the proportion as near as may be that the value of the property, interest, or benefit of each such person bears to the total value of the property, interests, or benefits received by all such persons interested in the estate or transfer, except that in making such proration, allowances shall be made for any exemptions granted by the law imposing the tax and for any deductions, including any marital deduction, allowed by such law for the purpose of arriving at the value of the net estate or transfer. In cases when a trust is created or other provision made by which any person is given an interest in income or an estate for years or for life or any other temporary interest in any property or fund, the tax on both such temporary interest and on the remainder thereafter shall be charged against and be paid out of the corpus of such property or fund without apportionment between remainders and temporary estates.

Sec. 10. Section 77-2113, Reissue Revised Statutes of Nebraska, is amended to read:

77-2113. (1) The personal representative of every estate subject to the tax imposed by sections 77-2101 to 77-2115 and sections 4 and 11 of this act ~~who is required by the laws of the United States to file a federal estate tax return~~ shall file with the Tax Commissioner within twelve months from the date of death of the decedent:

(a) An estate tax return on forms prescribed by the Tax Commissioner for taxes due under such sections;

(b) A true copy of ~~the~~ any federal estate tax return, pages 1, 2, and 3;

(c) A true copy of the federal determination of estate tax whether issued by the Internal Revenue Service or a federal court, if any. If such determination has not been received from the Internal Revenue Service or the federal court at the time of filing the return required in subdivision (a) of this subsection, a statement that the determination is unavailable shall be attached to the return and a true copy of the federal determination shall be filed with the Tax Commissioner within ten days of receipt of such determination by the personal representative; and

(d) A true copy of the inheritance tax return or worksheet as filed with the county court in each county where the decedent had property.

(2) For the generation-skipping transfer tax, a return in the form required by the Tax Commissioner shall be filed with the Tax Commissioner ~~on the due date or dates, including extensions, for paying the related federal generation-skipping transfer tax and filing the related federal return by the person required to pay the federal generation-skipping transfer tax and file the federal return~~ within twelve months of the date of the transfer by the transferee. The return shall include a true copy of the federal generation-skipping transfer tax return and the federal determination of the federal generation-skipping transfer tax due whether issued by the Internal Revenue Service or a federal court, if any.

Sec. 11. The changes made by this legislative bill apply to decedents dying and to generation-skipping transfers made on and after January 1, 2003.

Sec. 12. This act becomes operative on January 1, 2003.

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Sec. 13. Original sections 77-2101 to 77-2105, 77-2108, and 77-2113, Reissue Revised Statutes of Nebraska, are repealed.