

LEGISLATIVE BILL 120

Approved by the Governor March 5, 2009

Introduced by Wightman, 36.

FOR AN ACT relating to inheritance tax; to amend sections 77-2018.04 and 77-2018.07, Reissue Revised Statutes of Nebraska, and section 77-2010, Revised Statutes Cumulative Supplement, 2008; to change provisions relating to estate administration expenses and penalties; and to repeal the original sections.

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

Section 1. Section 77-2010, Revised Statutes Cumulative Supplement, 2008, is amended to read:

77-2010 All taxes imposed by sections 77-2001 to 77-2037, unless otherwise herein provided for, shall be due and payable twelve months after the date of the death of the decedent, and interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be charged and collected on any unpaid taxes due from the date the same became payable, and in all cases in which the personal representatives or trustees do not pay such tax within twelve months from the death of the decedent, they shall be required to give bond in the form and to the effect prescribed in section 77-2009 for the payment of the tax together with interest. In addition, for failure to file an appropriate proceeding for the determination of the tax within twelve months after the date of the death of the decedent there shall be added to the amount due a penalty of five percent per month or fraction thereof, up to a maximum penalty of twenty-five percent of the unpaid taxes due. The filing of a petition or an application for probate proceedings or the filing of an application under section 77-2018.07 and payment of the tentative tax payment within twelve months of the decedent's death shall be considered an appropriate proceeding for the determination to avoid a penalty and to stop the accrual of a penalty. In addition, the county court may abate this penalty if good cause is shown for failure to file.

Sec. 2. Section 77-2018.04, Reissue Revised Statutes of Nebraska, is amended to read:

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, paid, payable, or expected to become payable 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, and expenses related to taking possession or control of estate assets and the management, protection, and preservation of estate assets, including, but not limited to, expenses related to the sale of estate assets, but not expenses related to the day-to-day operation and continuation of business interests which have not accrued as a result of the death of the decedent;
- (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 or her death and which have been paid; and
- (5) Any federal estate tax paid, payable, or expected to become payable, after deduction of all applicable credits, which is attributable to property subject to Nebraska inheritance taxation.

Sec. 3. Section 77-2018.07, Reissue Revised Statutes of Nebraska, is amended to read:

77-2018.07 (1) Any person subject to the tax imposed by ~~Chapter 77, article 20,~~ sections 77-2001 to 77-2037 may, prior to the final determination of the inheritance tax, make a tentative payment of the tax in order to avoid the accrual of interest or penalty on such tax. Any person who desires to pay such tentative inheritance tax shall make a written application to the county court for an order allowing the payment of a sum specified in such application, prior to the final determination of the inheritance tax due.

(2) If the county attorney shall not consent to the amount requested in the application by entering his or her voluntary appearance and waiver of notice, he or she shall within seven days of the filing of the application show in writing what sum he or she requests for the purpose of the prepayment.

The county court shall issue an order allowing a tentative payment of the tax in such amount as the court shall specify.

(3) The county treasurer shall receive all taxes paid pursuant to this section but shall not be required to invest any tentative tax payment made for the benefit of the estate nor shall ~~such~~ the county treasurer be required to pay interest on any refund claim for the period he or she holds the tentative tax payment.

(4) The tentative tax payment allowed in this section shall apply to both probate and nonprobate estates. The tentative tax payment shall not be a final order and may be amended, altered, or modified by subsequent order of the court.

Sec. 4. Original sections 77-2018.04 and 77-2018.07, Reissue Revised Statutes of Nebraska, and section 77-2010, Revised Statutes Cumulative Supplement, 2008, are repealed.