

AN ACT

To amend sections 1339.412, 5731.02, 5731.14, 5731.21, 5731.47, and 5731.48 and to enact section 5731.20 of the Revised Code to reduce the estate tax by increasing the credit amount, to exempt the value of family-owned businesses from the estate tax when such a business passes to family members, to reduce the share of the estate tax paid to the state, and to specify that a trustee of a trust qualifying for the estate tax marital deduction has a duty to annually distribute income from an IRA to the surviving spouse.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1339.412, 5731.02, 5731.14, 5731.21, 5731.47, and 5731.48 be amended and section 5731.20 of the Revised Code be enacted to read as follows:

Sec. 1339.412. (A) Except as provided in division (B) of this section, an instrument that creates an inter vivos or testamentary trust shall not require or permit the accumulation for more than one year of any income of property that satisfies both of the following:

(1) The property is granted to a surviving spouse of the testator or other settlor.

(2) The property qualifies for the federal estate tax marital deduction allowed by subtitle B, Chapter 11 of the "Internal Revenue Code of 1986," 26 U.S.C. 2056, as amended, or the estate tax marital deduction allowed by division (A) of section 5731.15 of the Revised Code.

(B)(1) Division (A) of this section does not apply if an instrument that creates an inter vivos or testamentary trust expressly states the intention of the testator or other settlor that obtaining a marital deduction as described in division (A)(2) of this section is less important than requiring or permitting the accumulation of income of property in accordance with a provision in the instrument that requires or permits the accumulation for more than one

year of any income of property.

(2) Division (A) of this section does not apply to any beneficiary of an inter vivos or testamentary trust other than the surviving spouse of the testator or other settlor or to any inter vivos or testamentary trust of which the surviving spouse of the testator or other settlor is a beneficiary if an interest in property does not qualify for a marital deduction as described in division (A)(2) of this section.

(C)(1) The trustee of a trust that qualifies for an estate tax marital deduction for federal or Ohio estate tax purposes and that is the beneficiary of an individual retirement account has a fiduciary duty, in regard to the income distribution provision of the trust, to withdraw and distribute the income of the individual retirement account, at least annually, to the surviving spouse of the testator or other settlor.

(2) A trustee's fiduciary duty as described in division (C)(1) of this section is satisfied if the terms of the trust instrument expressly provide the surviving spouse a right to withdraw all of the assets from the trust or a right to compel the trustee to withdraw and distribute the income of the individual retirement account to the surviving spouse.

(D) Divisions (A) and (B), and (C)(1) of this section are intended to codify certain existing fiduciary and trust law principles relating to the interpretation of a testator's or other settlor's intent with respect to the income provisions of a trust. Divisions (A) and (B), and (C) of this section apply to trust instruments executed prior to and existing on the effective date of this section, unless the October 1, 1996, or executed thereafter. The trustee of a trust of that nature described in division (A) or (B) of this section, in a written trust amendment, elects to do otherwise may elect to not apply divisions (A) and (B) of this section to the trust. Any election of that nature, when made, is irrevocable.

Sec. 5731.02. (A) A tax is hereby levied on the transfer of the taxable estate, determined as provided in section 5731.14 of the Revised Code, of every person dying on or after July 1, 1968, who at the time of his death was a resident of this state, as follows:

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| If the taxable estate is: | The tax shall be: |
| Not over \$40,000 | 2% of the taxable estate |
| Over \$ 40,000 but not over \$100,000 | \$800 plus 3% of the excess over \$40,000 |
| Over \$100,000 but not over \$200,000 | \$2,600 plus 4% of the excess over \$100,000 |
| Over \$200,000 but not over \$300,000 | \$6,600 plus 5% of the excess over \$200,000 |

| | |
|---------------------------------------|--|
| Over \$300,000 but not over \$500,000 | \$11,600 plus 6% of the excess over \$300,000 |
| Over \$500,000 | \$23,600 plus 7% of the excess over \$500,000. |

(B) A credit shall be allowed against the tax imposed by division (A) of this section equal to the lesser of five hundred dollars or the amount of the tax for persons dying on or after July 1, 1968, but before January 1, 2001; the lesser of six thousand six hundred dollars or the amount of the tax for persons dying on or after January 1, 2001, but before January 1, 2002; or the lesser of thirteen thousand nine hundred dollars or the amount of the tax for persons dying on or after January 1, 2002.

Sec. 5731.14. For purposes of the tax levied by section 5731.02 of the Revised Code, the value of the taxable estate shall be determined by deducting from the value of the gross estate deductions provided for in sections 5731.15 to 5731.17 and 5731.20 of the Revised Code.

Sec. 5731.20. (A) As used in this section:

(1) "Tax differential with respect to the estate" means the excess of (a) the amount that the estate tax liability would be under section 5731.02 of the Revised Code if the deduction under this section had not been deducted from the value of the gross estate, over (b) the estate tax liability under that section after the deduction under this section.

(2) "Tax differential attributable to a qualified family-owned business interest" means an amount that bears the same ratio to the tax differential with respect to the estate as the value of that interest bears to the value of all qualified family-owned business interests that are included in the value of the gross estate for the purposes of section 2057(b) of the internal Revenue Code.

(3) Any term used in this section has the same meaning as used in section 2057 of the Internal Revenue Code except as otherwise provided in this section.

(B) This section applies to the estates of decedents dying on or after January 1, 2001.

For the purposes of the tax levied under section 5731.02 of the Revised Code, the value of the taxable estate shall be determined by deducting from the value of the gross estate the adjusted value of any qualified family-owned business interest deductible from the value of the federal gross estate under section 2057 of the Internal Revenue Code, to the extent the amount deductible under that section is included in the value of the gross estate as defined in section 5731.01 of the Revised Code and not otherwise deducted in the determination of the taxable estate. the deduction shall be

made only if elected pursuant to division (D) of this section, but may be made regardless of whether a deduction is made for federal estate tax purposes under section 2057 of the Internal Revenue Code.

(C) If any of the events that would cause additional federal estate tax to be imposed pursuant to section 2057(f) of the Internal Revenue Code occur within ten years after the date of the decedent's death and before the death of the qualified heir, an additional estate tax is hereby imposed. the additional tax shall equal the sum of the following:

(1) The applicable percentage, as determined under section 2057(f) of the internal revenue code, of the tax differential attributable to the qualified family-owned business interest acquired by or passing to the qualified heir;

(2) Interest on the amount determined under division (C)(1) of this section at the rate determined under section 5703.47 of the Revised Code for the period beginning on the date the estate tax liability was due under section 5731.02 of the Revised Code and ending on the date the additional estate tax is due.

The additional tax is due on the first day of the seventh month after the event causing the imposition of additional federal estate tax occurs.

The qualified heir is personally liable for the additional tax imposed under this division.

(D) The election to make the deduction provided in this section shall be made on the return filed pursuant to section 5731.21 of the Revised Code and as prescribed by rule of the tax commissioner. The election, once made, is irrevocable.

An election may be made under this section with respect to a qualified family-owned business interest only if each person in being having an interest in any property designated in the agreement consents to the application of division (C) of this section with respect to such property by written agreement signed by each such person, under rules of the tax commissioner. The tax commissioner may extend the time for submitting the information and any signatures required to make an election under this division.

(E) If section 2057(g) of the Internal Revenue Code would apply to a qualified heir, any interest passing to that heir may be treated as a qualified family-owned business interest under this section only if the interest passes, is acquired, or is held in a qualified trust as defined in section 2057(g) of the Internal Revenue Code.

Sec. 5731.21. (A)(1)(a) Except as provided under division (A)(3) of this section, the executor or administrator, or, if no executor or administrator has been appointed, then such other person in possession of property, the

transfer of which is subject to estate taxes under section 5731.02 or division (A) of section 5731.19 of the Revised Code, shall file an estate tax return, within nine months of the date of the decedent's death, in the form prescribed by the tax commissioner, in duplicate, with the probate court of the county. The return shall include all property the transfer of which is subject to estate taxes, whether such property is transferred under the last will and testament of the decedent or otherwise. The time for filing the return may be extended by the tax commissioner.

(b) The estate tax return described in division (A)(1)(a) of this section shall be accompanied by a certificate, in the form prescribed by the tax commissioner, that is signed by the executor, administrator, or other person required to file the return, and that states all of the following:

(i) The fact that the return was filed;

(ii) The date of the filing of the return;

(iii) The fact that the estate taxes under section 5731.02 or division (A) of section 5731.19 of the Revised Code, that are shown to be due in the return, have been paid in full;

(iv) If applicable, the fact that real property listed in the inventory for the decedent's estate is included in the return;

(v) If applicable, the fact that real property not listed in the inventory for the decedent's estate, including, but not limited to, survivorship tenancy property as described in section 5302.17 of the Revised Code, also is included in the return. In this regard, the certificate additionally shall describe that real property by the same description used in the return.

(2) The probate court shall forward one copy of the estate tax return described in division (A)(1)(a) of this section to the tax commissioner.

(3) ~~If the value of the gross estate of the decedent is twenty-five thousand dollars or less and the decedent was a resident of this state, the A person otherwise required to file a return may file a return, but shall not be required to do so, file a return under division (A) of this section if the decedent was a resident of this state and the value of the decedent's gross estate is twenty-five thousand dollars or less in the case of a decedent dying on or after July 1, 1968, but before January 1, 2001; two hundred thousand dollars or less in the case of a decedent dying on or after January 1, 2001, but before January 1, 2002; or three hundred thirty-eight thousand dollars or less in the case of a decedent dying on or after January 1, 2002.~~

(4)(a) Upon receipt of the estate tax return described in division (A)(1)(a) of this section and the accompanying certificate described in division (A)(1)(b) of this section, the probate court promptly shall give notice of the return, by a form prescribed by the tax commissioner, to the

county auditor. The auditor then shall make a charge based upon the notice and shall certify a duplicate of the charge to the county treasurer. The treasurer then shall collect, subject to division (A) of section 5731.25 of the Revised Code or any other statute extending the time for payment of an estate tax, the tax so charged.

(b) Upon receipt of the return and the accompanying certificate, the probate court also shall forward the certificate to the auditor. When satisfied that the estate taxes under section 5731.02 or division (A) of section 5731.19 of the Revised Code, that are shown to be due in the return, have been paid in full, the auditor shall stamp the certificate so forwarded to verify that payment. The auditor then shall return the stamped certificate to the probate court.

(5)(a) The certificate described in division (A)(1)(b) of this section is a public record subject to inspection and copying in accordance with section 149.43 of the Revised Code. It shall be kept in the records of the probate court pertaining to the decedent's estate and is not subject to the confidentiality provisions of section 5731.90 of the Revised Code.

(b) All persons are entitled to rely on the statements contained in a certificate as described in division (A)(1)(b) of this section if it has been filed in accordance with that division, forwarded to a county auditor and stamped in accordance with division (A)(4) of this section, and placed in the records of the probate court pertaining to the decedent's estate in accordance with division (A)(5)(a) of this section. The real property referred to in the certificate shall be free of, and may be regarded by all persons as being free of, any lien for estate taxes under section 5731.02 and division (A) of section 5731.19 of the Revised Code.

(B) An estate tax return filed under this section, in the form prescribed by the tax commissioner, and showing that no estate tax is due shall result in a determination that no estate tax is due, if the tax commissioner within three months after the receipt of the return by the department of taxation, fails to file exceptions to the return in the probate court of the county in which the return was filed. A copy of exceptions to such a return, when the tax commissioner files them within that period, shall be sent by ordinary mail to the person who filed the return. The tax commissioner is not bound under this division by a determination that no estate tax is due, with respect to property not disclosed in the return.

(C) If the executor, administrator, or other person required to file an estate tax return fails to file it within nine months of the date of the decedent's death, the tax commissioner may determine the estate tax in such estate and issue a certificate of determination in the same manner as is

provided in division (B) of section 5731.27 of the Revised Code. Such certificate of determination has the same force and effect as though a return had been filed and a certificate of determination issued with respect to the return.

Sec. 5731.47. The fees of the sheriff or other officers for services performed under Chapter 5731. of the Revised Code; and the expenses of the county auditor shall be certified by the county auditor by a report filed with the tax commissioner. If the tax commissioner finds that such fees and expenses are correct and reasonable in amount, ~~he~~ the commissioner shall indicate ~~his~~ approval of the fees and expenses in writing to the county auditor. The auditor shall pay such fees and expenses out of the state's share of the undivided inheritance taxes in the county treasury and draw ~~his~~ warrants payable from such taxes; on the county treasurer in favor of the fee funds or officers personally entitled thereto. If the fees and expenses approved by the tax commissioner exceed the amount of the state's share of undivided inheritance taxes in the county treasury, the county auditor shall certify the amount of the excess to the tax commissioner, who shall certify the amount to the director of budget and management. The director shall provide for payment of the excess from the general revenue fund to the county treasury, and the county auditor shall draw warrants on the county treasurer in favor of the appropriate fee funds or officers.

Sec. 5731.48. ~~(A)~~ (A) If a decedent dies on or after July 1, 1989, and before January 1, 2001, sixty-four per cent of the gross amount of taxes levied and paid under this chapter shall be for the use of the municipal corporation or township in which the tax originates, and shall be credited as ~~follows~~ provided in division (A)(1), (2), or (3) of this section:

~~(A)(1)~~ (1) To the general revenue fund in the case of a city;

~~(B)(2)~~ (2) To the general revenue fund of a village or to the board of education of a village, for school purposes, as the village council by resolution may approve;

~~(C)(3)~~ (3) To the general revenue fund or to the board of education of the school district of which the township is a part, for school purposes, as the board of township trustees by resolution may approve, in the case of a township.

~~Where~~ The remainder of the taxes levied and paid shall be for the use of the state and shall be credited to the general revenue fund after any deduction for fees and costs charged under section 5731.47 of the Revised Code.

(B) If a decedent dies on or after January 1, 2001, and before January 1, 2002, seventy per cent of the gross amount of taxes levied and paid under

his chapter shall be for the use of the municipal corporation or township in which the tax originates and credited as provided in division (A)(1), (2), or (3) of this section, and the remainder shall be for the use of the state and credited to the general revenue fund after any deduction for fees and costs charged under section 5731.47 of the Revised Code.

(C) If a decedent dies on or after January 1, 2002, eighty per cent of the gross amount of taxes levied and paid under this chapter shall be for the use of the municipal corporation or township in which the tax originates and credited as provided in division (A)(1), (2), or (3) of this section, and the remainder shall be for the use of the state and shall be credited to the general revenue fund after any deduction for fees and costs charged under section 5731.47 of the Revised Code.

(D) If a municipal corporation is in default with respect to the principal or interest of any outstanding notes or bonds, one half of the taxes distributed under this section shall be credited to the sinking or bond retirement fund of the municipal corporation, and the residue shall be credited to the general revenue fund.

(E) The council, board of trustees, or other legislative authority of a village or township may, by ordinance in the case of a village, or by resolution in the case of a township, provide that whenever there is money in the treasury of the village or township from taxes levied under this chapter, not required for immediate use, that money may be invested in federal, state, county, or municipal bonds, upon which there has been no default of the principal during the preceding five years.

~~The remainder of the taxes levied and paid under this chapter, after deducting the fees and costs charged against the proceeds of the tax under this chapter, shall be for the use of the state, and shall be paid into the state treasury to the credit of the general revenue fund.~~

SECTION 2. That existing sections 1339.412, 5731.02, 5731.14, 5731.21, 5731.47, and 5731.48 of the Revised Code are hereby repealed.

SECTION 3. No later than December 1, 2001, the members of the Joint Committee on Estate and Death Taxes, which is hereby created, shall report to the Governor and to the majority and minority leaders of both the House of Representatives and Senate on a proposal to eliminate or phase out all remaining estate taxes by 2006. This proposal shall move Ohio toward a true "pick-up tax" or "sponge tax" and shall incorporate any effort by the federal government to expedite the elimination of, or eliminate entirely, federal estate tax. The Joint Committee on Estate and Death Taxes shall be comprised of six members, three from each house, with two from the majority party and one from the minority party. The committee shall choose co-chairs, one from each house. The committee shall take into consideration testimony presented to it. The committee shall cease to exist after it issues its report.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Sub. S. B. No. 108

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Governor.

Sub. S. B. No. 108

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____