

**As Introduced**

**128th General Assembly  
Regular Session  
2009-2010**

**H. B. No. 532**

**Representatives Murray, Okey**

**Cosponsors: Representatives Book, Pryor, Garrison, Zehringer, Domenick,  
Hollington**

**—**

**A B I L L**

To amend sections 5731.16, 5731.21, 5731.37, and 1  
5731.38 of the Revised Code to exclude from the 2  
estate tax land subject to an agricultural or 3  
conservation easement. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 5731.16, 5731.21, 5731.37, and 5  
5731.38 of the Revised Code be amended to read as follows: 6

**Sec. 5731.16.** (A) For purposes of the tax levied by section 7  
5731.02 of the Revised Code, the value of the taxable estate shall 8  
be determined by deducting from the value of the gross estate 9  
amounts for the following: 10

(1) Funeral expenses; 11

(2) Administration expenses, excluding the value of any money 12  
or property set off and allowed under section 2106.13 of the 13  
Revised Code, to the extent that such expenses have been or will 14  
be actually paid; 15

(3) Claims against the estate that are outstanding and unpaid 16  
as of the date of decedent's death; 17

(4) Unpaid mortgages on, or any indebtedness in respect of, 18  
property if the value of the decedent's interest in the property, 19  
undiminished by the mortgage or indebtedness, is included in the 20  
value of the gross estate, as are allowable by the laws of this 21  
state; 22

(5) Real property subject to an agricultural easement or 23  
conservation easement authorized under section 901.21 or sections 24  
5301.67 to 5301.70 of the Revised Code. 25

(B) There shall be deducted in determining the taxable estate 26  
amounts representing expenses incurred in administering property 27  
not subject to claims which is included in the gross estate, to 28  
the same extent such amounts would be allowable as a deduction 29  
under division (A) of this section if such property were subject 30  
to claims and such amounts are paid before the expiration of the 31  
period of limitations provided for in section 5731.38 of the 32  
Revised Code. 33

(C) The deduction allowed by this section in the case of 34  
claims against the estate, unpaid mortgages, or any indebtedness, 35  
when founded on a promise or agreement, is limited to the extent 36  
that they were contracted bona fide and for an adequate and full 37  
consideration in money or money's worth, except that in any case 38  
in which any such claim is founded on a promise or agreement of 39  
the decedent to make a contribution or gift to or for the use of 40  
any donee described in section 5731.17 of the Revised Code for the 41  
purposes specified in that section, the deduction is not so 42  
limited, but is limited to the extent that it would be allowable 43  
as a deduction under section 5731.17 of the Revised Code if the 44  
promise or agreement constituted a bequest. 45

(D) Any income taxes on income received after the death of 46  
the decedent, or property taxes not accrued before ~~his~~ the death 47  
of the decedent, or any estate, succession, legacy, or inheritance 48  
taxes, shall not be deductible under this section. 49

**Sec. 5731.21.** (A)(1)(a) Except as provided under division 50  
(A)(3) of this section, the executor or administrator, or, if no 51  
executor or administrator has been appointed, another person in 52  
possession of property the transfer of which is subject to estate 53  
taxes under section 5731.02 or division (A) of section 5731.19 of 54  
the Revised Code, shall file an estate tax return, within nine 55  
months of the date of the decedent's death, in the form prescribed 56  
by the tax commissioner, in duplicate, with the probate court of 57  
the county. The return shall include all property the transfer of 58  
which is subject to estate taxes, whether that property is 59  
transferred under the last will and testament of the decedent or 60  
otherwise. The time for filing the return may be extended by the 61  
tax commissioner. 62

(b) The estate tax return described in division (A)(1)(a) of 63  
this section shall be accompanied by a certificate, in the form 64  
prescribed by the tax commissioner, that is signed by the 65  
executor, administrator, or other person required to file the 66  
return, and that states all of the following: 67

(i) The fact that the return was filed; 68

(ii) The date of the filing of the return; 69

(iii) The fact that the estate taxes under section 5731.02 or 70  
division (A) of section 5731.19 of the Revised Code, that are 71  
shown to be due in the return, have been paid in full; 72

(iv) If applicable, the fact that real property listed in the 73  
inventory for the decedent's estate is included in the return; 74

(v) If applicable, the fact that real property not listed in 75  
the inventory for the decedent's estate, including, but not 76  
limited to, survivorship tenancy property as described in section 77  
5302.17 of the Revised Code or transfer on death property as 78  
described in sections 5302.22 and 5302.23 of the Revised Code, 79

also is included in the return. In this regard, the certificate 80  
additionally shall describe that real property by the same 81  
description used in the return. 82

(2) The probate court shall forward one copy of the estate 83  
tax return described in division (A)(1)(a) of this section to the 84  
tax commissioner. 85

(3) A person shall not be required to file a return under 86  
division (A) of this section if the decedent was a resident of 87  
this state and the value of the decedent's gross estate is 88  
twenty-five thousand dollars or less in the case of a decedent 89  
dying on or after July 1, 1968, but before January 1, 2001; two 90  
hundred thousand dollars or less in the case of a decedent dying 91  
on or after January 1, 2001, but before January 1, 2002; or three 92  
hundred thirty-eight thousand three hundred thirty-three dollars 93  
or less in the case of a decedent dying on or after January 1, 94  
2002. 95

(4)(a) Upon receipt of the estate tax return described in 96  
division (A)(1)(a) of this section and the accompanying 97  
certificate described in division (A)(1)(b) of this section, the 98  
probate court promptly shall give notice of the return, by a form 99  
prescribed by the tax commissioner, to the county auditor. The 100  
auditor then shall make a charge based upon the notice and shall 101  
certify a duplicate of the charge to the county treasurer. The 102  
treasurer then shall collect, subject to division (A) of section 103  
5731.25 of the Revised Code or any other statute extending the 104  
time for payment of an estate tax, the tax so charged. 105

(b) Upon receipt of the return and the accompanying 106  
certificate, the probate court also shall forward the certificate 107  
to the auditor. When satisfied that the estate taxes under section 108  
5731.02 or division (A) of section 5731.19 of the Revised Code, 109  
that are shown to be due in the return, have been paid in full, 110  
the auditor shall stamp the certificate so forwarded to verify 111

that payment. The auditor then shall return the stamped 112  
certificate to the probate court. 113

(5)(a) The certificate described in division (A)(1)(b) of 114  
this section is a public record subject to inspection and copying 115  
in accordance with section 149.43 of the Revised Code. It shall be 116  
kept in the records of the probate court pertaining to the 117  
decedent's estate and is not subject to the confidentiality 118  
provisions of section 5731.90 of the Revised Code. 119

(b) All persons are entitled to rely on the statements 120  
contained in a certificate as described in division (A)(1)(b) of 121  
this section if it has been filed in accordance with that 122  
division, forwarded to a county auditor and stamped in accordance 123  
with division (A)(4) of this section, and placed in the records of 124  
the probate court pertaining to the decedent's estate in 125  
accordance with division (A)(5)(a) of this section. The Except as 126  
provided under division (D) of section 5731.37 of the Revised 127  
Code, the real property referred to in the certificate shall be 128  
free of, and may be regarded by all persons as being free of, any 129  
lien for estate taxes under section 5731.02 and division (A) of 130  
section 5731.19 of the Revised Code. 131

(B) An estate tax return filed under this section, in the 132  
form prescribed by the tax commissioner, and showing that no 133  
estate tax is due shall result in a determination that no estate 134  
tax is due, if the tax commissioner within three months after the 135  
receipt of the return by the department of taxation, fails to file 136  
exceptions to the return in the probate court of the county in 137  
which the return was filed. A copy of exceptions to a return of 138  
that nature, when the tax commissioner files them within that 139  
period, shall be sent by ordinary mail to the person who filed the 140  
return. The tax commissioner is not bound under this division by a 141  
determination that no estate tax is due, with respect to property 142  
not disclosed in the return. 143

(C) If the executor, administrator, or other person required 144  
to file an estate tax return fails to file it within nine months 145  
of the date of the decedent's death, the tax commissioner may 146  
determine the estate tax in that estate and issue a certificate of 147  
determination in the same manner as is provided in division (B) of 148  
section 5731.27 of the Revised Code. A certificate of 149  
determination of that nature has the same force and effect as 150  
though a return had been filed and a certificate of determination 151  
issued with respect to the return. 152

**Sec. 5731.37.** (A) Taxes levied by this chapter shall be, 153  
until restricted, transferred, or discharged pursuant to this 154  
division, until paid, or unless division (A)(5)(b) of section 155  
5731.21 of the Revised Code applies to them, a lien upon all 156  
property subject to the taxes. This lien: 157

(1) Is discharged, as to property applied to costs and 158  
expenses of administration, property constituting the allowance 159  
made to the surviving spouse, minor children, or surviving spouse 160  
and minor children of the decedent under section 2106.13 of the 161  
Revised Code for their support, and all of the property of a 162  
decedent that is subject to inclusion in the gross estate and that 163  
has been disclosed to the tax commissioner by the time a 164  
certificate of discharge is issued; 165

(2) Is transferred, to the extent of any such property sold 166  
by the executor, administrator, or trustee for the purpose of 167  
paying debts, administration expenses, or taxes of the estate, or 168  
for any purpose to a bona fide purchaser for an adequate and full 169  
consideration in money or money's worth, to the money or other 170  
property received from the purchaser. Knowledge that the property 171  
is being sold by a fiduciary and that it otherwise would be 172  
subject to the estate tax lien does not preclude the purchaser 173  
from being classified as a bona fide purchaser. 174

(3) May be, by written authorization of the tax commissioner, 175  
restricted to all property that is subject to such taxes, and not 176  
specifically released, transferred to other property on conditions 177  
acceptable to the tax commissioner, or fully discharged, each upon 178  
conditions, including payment of a reasonable fee, prescribed by 179  
rules adopted under section 5703.14 of the Revised Code, when ~~he~~ 180  
the tax commissioner determines that any of these actions will not 181  
jeopardize the collection of the taxes; 182

(4) Shall be restricted, transferred, or discharged, as 183  
authorized in division (A)(3) of this section, by the tax 184  
commissioner, upon order of the probate court after notice to the 185  
commissioner and any other person whose substantial rights may 186  
reasonably be affected by the lien and hearing on an application 187  
of the executor, administrator, trustee, or the owner of an 188  
interest in any property subject, or reasonably the object of a 189  
claim to be subject, to the lien, and proof that the collection of 190  
the taxes will not be jeopardized by the action, and that the tax 191  
commissioner failed to grant a reasonable request for the action 192  
within sixty days of ~~his~~ receipt of a written request. 193

(B) The executor, administrator, trustee, or other person in 194  
possession of property, the transfer of which is subject to the 195  
taxes, or any transferee of the property, except a bona fide 196  
purchaser for an adequate and full consideration in money or 197  
money's worth, is personally liable for all the taxes to the 198  
extent that their collection is reduced by ~~his~~ the omission of the 199  
executor, administrator, or other person or of the transferee to 200  
perform a statutory duty, with interest as provided in section 201  
5731.23 of the Revised Code, until they have been paid. An 202  
administrator, executor, or trustee of any property, the transfer 203  
of which is subject to the taxes shall deduct the taxes from the 204  
property, or collect them from any person entitled to the 205  
property. ~~He~~ The administrator, executor, or trustee shall not 206

deliver or be compelled to deliver any property, the transfer of 207  
which is subject to the taxes, to any person, until the taxes on 208  
it have been collected, and on any other property of the same 209  
decedent that has been, or is to be, transferred to the person or 210  
~~his~~ the person's spouse or minor child. ~~He~~ The administrator, 211  
executor, or trustee may sell so much of the estate of the 212  
decedent as will enable ~~him~~ the administrator, executor, or 213  
trustee to pay the taxes in the same manner as for the payment of 214  
the debts of the decedent. Knowledge that the property is being 215  
sold by a fiduciary and that it otherwise would be subject to the 216  
estate tax lien does not preclude the purchaser from being 217  
classified as a bona fide purchaser. 218

(C) If an election is made, pursuant to division (B)(1)(b) or 219  
(c) of section 5731.011 of the Revised Code to have qualified farm 220  
property valued at its value for actual qualified use, an amount 221  
equivalent to the estate tax savings realized in the decedent's 222  
estate by valuating the property at its value for its actual 223  
qualified use, instead of at its fair market value pursuant to 224  
division (B) of section 5731.01 of the Revised Code, shall be a 225  
lien in favor of this state on the property for four years after 226  
the decedent's death, unless it is earlier discharged. The tax 227  
commissioner may issue a certificate of subordination of any lien 228  
imposed by this division upon any part of the property subject to 229  
the lien, if the tax commissioner determines that the state will 230  
be adequately secured after the subordination. 231

(D) If an election is made under division (A)(5) of section 232  
5731.16 of the Revised Code to exclude the value of real property 233  
that is subject to an agricultural easement or conservation 234  
easement from a decedent's taxable estate, a recapture tax shall 235  
be imposed in an amount equal to the decedent's estate tax 236  
liability reduction that results from the exclusion, plus interest 237  
compounded annually at the rate prescribed under section 5703.47 238



of the Revised Code, and that amount shall be a lien in favor of 239  
this state on real property under the agricultural or conservation 240  
easement the value of which was excluded from the decedent's 241  
estate. A lien under this division may be discharged by payment of 242  
the tax and interest. 243

**Sec. 5731.38.** No liability for the payment of taxes levied 244  
under Chapter 5731. of the Revised Code, including all interest 245  
and penalties thereon, may be determined as to the return required 246  
to be filed under section 5731.21 of the Revised Code, subsequent 247  
to three years after such return is filed, and as to the return 248  
required to be filed under section 5731.24 of the Revised Code, 249  
subsequent to three years after such return is filed. ~~Any~~ Except 250  
for a lien under division (D) of section 5731.37 of the Revised 251  
Code, which shall be perpetual until discharged, any lien in 252  
realty created under Chapter 5731. of the Revised Code shall 253  
become void upon the expiration of ten years after the date of 254  
decedent's death. 255

In the event there is litigation pending at the expiration of 256  
such three-year period for the determination or collection of any 257  
such tax, including interest or penalties thereon, the liability 258  
for the payment thereof continues until the expiration of one year 259  
after final determination of such litigation. 260

**Section 2.** That existing sections 5731.16, 5731.21, 5731.37, 261  
and 5731.38 of the Revised Code are hereby repealed. 262