

## LEGISLATIVE BILL 480

Approved by the Governor April 16, 1982

Introduced by Hoagland, 6; Beyer, 3; Sieck, 24

AN ACT to amend sections 77-2001, 77-2002, 77-2032, and 77-2106, Reissue Revised Statutes of Nebraska, 1943, sections 77-2003 and 77-2004, Revised Statutes Supplement, 1980, and section 77-2102, Revised Statutes Supplement, 1981, relating to taxation; to change inheritance tax provisions as prescribed; to eliminate the tax on property passing to a surviving spouse; to delete obsolete language; to provide operative dates; and to repeal the original sections, and also sections 77-2033, 77-2034, 77-2035, 77-2036, and 77-2106.03, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 77-2001, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2001. All property, including proceeds of life insurance receivable by the executor or administrator to the extent of the amount receivable by the executor or administrator as insurance under policies upon the life of the decedent, which shall pass by will or by the intestate laws of this state from any person who, at the time of his death was a resident of this state, or, if the decedent was not a resident, any part of the property within this state, except property exempted by the provisions of ~~sections 77-2007, 77-2007-01, and 77-2007-02~~ Chapter 77, article 20, shall be subject to tax at the rates prescribed by sections 77-2004 to 77-2006.

Sec. 2. That section 77-2002, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2002. (1) Any interest in property whether created or acquired prior or subsequent to August 27, 1951, shall be subject to tax at the rates prescribed by sections 77-2004 to 77-2006, except property exempted by the provisions of ~~sections 77-2007 to 77-2007-04~~ Chapter 77, article 20, if it shall be transferred by deed, grant, sale, or gift, in trust or otherwise, and: (a) Made in contemplation of the death of the grantor; (b) intended to take effect in possession or enjoyment, after

his or her death; (c) by reason of death, any person shall become beneficially entitled in possession or expectation to any property or income thereof; or (d) held as joint owners or joint tenants by the decedent and any other person in their joint names, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or property; Provided, that where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or property, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person or, where any property has been acquired by gift, bequest, devise, or inheritance by the decedent and any other person as joint owners or joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint owners or joint tenants. ~~If the decedent and the decedent's spouse were the only owners of property held in joint ownership or joint tenancy, it shall be assumed that each spouse contributed equally to the acquisition of the property, unless the surviving spouse shall prove that his or her contribution was greater than one-half the cost of such property.~~

(2) For the purpose of subsection (1) of this section, if the decedent, within a period of three years ending with the date of his or her death, except in the case of a bona fide sale for an adequate and full consideration for money or money's worth, transferred an interest in property for which a federal gift tax return is required to be filed under the provisions of the Internal Revenue Code of 1954, as amended, such transfer, ~~unless shown to the contrary~~, shall be deemed to have been made in contemplation of death within the meaning of subsection (1) of this section; no such transfer made before such three-year period shall be treated as having been made in contemplation of death in any event.

Sec. 3. That section 77-2003, Revised Statutes Supplement, 1980, be amended to read as follows:

77-2003. The tax imposed upon transfers under sections 77-2001 and 77-2002 shall be paid to the treasurer of the proper county and all heirs, legatees and devisees, personal representatives, other recipients of property subject to tax, and trustees shall be liable



for any and all such taxes until the same shall have been paid as hereinafter directed. This tax shall be a lien on the real property subject thereto until paid or otherwise terminated pursuant to section 77-2037, except that no interest in any property passing from the decedent to the decedent's surviving spouse shall be subject to the lien.

Sec. 4. That section 77-2004, Revised Statutes Supplement, 1980, 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; 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 or she shall have been a member of the household of the deceased and shall have had his or her permanent home in the home of the deceased for at least five continuous years during his or her 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. Interests passing to the surviving spouse by will, in the manner set forth in section 77-2002, or in any other manner 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. 5. That section 77-2032, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2032. All inheritance tax money received or collected by each county shall be credited by resolution of the county board in whole or in part either to the county general fund or to any other fund of the county selected by the county board. ~~for the relief of worthy, incapacitated or indigent persons, including the construction of a convalescent hospital, geriatrics unit or homes for the aged or infirm for their care, for the erection, planning, building, and maintenance of the county courthouse, or for the purpose of the improvement of county roads to be built without the corporate limits of any city or village or for county general fund purposes.~~

Sec. 6. That section 77-2102, Revised Statutes Supplement, 1981, be amended to read as follows:

77-2102. The estate tax imposed by sections 77-2101, 77-2101.01, and 77-2102 to 77-2107 shall become due and payable to the State Treasurer of Nebraska within twelve months from the date of the death of the decedent. The limitation of time during which a tax return, for the purpose of this tax, shall be open to inspection and examination shall be three years from the date of filing the same. Personal representatives, trustees, grantees, donees, beneficiaries, 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 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be charged and collected from the date the same became payable. This 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. 7. That section 77-2106, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2106. All the proceeds from the levy and imposition of this estate or excise tax shall be paid to the Tax Commissioner, who shall deposit same with the State Treasurer for credit to the General Fund. ~~When the final determination of the amount of the estate tax due~~



~~to the United States has been made and the amount due the State of Nebraska has been thereby finally ascertained; refund of any overpayment shall be made as provided in this act out of the Tax Refund Fund.~~

Sec. 8. Sections 2, 3, 4, 6, and 10 of this act shall become operative on December 31, 1982, and shall apply to all property which passes from a decedent dying after such date. The remaining sections of this act shall become operative on their effective date.

Sec. 9. That original sections 77-2001, 77-2032, and 77-2106, Reissue Revised Statutes of Nebraska, 1943, and also sections 77-2033, 77-2034, 77-2035, 77-2036, and 77-2106.03, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 10. That original section 77-2002, Reissue Revised Statutes of Nebraska, 1943, sections 77-2003 and 77-2004, Revised Statutes Supplement, 1980, and section 77-2102, Revised Statutes Supplement, 1981, are repealed.