A STUDY OF DEATH TAXES WITH

PARTICULAR REFERENCE TO DEATH

TAXES IN OHIO

A Thesis

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INTRODUCTION

Purpose and Organization of Study

As the title states, this work is mainly concerned with death taxation in the State of Ohio. A history of this form of taxation in other states and countries is presented as a necessary background, helping to explain and evaluate the development of Ohio's inheritance tax. The effect of the Federal Estate tax, for example, has been marked in the development of death taxation in Ohio. But an explanation and evaluation of the inheritance tax in Ohio is the primary purpose of this study.

After tracing the development of the inheritance tax in Ohio, the results of a statistical analysis of inheritance tax returns in Ohio are considered. The tabulations from a sample of 1200 tax returns are designed to reveal information relative to the size of estates, inheritance taxes paid and the manner in which estates were distributed. The sample was taken from returns for the year 1949, the most recent complete year. An estimate of the yield from two different, hypothetical estate taxes has been made and the results are compared with the inheritance tax yield. Results of this analysis are presented in Chapter VI. In Chapter VII conclusions and recommendations are set forth.

Definition of Terms

Before proceeding with the actual study it seems imperative to define certain terms which are used. Most of the meanings are common knowledge, but since some terms are subject to more than one interpre-

tation, it is well to state the meaning intended by the use of each term.

First of all, let us distinguish between estate tax and inheritance tax, the two major forms of death taxation.

An estate tax is an excise tax on the privilege of transmitting property of a decedent upon his death; the amount of the tax is measured by the value of the property transmitted.[1] Usually the rates are applied to the net estate, the total less certain deductions.

An inheritance tax is an excise tax on the privilege of succeeding to or inheriting a deceased person's property.[2] The rate is applied to each successors net receipts from a given estate; each share of the estate is taxed separately. Unfortunately, the term "inheritance tax" has been used as a general appellation for all death taxes including estate taxes. So common is the broad use of inheritance that we find books on death taxation entitled "Inheritance Taxation", even though they are not limited to studies of taxes on the right to succeed to a share of an estate. Indeed, in some instances this writer has used the term in its broad sense in this study, but he believes its intended meaning is clear in each case.

Both estate and inheritance taxes can have progressive rates based on the size of the estate or inheritance, and the inheritance tax can have rates graduated according to the degree of relationship of the decedent and his successor. An inheritance tax usually has different exemptions for each successor; an estate usually has one exemption for the entire estate, but may have varying exemptions for different heirs.

1. Igleheart v. Commissioner of Internal Revenue, C.C.A. Fla., 77 F. 2nd 704, 712.

2. In re Jahn's Estate, 65 South Dakota 124.

A probate duty is a low, usually flat rate applied to an estate in order to pay the cost of probating the will or the court costs in dividing an estate. It is a form of estate tax.

A direct inheritance tax is a tax on direct heirs of the decedent. Direct heirs are those of a family line, direct ancestors and descendants and the spouse of the decedent. Collateral heirs are relatives not directly in the family line, such as brothers and cousins. Non-relatives, often called strangers-in-blood, are usually included as collateral heirs. Brothers and sisters, and also nephews and nieces are treated as direct heirs by some states.[1]

Another set of terms which need clarification is the group including gross and net estate, deductions and exemptions.

The gross estate is the value of the total property in the estate including transfers in contemplation of death, transfers by contract and the decedent's share of joint-and-survivorship bank accounts and similar items. (Internal Revenue Code, Title 26, Section 811). Ohio law provides for taxing all of these assets (Ohio G.C. 5332); but, in practice, does not include transfers by contract and joint-and-survivorship bank accounts as part of the gross estate itself from which deductions can be made. The Ohio Law does not use the terms gross and net estate. The writer has included in "gross estate" all property which is taxable under the inheritance tax.

Deductions are allowances, such as debts of the decedent, funeral expenses, a widow's and children's statutory exemption or allowance

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1. Lutz, Harley L., Public Finance, Fourth Edition, (New York, D. Appleton-Century Company, Inc. 1947), p. 487.

and costs of administering the estate, which may be subtracted from the gross estate in arriving at the taxable estate (Internal Revenue Code, Title 26, Section 812b).[1]

Exempt transfers or successions are transfers or successions which are not taxed because the recipient is a charitable, public or otherwise exempt institution (Ohio G.C. 5334).

Exemptions are certain amounts, provided by law, which are subtracted from the estate, or from individual inheritances, before applying the tax rates. The Federal Estate Tax exemption is now $60,000 for the entire estate (Internal Revenue Code, Title 26, Section 935c); Ohio, on the other hand provides a $5,000 exemption for a widow and for each minor child, and lesser amounts for each other successor of certain classes (Ohio G.C. Section 5334). The exemptions in the case of inheritance taxes or estate taxes with different exemptions for certain relatives, are usually called personal exemptions.

Net estate is subject to various meanings. Under the Federal Estate Tax all deductions and exemptions are subtracted from the gross estate in arriving at the net estate to which the tax rates are applied (Internal Revenue Code, Title 26, Section 812). In Ohio net estate is not defined in the code, but in practice is the gross estate less the deductions only, and does not include joint-and-survivorship accounts. In this study joint-and-survivorship accounts are included.

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1. Since Ohio taxes the property actually transferred it automatically excludes the above deductions and does not enumerate them specifically. These are reported on tax returns, however. The widow's allowance is for support for one year; the excess over three thousand is taxable. Ohio G.C. 5332-1.

The net taxable estate, as used herein, is the net estate in Ohio less any exempt successions (charitable bequests, etc.). From each share of the net taxable estate is subtracted the personal exemption, if any, to arrive at the tax rate base, the amount to which the tax rates are applied. It did not seem advisable to subtract the personal exemptions from the estate before arriving at the net taxable estate since the exemptions are an integral part of the rate structure itself. In estimating an estate tax yield for Ohio, the net taxable estate has the exemptions already subtracted from it, in order to be closer to the Federal practice; "net taxable estate", in this case, being equal to the Federal concept of "net estate",

In short, "net taxable estate", when considering the inheritance tax, is the gross estate minus deductions and exempt successions, but not personal exemptions. When considering an estate tax "net taxable estate" is the gross estate minus all deductions and exemptions.

Chapter I

ARGUMENTS FOR AND AGAINST DEATH TAXES[1]

Various arguments in behalf of and in opposition to death taxes have been advanced. The arguments in favor of this form of tax may be summarized under these categories as follows:

I. The Tax as a Limitation on Inheritance.

A. Diffusion of Wealth.

Here it is argued that it is socially desirable to limit inheritance in order to diffuse the wealth. Stiff progressive rates, in the case of the inheritance tax, would encourage the wealthier people to divide their estates among more people in order to avoid high rates on a single large inheritance. This division of wealth is favored by socialists and certain other groups. The inheritance tax is an excellent weapon for this purpose, if such a diffusion is desired.

B. Restriction of Inheritance.

Many writers, including Jeremy Bentham and John Stuart Mill, have argued that collateral inheritance should not exist at all. Property should pass to collateral relatives and strangers-in-blood by bequest only or not at all. Mill desired a severe limitation on the amount that direct heirs could receive.[2]

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1. The major sources of information for this chapter were West, Max, The Inheritance Tax, Second Edition, (New York, Columbia University Press, 1908), Chapter IX; Groves, Harold M., Financing Government, (New York, Henry Holt and Company, 1939), pp. 247-255, and Schultz, William J., The Taxation of Inheritance, (Cambridge, The Riverside Press, 1926), pp. 167-199.
2. Mill, John Stuart, "Views on Economic and Social Effects of Inheritance and Its Taxation", in Viewpoints on Public Finance, Edited by Harold M. Groves, (New York,Henry Holt and Co., 1947) p. 237..

These writers reasoned that a widow or children of a decedent usually needed some means of support left to them while other relatives and friends had no such justification for receiving an inheritance. Excess amounts left to direct heirs were considered to have a weakening and unwholesome effect on the heirs and were therefore undesirable. More distant relatives and friends are entitled to very little since they didn't contribute toward the building of the estate.

The inheritance tax is a method of accomplishing the above restrictions on inheritance but the estate tax would not be as effective. An estate tax with higher exemptions for direct heirs would result in tax savings if the estate were given to direct heirs and would thus discourage bequests to more distant relatives, but it would be impossible to tax bequests to distant relatives at a very high rate and not tax the rest of the estate. Severe rates would be required to limit inheritance in this manner. A tax with such high rates and with the above purpose would certainly meet considerable opposition in many countries of the world today, especially in the United States; although some countries do have rather high rates.

C. The State as a Co-heir or Partner.

Looking at the limitation of inheritance from the positive side; that is, considering the state's right instead of the lack of the relatives' rights, it may be argued that the state is entitled to a certain amount of an estate since the state is a "partner" or "co-heir". Both of these terms are figures of speech which attempt to exemplify the state's role as a protector of the estate and in that way an assistant in its accumulation, and therefore a partner of the decedent, much as

the wife in community property states; or the state as a group more deserving of an inheritance than some distant relative of a decedent, in which case that state is considered as an heir. The state's role as a partner is further substantiated by the fact that the state is often responsible for the care of a resident when he becomes indigent. Both of these arguments are complements of the restriction on inheritance argument and are approaching the problem from the other side. Both the inheritance and the estate taxes, especially the estate tax, could be used to effect these policies of giving the state its "earned" share.

All three of the above arguments in favor of death taxes are based on certain social viewpoints. Our present day society in most countries is not actively in favor of these reasons for a death tax; seldom are they used in behalf of such a tax.

II. The Tax as A Fee.

A. Value of Service.

The state, by making provisions for the transfer and protecting property during transfer, performs a service of certain value to the recipients of the property. The state is therefore entitled to a fee commensurate with its service. The state's service is presumably more valuable to more distant relatives, since it is through state laws that they receive much of their property, and thus the state is deserving of a higher fee as the relationship becomes more distant. These fees could amount to nearly all of the property in the case of a very distant relative.

This argument, at least as far as progressive rates are concern-

ed, seems to apply only to intestate inheritances.[1] The state would seem to perform the same service, no matter what the relationship, in an inheritance by will. In a testamentary bequest the state serves the son or total stranger to the same extent. The value of service argument would seem, therefore, to favor progressive rates by relationship in the case of intestate proceedings and equal rates in the testamentary successions. Rates would be proportional in regard to the amount of the inheritance. Rates could presumably be very high in certain cases of distant relatives.

B. Cost of Service.

This argument is based on the expense of the state's service rather than its value. The tax would undoubtedly be at a very low rate and would be regressive. Perhaps a uniform charge per estate would be used. This form of tax would not be a revenue raiser at all, but would merely cover expenses. Thus this argument is not in favor of the inheritance tax as such, but is in behalf of probate duties, a very mild form of the tax.

III. The Tax as a Tax.

A. Back Tax.

The fact that many taxes on personal property are evaded is well-known. The inheritance tax has been proposed as a method of collecting these back taxes. In this role the inheritance tax is useless

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1. Intestate "signifies a person who died without leaving a valid will". (In re Cameron's Estate, 62 New York Supplement 187).

and inequitable. Since the inheritance tax applies to all successions, it must be paid by both the personal property tax evaders and those who paid their tax on personal property religiously. With this situation it is impossible to collect back-taxes. If the inheritance tax is levied on tax evaders as a back-tax, what is the inheritance tax that is levied on those who paid their personal property tax called? It certainly is not a back-tax; they paid their taxes. Levied on any other basis the tax is unfair because some taxpayers are paying it as a back-tax and are therefore not paying it on the other basis. This is certainly unfair. Any back-tax argument in behalf of the inheritance tax seems wholly untenable.

The collection of back-taxes at death is an entirely different matter and is not an inheritance tax.[1]

B. Lump-sum Tax.

A somewhat better argument is that the inheritance is levied in lieu of other taxes rather than in order to collect back taxes. This eliminates the specific inequity of the back-tax proposal outlined above, but other injustices arise. For example, a series of deaths and successions to property with little time in between will result in a much higher tax being paid in a period of time in which another estate may pay only one tax. The tax would only be levied on a certain amount at each succession. Thus, if the tax were levied in place of a personal

1. For information on Ohio collection of back-taxes see Ohio G.C. 5398, 5398-1, 5398-2, 5398-3, 5398-4 and State ex rel. Greenward Realty Co. v. Zangerle (135 Ohio State 533), Black v. Evatt (138 Ohio State 52) and State ex rel. Hostetter v. Hunt (56 Ohio Appellate 120).

property tax, for instance, some tax payers would pay a higher tax merely because the owner of the property happened to die early in life or shortly after receiving the property through inheritance. This situation would certainly be inequitable. This problem exists in many death taxes at present; although some governments make allowances. The United States Federal Government, for example, does not tax the same property twice in a five year period under the estate tax.[1] The only advantage of the inheritance tax over a personal property tax, in this respect, is the difficulty of evading the inheritance tax. The inheritance tax can be collected almost universally while the personal property tax is often avoided.

C. Tax on Accidental or Unearned Income.

Gain through inheritance is accidental and even unearned in many cases and is therefore an excellent basis for taxation. Any windfall gain is usually considered taxable. Much of the time the successors to property contributed nothing towards accumulating that property and therefore the inheritance is unearned and consequently taxable. Often the immediate family of the decedent has contributed, at least indirectly, in the accumulation of an estate. States with community property laws recognize this; death taxes should make similar allowances.

D. Inheritance Represents the Ability to Pay.

Any income represents to a certain extent an ability to pay taxes. Inheritance since it is usually one large amount of income often

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1. Internal Revenue Code, Title 26, Section 812c.

to one who was not even dependent on the decedent, represents an ability to pay a certain amount of tax. In fact if the amount of inheritance is large, it is a source of future income; it is funded income. As the relationship to the decedent becomes more distant the ability to pay seems to increase since the income is usually more of a windfall gain from a source which was not depended upon for support. This justifies graduated tax rates according to relationship. Widows and minor children of the decedent are usually allowed generous exemptions because, since they have lost their breadwinner, their inheritance does not represent the same ability to pay as the same inheritance would to a more distant relative or stranger who has not lost his means of support with the death of the decedent.

The arguments against the inheritance tax may be summarized as follows:

A. Tax on Capital.

Briefly, this argument against the inheritance tax is that the tax is on a fund of wealth rather than on income and therefore decreases the amount of capital. Actually the amount of capital is decreased only by the amount of the tax minus the amount of the tax that the government uses for capital purposes. If the tax, once collected, is used for capital purposes, the capital of the country is not decreased; although it might be less, or possibly more, efficiently used. Furthermore, it must be remembered that the inheritance tax revenue replaces revenue from other taxes which, if levied, might also decrease the amount of capital. To the extent that alternative taxes would diminish capital, any decreasing of capital that would be caused by an inheritance tax is lessened relatively.

Even with these moderating effects, however, the inheritance tax probably results in some decrease in the amount of capital. Here we are referring to money capital, since capital equipment is obviously not destroyed every time an inheritance tax is levied; it is sold and the money is used to pay the tax. Taxes are collected in money and not as a certain fraction of a machine. Although the levying of a tax may result in the selling of capital equipment, the equipment is still a means of production.

Besides showing the limit on the decrease in capital due to the inheritance tax, it is well to evaluate the effect of any reduction in capital which is actually caused by this tax. A diminution in the amount of capital is not, in itself, necessarily harmful, in fact it may be beneficial. Building up capital is not the primary goal of an economy which is already well supplied with capital. There can be such a thing as too much money capital. In the words of Josiah Stamp, "Accumulation of savings is not the only important factor in well-being and the nation might easily save too much".[1] Wealth which can not be invested can be detrimental to a nation and in that event the inheritance tax is certainly not evil. Granted, discretion should be shown, as to the tax rates, in countries which are in need of greater amount of capital. A severe inheritance tax could be harmful in that case; but it must be remembered, so could any tax.

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1. Stamp, Josiah, "The Economic Effects of Death Duties", in "Viewpoints on Public Finance, Edited by Harold M. Groves (New York, Henry Holt and Company, 1947), p. 245.

B. Discourages Saving.

A somewhat similar argument is that the inheritance tax discourages saving and thus reduces capital accumulation. People supposedly save less when they know that savings will be taxed at their death. Opponents of this argument hold that a person will not be influenced in that way by such a thing so uncertain in time as death. A tax on savings to be levied at a definite time in the future may cause a saver to stop or lessen savings in order to avoid the tax, at least in part. However, no one knows exactly when he will die, and therefore he is not so concerned with a happening which will occur at some indefinite time in the future. Thus, he will probably continue to save without regard to death unless death seems imminent.

Moreover, some people may save more in the face of an inheritance tax in order to be able to hand down the same net amount to relatives and friends. Although they are probably few in number, it seems that some people might make considerable sacrifice for this purpose.

C. Breaks up Effective Production Units.

In somewhat the same vein as the diminution of capital is the idea that an inheritance tax will break up effective production units. Thus an inheritance tax may force the survivors to sell part of the decedent's business or close the business and sell the equipment in order to raise funds to pay the tax. This would seem to be true only in the case of an individual proprietorship, partnership or closed corporation. In a corporation the decedent would hold shares of stock; the sale of part of these would provide money for the tax, and the corporation would not be affected since some other investor would then hold the stock or

part of it. In an individual proprietorship sometimes the whole business would be sold, intact, to another potential investor. Thus the business would be preserved in somebody else's hands. In other circumstances a certain share of the business would be sold and a partnership formed where an individual proprietorship had existed before, or a new partner found for the deceased partner. The production unit would be maintained. Granted in some situations a business unit would have to be liquidated in order to pay taxes and an effective production unit would be lost. Even so, other business units would probably be improved to some extent by the addition of equipment, but some value might be lost due to the lack of complete adaptability of the equipment.

D. Tax is Unequal.

Adam Smith and many others considered the inheritance tax unequal, because of the varying amounts of time between successive transfers of the same property. A person who had recently inherited property may die and the property will again be subjected to the tax, twice in a short period of time. Other estates may be held for a long period of time before they are passed down again and the inheritance tax consequently levied. This is unfair when the inheritance tax is regarded as a property tax paid once a generation. However, in the words of Max West:

> "If the tax be regarded as a limitation of inheritance, or as a probate fee, or as a tax based upon the increase of tax-paying ability resulting from inheritance, there is no inequality in exacting it as often as devolution occurs."[1]

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1. West, Max, op. cit., p. 210.

However, as mentioned above, some governments provide allowances for more than one transfer of the same property in a short period of time.

E. Tax on Widows and Orphans.

Since much of the inherited property is received by widows and orphans it is argued that the inheritance tax is a tax upon these successors. This position is very unsubstantial when we consider the generous exemptions and/or low rates provided for widows and children of decedents. Only a very small part of their inheritance is taken by the tax. Although Ohio has a low exemption, for example, the tax rate is only from one to four per cent.

F. Inheritance is a Natural Right Which Should Not be Taxed.

Formerly "natural rights" were held in high regard. Now, we consider rights as social rights which must be justified. Numerous court devisions have set forth inheritance as a right granted by the state and under the states control. The Supreme Court of North Carolina in 1872 stated the case as follows:

> "The right to give or take property is not one of those natural and inalienable rights which are supposed to precede all government, and which no government can rightfully impair. There was a time, at least as to gift by will, it did not exist; and there may be a time again when it will seem wise and expedient to deny it. These are the uncontested powers of the Legislature upon which no article of the Constitution has laid its hands to impair them. If the Legislature may destroy this right, may it not regulate it?"[2]

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1. Pullen v. Commissioners of Wake County, 66 North Carolina 361(363), Decided January 1872. See also United States v. Perkins, 163 United States 625, Decided May 25, 1896.

G. Tax is Communistic.

Many people claim that the inheritance tax is communistic. This could be true if very high confiscatory rates were levied. With our present low rates the tax is certainly not communistic. Any tax can become confiscatory with high enough rates. Our democratic government is our protection against any tax, including the inheritance tax, becoming communistic.

H. Joint-family Endeavor Formed the Wealth of an Estate and thus Part of an Estate Belongs to Certain Successors.

Since a wife and children do much work in behalf of the household they have contributed considerably toward the accumulation of the estate. Therefore, they are being taxed in part on something that is already theirs. This is unjust. Community property states recognize the wife's share. In answer it may be stated that in the case of some large estates the wife and children contribute nothing. Hired servants do all of the house-work and often the wife and children do nothing toward helping to accumulate the wealth. In small estates a considerable portion of the estate may represent efforts of the wife and children. However, in these estates, since they are so small, there is little or no inheritance tax. In some cases there may be some inequities, but in the vast majority of estates which have to pay any inheritance tax the tax is fair in this respect. It would be practically impossible in the administration of the inheritance tax to make allowance for the indefinite amount that a wife and children have earned unless community property provisions have been in effect. Although this argument is valid in many respects, practically it is of little significance against an inheritance tax, but may be better directed toward estate taxes only.

Moreover, if the wife's share is recognized under community property laws there is some justification for a higher tax rate on the part of her inheritance that is not her share since her contribution to the estate has been removed. Lower rates applied to her entire inheritance would probably have the same tax effect. The contribution of the wife is in practice more easily acknowledged by lower rates than by determining who earned what share.

In summary, it seems that the inheritance tax is, on the whole, a good tax whose merits outweigh its disadvantages. In addition, in its favor the inheritance tax has its widespread acceptance by voters throughout the world, an unimpeachable endorsement indeed.

Chapter II

HISTORY OF DEATH TAXES PRIOR TO 1924

A. Other Countries.

Antiquity:[1]

The Egyptians are believed to have had a tax on successions in 117 B.C. or earlier. This tax was over one-tenth of the property in amount at one time.

However, the Emperor Augustus is usually credited with originating the inheritance tax in the year 6 A.D. at Rome. Earlier Romans had probably borrowed the tax from the Egyptians, but the first real evidence of the inheritance tax was under the reign of Augustus, who levied a tax of one-twentieth of inheritances in order to raise funds for veterans' pensions. Only Roman citizens were taxed, with small amounts exempt and funeral expenses allowed. Close relatives of the old Roman citizens were exempt; newer citizens did not enjoy this privilege. About a century later this exemption of direct descendants was extended to all citizens. Another century passed and Roman citizenship, with its liability to the tax on inheritances, was extended to all free people of the empire. Approximately another century from then, sometime before the time of the Justinian Code, the tax was repealed.

Middle Ages:

In the middle ages the inheritance tax took the form of the "relief", "heriot" and "mortuary". The relief was paid by any new

1. Shultz, op. cit., pp. 3-6.

tenant, generally the son of the decedent, to the lord in order to succeed to the property.[1] The heriot was paid in lieu of surrendering all of the cattle, which theoretically was the lord's originally, and usually consisted of the best beast.[2] The church took the second best animal as payment for any tithes which might not have been paid, and guaranteed a Christian burial; this was a mortuary.[2] Gradually the heriot and relief became confused and were combined into one exaction.[3]

Heriots often became excessive, sometimes over one-half of the property or practically complete confiscation.[4] Various limitations upon them were made.[5]

There seems to be no direct connection between the old Roman tax and the relief (the relief originated with the custom of a peasant, at death, returning his war head-gear to the lord[6]), although both are believed to be origins of modern inheritance taxes in various countries.[7] In France the inheritance tax was an outgrowth of the relief while in Italy the modern inheritance tax was probably a revival of the old Roman levies. Germany and the Netherlands are also believed to have obtained the idea for the inheritance tax from the Romans.

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1. Coulton, G.G., The Medieval Village, p. 156, footnote.
2. Bennett, H. S., Life on the English Manor, 1150-1400, (New York, The Macmillan Company, 1937), p. 144.
3. Ibid, p. 148.
4. Ibid, p. 146.
5. Coulton, op. cit., Appendix 12, p. 29.
6. Bennett, op. cit., p. 143.
7. West, op. cit., p. 19

France:[1]

In France in the middle of the sixteenth century a registration tax on certain transfers of property was levied. At the beginning of the eighteenth century Louis XIV extended this tax to all immovables except those transferred to direct heirs. Furthermore, a one per cent tax was added. A German writer said the inheritance tax rate varied from one to nine per cent depending on relationship in 1886.[2] In the last of the nineteenth century the rate ranged from one and one-fourth per cent for direct heirs to eleven and one-fourth per cent for strangers in-blood. All in all, the tax was regressive since registration duties which bore heaviest on small estates were also levied. No exemptions of small amounts or for debts were allowed. This caused many hardships.

In 1901 many of these evils were eliminated and progressive rates both by size of inheritance and relationship were enacted. The rates ranged from one to eighteen and one-half per cent. In the following year the rates in the upper brackets were increased. No exemptions for small inheritances were allowed. Certain probate duties were also levied. In 1910 the rates were increased and ranged from one to twenty-nine per cent. 1917 saw a revised inheritance tax with three main provisions: An inheritance tax with rates from one to thirty-six per cent, an additional tax on the estate with rates ranging up to twenty-four per cent and graduating both as to the size of the estate

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1. Ibid., pp. 22-31, and Shultz, op. cit., pp. 34-39.
2. Cohn, Gustav, The Science of Finance, Translated by J. B. Veblen, (Chicago, The University of Chicago Press, 1895), p. 429.

and inversely to the number of surviving children of the decedent, and a complicated gift tax with rates from six and one-half to thirty-one per cent depending upon the relationship and other conditions. In 1921 inheritance tax rates were as high as fifty-nine per cent for strangers-in-blood, estate tax rates went up to thirty-nine per cent in the highest bracket for decedents with no children, and the gift tax rates were also increased. With the combination of the estate and inheritance taxes it was possible for all of an inheritance to be taken as tax; therefore, eighty per cent of the amount of a given inheritance was set as a limit of the tax. Rates were increased by one-fifth in 1924, but the limitation was held at eighty per cent.

Germany:[1]

The inheritance tax began in Germany in the seventeenth century, not as a national tax but as a local levy of various independent principalities. Cohn mentions a stamp tax in Prussia in 1822 on transfers to collateral heirs with rates from one to eight per cent according to the degree of relationship.[2] Widespread adoption of the inheritance tax prevailed in the German states after 1873. Problems of multiple taxation were present, and only the low rates of the tax prevented grave injustices.

In 1906 the Imperial Government of Germany levied the first national tax. The tax was graduated both by relationship and amount of the inheritance; the rates ranged from four to twenty-five per cent. Rates applied to all of the inheritance, not just one bracket. To prevent sudden jumps in the amount of the tax in going from one bracket to

1. West, op. cit., pp. 32-38, and Schultz, op. cit., pp. 51-61.
2. Cohn, op. cit., p. 426.

the next, a limit of one-half of the amount by which the inheritance exceeded the lower limit of the higher rate bracket was placed on the extent to which the higher rate would be used. Special privileges were allowed to agricultural property since the agrarian block in the government was strong. A gift tax with rates equal to those of the inheritance tax was levied at the same time. In lieu of their own inheritance taxes, individual states were given one-third of the revenue from the national inheritance tax.

In 1919 Germany enacted an estate, inheritance and gift tax. The rates of the estate tax were from one to five per cent. The inheritance tax was graduated by relationship and amount of inheritance; the rates ranged from four to seventy per cent. Besides these severe rates, additional percentages, according to the wealth of the heir, were levied. The total rate was limited to twice the regular rate or ninety per cent of the inheritance whichever was smaller. The above rates were to apply in 1935; certain discounts were allowed for inheritances before that time. Thus in 1920 heirs paid only about eighty per cent of the rates set for 1935. A gift tax with rates equal to the inheritance tax was also levied.

With the severe inflation of the 1920's inheritance tax rates were reduced somewhat.

England:[1]

A stamp tax on probates constituted England's inheritance tax.

1.West, op. cit., pp. 60-66, and Shultz, op. cit., pp. 18-27, 72-74.

Real property was not taxed. This probate duty, started in 1698, remained unchanged through most of the eighteenth century. The levy was a flat sum until 1779 when the rate was set more in proportion to the size of the estate; the rate became more nearly proportional as time passed. A legacy duty, also proportional, was inaugurated in 1780.

Progressive rates, based on the relationship of the decedent and successor, were introduced in 1796. Direct heirs were exempt and the highest rate was six per cent. These rates increased with the British revenue needs until 1805 inheritances by direct heirs were taxable at one per cent; brothers, sisters and descendants paid three per cent; uncles, aunts and descendants five per cent; great-uncles, great-aunts and descendants six per cent and all others ten per cent. These were the basic rates in the English legacy duty until 1910.

After much agitation real property was included as taxable in 1853 under the legacy duty rates. However, the real estate was valued for taxation purposes as a life estate, not at the property's value.

In 1880 the discrimination against intestate successions under the probate duty was eliminated. The following year provision was made to tax gifts made just prior to death.

England's death duties were further complicated in 1885 with the addition of a five per cent corporation duty on the income from landed property of all corporations except municipal, religious and charitable. This duty was in lieu of a death tax which would never reach corporations.

In 1894 a much needed reform and consolidation of England's death taxes was accomplished. In that year probate and estate duties

were combined into one estate tax, the other succession levies were consolidated and real estate was made taxable at its market value. In addition, the new estate tax had progressive rates ranging from one to eight per cent depending on the size of the estate. In the following period, these rates were increased until the highest rate was twenty per cent at the outbreak of World War I.

In 1914 a reduction of the amount of tax due was instituted if land or a settled business was transferred because of death within five years of its last transfer.

Death tax rates were not increased during the war, but later the possibility of a capital levy brought about an increase in rates so that estates above three million pounds were taxed at a rate of forty per cent.

Canada:[1]

Death taxes first spread to Canada in 1892. Most Canadian provinces soon adopted taxes with progression both as to amount of inheritance and degree of relationship. Highest rates varied from five to ten per cent. By 1920 rates were as high as thirty-five per cent for large inheritances passing to strangers-in-blood.

B. United States Federal Government.

The first step in federal government death taxation in the United States was a Stamp Act of July 6, 1797. Rates were one-half of one per cent and less. This duty commenced on July 1, 1798, and ended on April 6, 1802.[2]

1. West, op. cit., pp. 77-85, and Shultz, op. cit., pp. 30-33, 76-79
2. Shultz, op. cit., pp. 150-151.

Although a combined legacy, succession and probate duty was proposed at the close of the War of 1812, the federal government did not actually levy another death tax until the Civil War. On July 1, 1862, a tax on the transfer of personal property with rates graduated according to degree of relationship was levied if the estate exceeded one thousand dollars in value. The highest rate was five per cent, and a husband or wife was exempt from the tax. A probate duty with very low, regressive rates was also enacted at this time.[1]

Yields from these taxes were disappointing, and consequently rates were increased slightly and successions of surviving husbands were included as taxable in 1864.[2] With the continued low yields of the inheritance and probate duties, and the increasing government surplus after the war, opposition to these death duties grew; and they were repealed - the inheritance tax in 1870 and the probate duty two years later.[3]

In 1874 the United States Supreme Court ended the question of the constitutionality of the inheritance tax by upholding it as an excise tax.[4]

In 1894 inheritances were again taxed as part of income.[5] Inheritances were included as income which had a four thousand dollar

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1. Ibid., p. 151.
2. Ibid., p. 152.
3. Sidney Ratner maintains that although there was some opposition to the inheritance tax, one of the main reasons for its repeal was the belief among proponents of a high protective tariff that lower internal taxes would strengthen their position. Committee recommendations for repeal and little debate in Congress resulted in repeal. Ratner, Sidney, American Taxation, (New York W.W. Norton and Company, Inc., 1942), p. 128.
4. Scholey v. Rew, 23 Wall. 331 (Decided October 1874).
5. Ibid., p. 153.

exemption, and were taxed at two per cent. This form of inheritance taxation disappeared when the Income Tax Bill of 1894 was declared unconstitutional.[1]

A graduated progressive inheritance tax applying to transfers of personal property was enacted as a war measure in 1898.[2] This levy was actually an estate tax with progressive rates since the tax was on the transmission of personal property and the entire amount of the estate determined the tax rate. However, rates were graduated according to class of heirs and thus one of the essential elements of an inheritance tax was contained in this act. Rates were from three-fourths of one per cent to fifteen per cent. Charitable bequests were exempted in 1901.[3] The tax was repealed in 1902.[4] Meanwhile, in 1900, the Supreme Court had upheld the tax's constitutionality, but disapproved of the basing of the exemption and rate upon the entire estate.[5]

In the late nineteenth century increasing force was exerted behind the inheritance tax movement. Andrew Carnegie went so far as to advocate complete confiscation of a decedent's estate except for moderate allowances to immediate heirs.[6] Although Carnegie first wrote his article in 1890, it was printed in pamphlet form with increasing frequency

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1. Pollock v. Farmers' Loan and Trust Company, 158 U.S. 601, 607 (Decided after rehearing on May 20, 1895).
2. Ibid., pp. 153-154.
3. Ibid., p. 154.
4. Ibid., p. 155.
5. Knowlton v. Moore, 178 U.S. 41 (Decided May 14, 1900).
6. Carnegie, Andrew, "The Gospel of Wealth", North American Review, June and December, 1890.

after 1900.[1] Increasing support of succession taxes was in evidence; the main resistance was by those who thought only the states, not the national government, should levy the tax.

With the increasing needs of the national government for its "preparedness" program and under the sponsorship of the Democratic Party, defender of states rights (overcoming many objections that death taxation was for the states alone), an estate tax was enacted in 1916.[2] This was the first permanent death tax levied by the national government, prior levies having been repealed after the war emergencies for which they were originally passed were over. A fifty thousand dollar exemption was allowed and the rates varied from one per cent on the first fifty thousand dollars of the net estate to ten per cent on the excess over five million dollars. Transfers in contemplation of death (defined as transfers within two years of death) were taxed.

In 1917 rates were increased to one and one-half per cent on the first bracket to twenty-five per cent on the amount over ten million dollars; but in 1918 rates in the lower brackets were lowered as much as one-half.[3]

C. States of the United States.[4]

The American colonies and the states early in their history, often had probate duties. One of the earliest was a fee of two hundred pounds of tobacco and a cask for affixing the official seal on probates

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1. Shultz, _op. cit._, p. 155.
2. _Ibid._, p. 156.
3. _Ibid._, p. 158
4. Unless otherwise stated, all information in this section is from Schultz, _op. cit._, pp. 98-149.

and letters of administration. Most probate levies were lower in rate, however.

Pennsylvania, in 1926, was the first state to adopt a real inheritance tax. Direct heirs were exempt from the two and one-half per cent levy, as were estates under two hundred and fifty dollars. Twenty years later, in 1846, the rate was increased to five per cent. In 1830 a fifty cent probate fee was added to Pennsylvania's death duties.

The second state to tax inheritances was Louisiana in 1828. The first levy, repealed in 1830, taxed property which was located in Louisiana and passed from a resident of that state to a foreign heirs at ten per cent. Reenacted in 1842, the tax was dropped in 1877, revived in 1894, and finally declared unconstitutional in 1898 since it had originated in the upper house of Louisiana's legislature.[1]

A probate fee of one-fourth of one per cent in Massachusetts in 1841 only lasted two years. In 1843 Virginia levied a probate fee of fifty cents. This was increased to two dollars and fifty cents during the Civil War. In 1870 the fee was made proportional to the size of the estate, one-tenth of one per cent with a minimum of one dollar. One year after the original probate levy a collateral inheritance tax with a two per cent rate was enacted. After increasing the rate to six per cent in 1870, the tax was repealed in 1884.

Maryland adopted a collateral inheritance tax with a two and one-half per cent rate in 1844.

North Carolina's first inheritance tax was a one per cent tax

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1. Succession of Sala, 50 Louisiana Annual 1009, Decided after rehearing, March 21, 1898.

on collateral heirs; a three hundred dollar exemption was provided for real estate and a two hundred dollar exemption was allowed on personal property. In 1855 collateral relatives were classified and the tax rate varied from one to three per cent, depending on the relationship. The tax was discontinued in 1874 after various rate changes.

Vermont introduced a nominal probate fee in 1862. Six years later Wisconsin initiated a probate levy of from twenty to seventy-five dollars which was repealed in 1872.

In 1869 Delaware enacted a three per cent collateral inheritance tax. Two years later relatives were classified and taxed from one to five per cent. A decade later the tax was limited to strangers-in-blood.

In 1875 Minnesota and in 1878 New Hampshire levied probate duties which were declared unconstitutional since the exemption provision made them not proportional.[1] Illinois escaped a similar fate by reenacting in 1891 a proportional probate duty, originally passed in 1887.

Collateral inheritance taxes spread to West Virginia in 1887, Connecticut in 1889, Massachusetts and Tennessee in 1891 and New Jersey in 1892.

Meanwhile in 1892 New York imposed a tax on direct heirs also. Although this was not the earliest tax on direct heirs, New York is

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1. Several states had difficulties with exemptions early in their taxation of inheritances. The main mistake was that of exempting all estates below a certain amount, but taxing the entire amount of larger estates, allowing no exemption for them. Their constitutions usually required equality and the exemptions should have been granted to all estates. For Ohio experience see Chapter IV.

generally credited with introducing this phase of death taxation.

California, Maine, Michigan and Ohio adopted collateral inheritance tax laws in 1893. Ohio's law provided that one-fourth of the revenue should be given to the county in which it was collected. Michigan's statute, which also taxed direct heirs was declared unconstitutional since the revenue was used for general purposes rather than interest on school and other types of debts.

The first inheritance tax with progressive rates was enacted by Ohio in 1894.[1] Direct heirs paid varying rates depending on the size of the entire net estate, while collateral heirs all paid a flat rate of five per cent, the same as the highest direct heir rate. This graduated tax, that on direct heirs only, was nullified by Ohio's Supreme Court due to the rate structure.

Missouri had the same difficulty with her first inheritance tax in 1895; but Illinois was successful, with heavy protests nevertheless, in providing rates progressing as the distance of relationship and size of the estate increased. Rates were from one to six per cent with exemptions of from two thousand to ten thousand dollars.

In 1896 Iowa, Vermont and Virginia adopted five per cent taxes on collateral inheritances.

Connecticut, Minnesota, Montana, North Carolina and Pennsylvania all incorporated a tax on direct heirs into their death tax systems in 1897. The Minnesota and Pennsylvania taxes were declared unconstitutional, however.

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1. See Chapter IV for greater detail of the development of death taxation in Ohio.

In 1899 Michigan and Missouri enacted satisfactory death taxes; Michigan included direct heirs. Wisconsin's tax on inheritances of direct heirs in 1899 was found unconstitutional because of the exemption provision which allowed a ten thousand dollar exemption on the entire estate rather than the individual share. During this period many states had similar difficulties; their taxes were nullified because the exemption provided "unfair" progression or because the act was poorly written in a similar manner.

In 1901 several more states entered the death tax field. Arkansas levied a five per cent collateral inheritance tax, and Utah provided for a five per cent duty on the amount of estates in excess of ten thousand dollars. Colorado, Nebraska, North Carolina and Washington all enacted progressive inheritance taxes applying to both direct and collateral heirs. Many increases in tax rates were occurring at this time, as is evidenced by Maine's increasing her collateral inheritance tax rate from two and one-half to four per cent. However, the Alabama Constitution of 1901 limited inheritance taxes to a two and one-half per cent levy on collateral heirs, not including the decedent's brothers and sisters and their descendants.[1]

The trend which had begun a decade before continued for the next few years. Tax laws were broadened to include more transfers, progressive rates and taxes on direct heirs became more prominent and the courts demonstrated a more liberal attitude toward death taxes accepting many provisions which they had opposed a few years before.

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1. Alabama Constitution of 1901, Section 219.

In 1903 North Dakota enacted a two per cent collateral inheritance tax and Wyoming passed a direct inheritance tax with the same rate. Oregon's inheritance tax law of that year had rates progressive as to relationship of heirs and as to the size of the estate when heirs were strangers-in-blood.

In the same year Wisconsin adopted a tax which became the basis for many future acts in other states. The rates progressed from one to three per cent, depending on the size of the inheritance, for a widow and from five to fifteen per cent for distant relatives and non-relatives. A widow was allowed a ten thousand dollar exemption; others had smaller allowances. Rates progressed by brackets not by the size of the entire inheritance.

West Virginia introduced progression into her collateral inheritance tax rates in 1904, and Ohio levied a two per cent tax on direct heirs. Louisana enacted a law which in effect taxed only property which had evaded other taxes or was not taxed previously by the state, e.g., bonds and securities.

In 1903 New Hampshire adopted a five per cent collateral inheritance tax.

South Dakota adopted a tax with rates progressive as to relationship and as to the size of inheritance in the case of distant relatives and non-relatives.

Two new states adopted taxes similar to Wisconsin's; California in 1905 and Minnesota in 1906 after one year's experience with a tax progressive only as to relationship.

In 1907 West Virginia began taxing direct inheritances with a

one per cent levy on transfers over a twenty thousand dollar exemption while Arkansas and Massachusetts enacted a tax with rates graduated from one to five per cent. Texas adopted a progressive inheritance tax, exempting the surviving spouse, parents and children, with rates of from two to twelve per cent. Idaho adopted the Wisconsin law as its first death levy.

Oklahoma adopted a tax similar to Wisconsin's in 1908. One major difference was a steadily progressive rate with very narrow brackets. Except for the Oklahoma Supreme Court's interpretation, the act would have resulted in complete confiscation of all transfers above a certain amount ($1,240,000 for Class I relatives, less for others).

In 1909 Connecticut, Delaware and Tennessee added a tax on inheritances of direct heirs to their existing collateral inheritance taxes, and Kansas and West Virginia adopted laws similar to Wisconsin's.

New York enacted a tax with progressive rates ranging to twenty-five per cent in 1910. After bitter denunciation of these "confiscatory" rates, the rates were lowered in 1911 so that the highest rate charged was eight per cent.

Maine and minnesota copied the Wisconsin law, with minor revisions, in 1911.

The following year Arizona adopted an inheritance tax with progressive rates on collateral heirs only.

In 1913 Georgia adopted a proportional tax (one per cent on direct heirs and five per cent on collateral heirs), Indiana and Nevada enacted laws similar to Wisconsin's while North and South Dakota switched to this type of inheritance tax. North Carolina reverted to a

proportional levy, and California increased its rates so that they reached as high as thirty per cent.

New Jersey added a progressive direct inheritance tax to her levies in 1914.

The following year Connecticut, Kansas, North Carolina and Oklahoma adopted progressive rates.

In 1916 Kentucky, Massachusetts and Virginia switched to rates progressive by brackets and according to relationship.

Also in 1916 Rhode Island started a new trend by adopting a combination estate and inheritance tax law. An estate levy of one-half of one per cent was imposed on the entire estate in addition to the inheritance tax, whose rate was from one-half to eight per cent. Other states had had estate taxes, e.g., Utah in 1905, but this was the first combination of estate and inheritance for the American states.

Pennsylvania and Vermont made direct inheritances taxable in 1917. Delaware, Missouri and Washington adopted progressive rates. In 1918 Virginia was added to the ever-growing list of states with progressive rates on inheritances. Mississippi enacted a combination estate inheritance tax in 1918, copying Rhode Island's law. The following year Oregon copied this same tax from Mississippi.

In 1919 New Hampshire adopted progressive rates which were found contrary to the constitution a few years later. Georgia, Michigan, Minnesota, North Dakota and Ohio enacted schedules similar to Wisconsin's. Wisconsin in 1921 increased her inheritance tax rates to as high as forty per cent. Four years later, however, the total tax on any one share was limited to fifteen per cent. Also in 1921, Colorado, Connecticut, Indiana, Iowa, Louisiana, Montana and West Virginia all enacted

inheritance taxes with progressive rates.

The following year Arizona adopted a law exactly like Wisconsin's before her latest increase in rates, and South Carolina entered the death tax field with a progressive levy on inheritances. In 1923 Arkansas, Montana, Texas and Washington adopted higher rates; Arkansas and Washington nearly equalled the 1921 Wisconsin levy.

Throughout this period rates in general were increased and the tax base was broadened as the states became more familiar with the tax and the courts viewed death levies with increasing favor. The realization of the need for elimination of multiple taxation was also begun.

Chapter III

HISTORY OF DEATH TAXES, 1924 TO DATE

A. United States Federal Government.

The Revenue Act of 1924 set estate tax rates varying from one per cent on the first fifty thousand dollars of the net estate to forty per cent on the amount over ten million dollars (See Table I).[1] However, these rates were lowered retroactively in 1926 so that the highest bracket was taxed at only twenty-five per cent.[2] The excess taxes collected at the higher rate were refunded. Fifty thousand dollars of each estate was exempt.[3] The estate was allowed a credit for state death taxes paid up to twenty-five per cent of the amount of the Federal estate tax.[4] This beginning of credits on death taxes, which have continued until the present time, was designed to effect uniformity in state death tax laws.

The first Federal gift tax (independent of other taxes) was enacted in 1924 and was effective for that calendar year.[5] The rates were identical with the estate tax rates (See Table II).[6] A fifty

1. United States Code Annotated, Title 26, Internal Revenue Code, Internal Revenue Acts, 1924 to Date, (St. Paul, West Publishing Company, 1940) p. 65.
2. Ibid., p. 66.
3. Ibid., p. 69.
4. Ibid., p. 67.
5. Gift Taxes are included in this study since they are usually considered a complement to death taxes and are integrated with them. Although Ohio does not have a gift tax at present; it seems necessary to include their development as part of the general background.
6. Ibid., p. 79.

TABLE I

Federal Estate Tax Rates, by Effective Period, June 2, 1924 to December 31, 1949

Portion of Net Estate Over:	But Not Over:	June 2, 1924 to Feb 25, 1926(a)	Feb 26, 1926 to June 5, 1932	June 6, 1932 to May 9, 1934	May 10, 1934 to Aug 27, 1935	Aug 30, 1935 to Sep 19, 1941(b)	Sep 20, 1941 to Dec 31, 1949
$ 0	$ 5,000	1%	1%	1%	1%	2%	3%
5,000	10,000	1	1	1	1	2	7
10,000	20,000	1	1	2	2	4	11
20,000	30,000	1	1	3	3	6	14
30,000	40,000	1	1	4	4	8	18
40,000	50,000	1	1	5	5	10	22
50,000	60,000	2	2	7	7	12	25
60,000	70,000	2	2	7	7	12	28
70,000	80,000	2	2	7	9	14	28
80,000	90,000	2	2	7	9	14	28
90,000	100,000	2	2	7	9	14	28
100,000	150,000	2	3	9	12	17	30
150,000	200,000	3	3	9	12	17	30
200,000	250,000	3	4	11	16	20	30
250,000	400,000	4	4	11	16	20	32
400,000	450,000	4	5	13	19	23	32
450,000	500,000	6	5	13	19	23	32
500,000	600,000	6	5	13	19	23	35
600,000	750,000	6	6	15	22	26	35
750,000	800,000	8	6	15	22	26	37
800,000	1,000,000	8	7	17	25	29	37
1,000,000	1,250,000	10	8	19	28	32	39
1,250,000	1,500,000	10	8	19	28	32	42
1,500,000	2,000,000	12	9	21	31	35	45
2,000,000	2,500,000	14	10	23	34	38	49
2,500,000	3,000,000	14	11	25	37	41	53

TABLE I (Continued)

Portion of Net Estate Over:	But Not Over:	June 2, 1924 to Feb 25, 1926(a)	Feb 26, 1926 to June 5, 1932	June 6, 1932 to May 9, 1934	May 10, 1934 to Aug 27, 1935	Aug 30, 1935 to Sep 19, 1941(b)	Sep 20, 1941 to Dec 31, 1949
$ 3,000,000	$ 3,500,000	16%	12%	27%	40%	44%	56%
3,500,000	4,000,000	16	13	29	43	47	59
4,000,000	4,500,000	18	14	31	46	50	63
4,500,000	5,000,000	18	14	33	48	53	63
5,000,000	6,000,000	20	15	35	50	56	67
6,000,000	7,000,000	20	16	37	52	59	70
7,000,000	8,000,000	20	17	39	54	61	73
8,000,000	9,000,000	22	18	41	56	63	76
9,000,000	10,000,000	22	19	43	58	65	76
10,000,000	20,000,000	25	20	45	60	67	77
20,000,000	50,000,000	25	20	45	60	69	77
50,000,000		25	20	45	60	70	77

(a) Rates originally were higher but were changed retroactively in 1926.
(b) From June 26, 1940, to September 19, 1941 a special defense levy equal to ten per cent of the amount of the tax was added to the regular tax.

Source: United States Code Annotated, Title 26, Internal Revenue Code.

TABLE II

Federal Gift Tax Rates, by Effective Period (Calendar Years), 1924 to 1949

Portion of Net Gifts in Calendar Year — Over:	But Not Over:	1924, 1925(a)	1932(b)-1934	1935	1936-1941(c)	1942-1949
$ 0	$ 5,000	1%	0.75%	0.75%	1.50%	2.25%
5,000	10,000	1	0.75	0.75	1.50	5.25
10,000	20,000	1	1.50	1.50	3.00	8.25
20,000	30,000	1	2.25	2.25	4.50	10.50
30,000	40,000	1	3.00	3.00	6.00	13.50
40,000	50,000	1	3.75	3.75	7.50	16.50
50,000	60,000	2	5.00	5.25	9.00	18.75
60,000	70,000	2	5.00	5.25	9.00	21.00
70,000	100,000	2	5.00	6.75	10.50	21.00
100,000	200,000	3	6.50	9.00	12.75	22.50
200,000	250,000	4	8.00	12.00	15.00	22.50
250,000	400,000	4	8.00	12.00	15.00	24.00
400,000	500,000	5	9.50	14.25	17.25	24.00
500,000	600,000	5	9.50	14.25	17.25	26.25
600,000	750,000	6	11.00	16.50	19.50	26.25
750,000	800,000	6	11.00	16.50	.19.50	27.75
800,000	1,000,000	7	12.50	18.75	21.75	27.75
1,000,000	1,250,000	8	14.00	21.00	24.00	29.25
1,250,000	1,500,000	8	14.00	21.00	24.00	31.50
1,500,000	2,000,000	9	15.50	23.25	26.25	33.75
2,000,000	2,500,000	10	17.00	25.50	28.50	36.75
2,500,000	3,000,000	11	18.50	27.75	30.75	39.75
3,000,000	3,500,000	12	20.00	30.00	33.00	42.00
3,500,000	4,000,000	13	21.50	32.25	35.25	44.25
4,000,000	4,500,000	14	23.00	34.50	37.50	47.25
4,500,000	5,000,000	14	24.50	36.00	39.75	47.25
5,000,000	6,000,000	15	26.00	37.50	42.00	50.25
6,000,000	7,000,000	16	27.50	39.00	44.25	52.50

TABLE II (Continued)

Portion of Net Gifts in Calendar Year		1924, 1925(a)	1932(b)-1934	1935	1936-1941(c)	1942-1949
Over:	But Not Over:					
$ 7,000,000	$ 8,000,000	17%	29.00%	40.50%	45.75%	54.75%
8,000,000	9,000,000	18	30.50	42.00	47.25	57.00
9,000,000	10,000,000	19	32.00	43.50	48.75	57.00
10,000,000	20,000,000	20	33.50	45.00	50.25	57.75
20,000,000	50,000,000	20	33.50	45.00	51.75	57.75
50,000,000		20	33.50	45.00	52.50	57.75

(a) Rates originally were higher, but were changed retroactively in 1926.
(b) Began June 6, 1932.
(c) During the calendar year 1941 a special defense levy equal to ten per cent of the amount of the tax was added to the regular tax.

Source: United States Code Annotated, Title 26, Internal Revenue Code.

thousand dollar exemption was allowed annually, and, in addition, gifts to one person up to five hundred dollars per year were excluded from the tax.[1] The gift tax rates were also lowered in 1926, effective in 1924.[2] The gift tax was repealed in 1926 and was only effective in 1924 and 1925.[3]

Estate tax rates were lowered again in 1926; they then ranged from one to twenty per cent.[4] The credit for state taxes was increased to eighty per cent,[5] and the exemption was raised to one hundred thousand dollars.[6]

No further, important changes were made in the estate tax until 1932. In the revenue act of that year an additional levy was made equal to the difference between a tentative tax and the tax as computed under the 1926 rates. The tentative tax rates varied from one to forty-five per cent.[7] The exemption was reduced to fifty thousand dollars for the tentative tax, but remained at one hundred thousand for computation of the tax at the 1926 rates in order to determine the amount of the credit allowed for death taxes of the state; this credit was kept at eighty per cent of the amount under the 1926 rates.[8] Thus, in effect, the credit allowed was reduced relatively, when compared with the total Federal tax levied.

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1. Ibid., p. 81.
2. Ibid., p. 262.
3. Ibid., p. 262.
4. Ibid., p. 225.
5. Ibid., p. 226.
6. Ibid., p. 236.
7. Ibid., p. 573.
8. Ibid., p. 578.

The gift tax was revived in 1932, effective for that calendar year. The rate was from three-fourths of one per cent on the amount less than ten thousand dollars to thirty-three and one-third per cent of the amount above ten million dollars.[1] The procedure for computing the tax was as follows: The rates were applied to the total amount of gifts given by a person in 1932 and succeeding years including the current year, less the fifty thousand dollar exemption. From this result was subtracted the amount obtained by applying the tax rates to the total amount of gift given in 1932 and succeeding years prior to the current year, less the fifty thousand dollar exemption.[2] The difference was the amount of the current year's tax. In all computations gifts not exceeding five thousand dollars to any one person in any one year were excluded.[3]

Estate tax rates were increased again in 1934; the rate in the highest bracket was increased to sixty per cent.[4] At the same time gift tax rates were raised; net gifts in excess of ten million dollars were taxed at forty-five per cent.[5] The gift tax changes were effective beginning in 1935.

In 1935 the exemptions for gift and estate taxes were lowered to forty thousand dollars.[6] Estate tax rates were upped to two per cent on the first ten thousand dollars and to seventy per cent on the amount of the net estate in excess of fifty million dollars.[7] Gifts

1. Ibid., p. 581.
2. Ibid., p. 586.
3. Ibid., p. 585.
4. Ibid., p. 761.
5. Ibid., p. 773.
6. Ibid., pp. 805, 808.
7. Ibid., p. 803.

were taxed at one and one-half per cent and fifty-two and one-half per cent on the lowest and highest brackets respectively.[1] Again, the new gift tax provisions began in the following year. The maximum amount of gifts to one person annually which could be untaxed was lowered to four thousand dollars in 1938, effective in 1939.[2]

In 1940 estate and gift taxes, along with many other taxes, were subject to special defense increases, originally to be effective for five years. In the case of estate and gift taxes this increase was ten per cent of the amount of the regular tax.[3] In 1941 this special tax was repealed.[4] The increase was effective from June 26, 1940, to September 19, 1941, for the estate tax, and applied to gifts made during the calendar year 1941 only.

At the same time (September 20, 1941) the estate tax rates were increased so that the first five thousand dollars of the net estate was subject to a three per cent levy and the amount above ten million dollars was taxed at seventy-seven per cent.[5] Gift tax rates were two and one-fourth and fifty-seven and three-fourths per cent for the same brackets, effective in 1942.[6]

In 1942 the estate tax exemption was raised to sixty thousand dollars, and the gift tax exemption was changed to thirty thousand

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1. Ibid., p. 806.
2. Ibid., p. 1139.
3. United States Code Annotated, Title 26, Internal Revenue Code, Internal Revenue Acts, Beginning 1940 (St. Paul, West Publishing Company, 1946), p. 13, 14.
4. Ibid., pp. 117, 118.
5. Ibid., p. 116.
6. Ibid., p. 117.

dollars with annual gifts of three thousand dollars per person being exempt from the tax.[1] No further important changes were made up to the time of this study.

The Present Federal Estate and Gift Taxes.[2]

At present (December 31, 1949) the Federal estate tax has the same rates that were enacted in 1941 (Table I). These consist of the 1926 rates plus an additional schedule of rates. The rates are applied to the net estate which is the gross estate less certain deductions.

The gross estate of a decedent is "the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States".

The gross estate includes transfers in contemplation of death, revocable transfers, the decedent's share of community property and life insurance payable to the estate.

Transfers in contemplation of death are transfers in which the decedent, until death or a time fixed with reference to or after his death, retains "(1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right either alone or in conjunction with any person, to designate the person who shall possess or enjoy the property or the income therefrom". Transfers within two years of death are deemed in contemplation of death unless proved otherwise.

1. Ibid., pp. 340, 342, 343.
2. Source is the United States Code Annotated, Title 26, Internal Revenue Code, (St. Paul, West Publishing Company, Current), Section 810 ff., and all quotations are from that source.

The size of the gross estate is also affected by the time at which it is assessed. The executor may have the estate valued as at the time of death or one year later.

The net estate, to which the tax rates are applied, is determined by deducting certain items from the gross estate.

An exemption of sixty thousand dollars is allowed on the entire estate.

Expenses, losses, indebtedness and taxes of the estate are deductible.

Transfers for public, charitable and religious purposes are excluded.

Any property which has been subject to Federal Estate or gift taxes within the preceding five years are exempt from the estate taxes.

After the tax rates are applied to the net estate a credit for death taxes paid to the various states on the same property is allowed up to eighty per cent of amount of basic tax (not the additional levy); these are the rates set in 1926.

Non-resident decedents who are not citizens of the United States are allowed a two thousand dollar exemption (instead of sixty thousand dollars).

Various interest and penalties are provided for late or deficient payment of the tax. The interest rate is usually six per cent if there is no fraud (four per cent if the payment date has been extended); but fifty per cent of the amount of the tax is added in the case of false or fraudulent returns.

When reversionary or remainder interests are included in the

estate, tax payment on this portion of the estate may be deferred until six months after settlement of these interests if the executor wishes.[1]

The above provisions are the main terms of the present law; other clauses stipulate various administrative procedures and other minor conditions.

The gift tax rates are the ones enacted in the Revenue Act of 1941 (See Table II). The tax is calculated on the total gift from 1932, through the current year, and on the total gifts from 1932 through the year preceding the current year; the difference is the current year's tax. A thirty thousand dollar exemption is permitted in both computations.

Gifts to any one person up to the amount of three thousand dollars annually are excluded. Gifts to charities are also not taxed.

Gifts of community property are taxable one-half to each spouse, and transfers for less than full consideration are treated as gifts to the extent that the remuneration was insufficient.

Taxpayers must file a return and pay the tax for the preceding year by March fifteenth. Penalties and interest are the same as in the estate tax.

B. States of the United States.[2]

With the adoption of the credit provision by the Federal

1. A revisionary or remainder interest is an interest in property which will revert to or become part of the estate in event of certain contingencies, e.g., the remainder from someone's life estate after his death.
2. Source of this section is Proceedings of Annual National Conference on Taxation, (New York, National Tax Association), various volumes. See Bibliography for exact volumes and pages.

Government a pattern for state death taxation was established. After 1924 most states adopted taxes which would absorb the full credit allowed, and, in many cases, just that amount. A certain degree of uniformity in death taxes was thus established.

There was also a trend toward the elimination of multiple taxation; tangible property, in general, was taxed at its situs and intangible property was taxed at the decedent's residence. In addition, there was a further broadening of the tax base to include successions previously untaxed; however, there were provisions made for charitable bequests. Tax rates increased generally. A more detailed account of the changes since 1924 follows.

1924 - Kentucky increased its inheritance tax rates and put them on a progressive principle. The size of exemptions was also changed. This was the first state to adopt the second Model Law of the National Tax Association. Mississippi adopted an estate tax conforming to the Federal estate tax. Rates were from one to ten per cent. Virginia made slight changes in the rates and provided a maximum of four million dollars for the total tax on any one estate. Florida amended her constitution to prohibit inheritance taxes.

1925 - Georgia switched from an inheritance tax to an estate tax just equal to the credit allowed by the Federal estate tax, *i.e.*, one-fourth of the rate. Michigan increased exemptions for lineal descendants, and provided for the taxation of transfers of real estate at three-fourths of the regular rates. Nevada repealed its inheritance tax law.

New Hampshire dropped what progression there was in the rates and levied a five per cent tax on all property transferred by will; direct heirs were exempted. Wyoming also adopted a flat rate.

New York amended its death tax laws so that resident decedents were taxed under the old inheritance tax law and also under an estate tax on the amount of the estate in excess of one million dollars. The total tax was limited to one-fourth of the Federal estate tax. Non-residents were taxed on real estate, tangible personal property and intangible personal property used in business under the inheritance tax at a proportional rate. Personal property was exempt for residents of states which exempted New York residents under similar conditions.

North Carolina increased its rate on all classes of beneficiaries. Pennsylvania adopted a tax at one-fourth of the Federal rates to be applied when the regular inheritance tax failed to equal the full credit allowed by the United States Government.

Tennessee introduced an exemption from its tax of property which had been taxed under death or gift taxes during the preceding five years in order to prevent over-burdening of estates which were transferred more than once in a short period of time. Wisconsin limited the amount of its inheritance tax to fifteen per cent of the total amount of property transferred.

1926 - Since the amount of credit allowed under the Federal Estate tax was extended to eighty per cent in 1926, much legislation in the states followed in order to take advantage of the increased credit. Georgia, Massachusetts, Rhode Island and Virginia adopted

the necessary measures for this purpose in 1926.

Kentucky increased rates and adopted certain reciprocal provisions. Massachusetts broadened its tax base, including real estate and tangible personal property; and providing for reciprocal exemptions of intangible personalty of non-residents.

Mississippi lowered the amount of exemptions to five thousand dollars for the widow and each child with a minimum exemption of twenty-five thousand dollars for every estate.

New Jersey and Rhode Island increased rates while Virginia added real estate and tangible personal property of non-residents to its tax base.

1927 - California, Georgia, Illinois, Maine, Maryland, Massachusetts, New Hampshire, Ohio and Oregon continued the adoption of recoprocity provisions for non-residents' transfers of property situated in these states.

Legislation to take full advantage of the Federal eighty per cent credit provision was enacted in California, Colorado, Delaware, Missouri, Montana, Ohio, Pennsylvania and Vermont. Meanwhile, Arizona, Indiana, Maryland, Nevada, North Dakota, Vermont and Wyoming went on record against a Federal Estate Tax.

Georgia instituted a proportional rate on the property of non-resident decedents. New Jersey and Oklahoma increased rates.

The Court of Appeals of New York declared the flat-rate non-resident inheritance tax of that state unconstitutional and part of the same act, providing reciprocity for the tax on intangibles of non-

residents, became inoperative.[1]

North Dakota replaced its inheritance tax with an estate tax having rates somewhat below eighty per cent of Federal rates.

1928 - Mississippi adjusted its estate tax so as to absorb the full Federal credit and, along with New York and Virginia, improved its reciprocity provisions.

North Carolina's courts held that the state's estate and inheritance taxes could not be credited against one another, but were in addition to each other.[2]

1929 - The trend toward reciprocity between states continued as sixteen states adopted some kind of reciprocal provisions.

Maryland, Michigan and Nebraska adopted additional taxes to absorb the full eighty per cent Federal credit; Iowa enacted an estate tax with rates equal to eighty per cent of the Federal estate tax rates.

Arkansas and West Virginia increased rates slightly while California, Idaho, Indiana and North Carolina made more substantial increases. On the other hand Washington lowered its rates, and Arkansas, California and Indiana increased the exemption amounts.

1930 - Kansas levied an additional tax equal to the difference between eighty per cent of the Federal and the state's estate tax. The voters of Florida amended the constitution to permit the levy of an estate tax within the limits of the Federal credit provision.

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1. Smith v. Loughman, 245 New York 486, Decided July 20, 1927.

2. Hagood v. Doughton, 195 North Carolina 811, Decided June 23, 1928.

1931 - Several more states increased their rates in 1931 and 1932, while a few states lowered them. Alabama amended her constitution to limit inheritance taxes just to the amount of the Federal credit.[1]

1932 - Florida and Alabama adopted estate taxes as permitted by their constitutions. This left Nevada as the only state without some form of death taxation.

1933 - Oklahoma, Texas and West Virginia absorbed the Federal credit. Rates were increased in Colorado, Massachusetts, North Carolina, Oregon, New York and Wisconsin; exemptions were raised in Wisconsin and lowered in New York, North Dakota and West Virginia. Further reciprocal provisions were enacted by Connecticut, Maine, Massachusetts, New Hampshire, Ohio and Pennsylvania. Oregon and Wisconsin became the first states to levy a gift tax.

1934 - Montana doubled its rates, and Montana and New Jersey imposed an additional tax for the Federal credit. Mississippi and Virginia reduced exemptions, and Mississippi set up reciprocal provisions. A gift tax was enacted by Virginia.

1935 - Rate increases were featured as twelve states increased rates and three lowered exemptions. Reciprocity was provided in North Carolina, Oregon and Washington. Oklahoma changed from an inheritance tax to an estate tax.

1936 - Kentucky made a complete revision of its inheritance

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1. Amendment 23 to the Constitution of Alabama.

tax law, adopting reciprocity, higher rates and provision to absorb the Federal credit. South Carolina also absorbed the eighty per cent allowance.

1937 - Rates were increased by Connecticut, Minnesota and New Hampshire, while Arizona switched from inheritance to estate taxation. Reciprocity provisions were enacted by California, Colorado and Michigan. Colorado, Minnesota and North Carolina were added to the three states already levying gift taxes.

1938 - No significant changes.

1939 - California and Tennessee adopted gift taxes. An appeal for greater credit allowances was made with a memoralization of Congress by the New Jersey legislature.

1940 - Alabama and Louisiana enacted reciprocal provisions, and Louisiana levied a gift tax. Mississippi and Rhode Island memorials called for a constitutional limitation on Federal death tax rates of twenty-five per cent.

1941 - Arkansas replaced its inheritance tax with an estate tax equal to eighty per cent of the Federal 1926 rates. Eleven states made some provisions for inter-state cooperation. Oklahoma and Washington began to tax gifts.

1942 - Rhode Island adopted a gift tax, and several new reciprocity provisions were instituted. Nevada amended her constitution to prohibit the levying of an inheritance tax.

1943 - Wisconsin increased rates temporarily by thirty per cent of the amount of tax under the regular rates. New Mexico enacted an estate tax to supplement its inheritance tax and levy the full amount

provided under the Federal credit allowance.

1944 - No significant changes.

1945 - Arkansas changed to an estate tax equal to the Federal credit, and New Mexico imposed an additional estate tax in order to obtain the full eighty per cent credit. Several states added reciprocal provisions. There were some changes in the amount of exemptions.

1946 - No significant changes.

1947 - Nebraska increased rates slightly.

1948 - No significant changes.

1949 - Massachusetts and Vermont made small increases in rates.

The Present State Inheritance, Estate and Gift Taxes.

As of December 31, 1949 all of the forty-eight states, except Nevada, levy some form of inheritance or estate tax. Twelve states have gift taxes.

Forty-two states levy an estate tax. Thirty-eight of these have rates that are eighty per cent of the Federal 1926 rates, designed to yield a tax equal to the full credit provided by the Federal Government. Most states levying this tax impose it as a levy in addition to another levy in order to take full advantage of the eighty per cent credit should the base levy yield a tax of a smaller amount. Eight states levy an estate tax different than the "eighty per cent" levies; four of these also levy an additional tax for the full Federal Credit and are also included in the thirty-eight states mentioned above. Thirty-six states have some form of inheritance tax.

The most common tax system is found in thirty-one states, an inheritance tax with an additional estate levy to increase the amount

of the tax to the amount of the eighty per cent credit if the tax otherwise would be less.

More precisely we can summarize the states systems, state by state, as follows:

The District of Columbia levies an inheritance tax with an additional estate levy for the eighty per cent credit.

Nevada has no death duties; a constitutional amendment of 1942 prohibits this form of taxation.

Alabama, Arkansas, Florida and Georgia have an estate duty with rates equal to eighty per cent of the 1926 Federal rates.

Mississippi, North Dakota, Oklahoma (also has gift tax) and Utah have an estate duty independent from the Federal credit provision.

Arizona, New York and Pennsylvania have an independent estate tax with an additional levy to absorb the full eighty per cent credit.

Idaho, Oregon (also has gift tax), South Dakota and West Virginia have inheritance taxes with rate progressive as to amount of inheritance and as to degree of relationship. Another twenty-seven states have inheritance taxes progressive as to amount and relationship of heir, and also an additional levy, if needed, to make the total tax at least as large as the amount of the Federal credit. Nine of these states also have gift taxes. The twenty-seven states are (* indicates gift tax): California*, Colorado*, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana*, Maine, Massachusetts, Michigan, Minnesota*, Missouri, Montana, Nebraska, New Jersey, North Carolina*, Ohio, South Carolina, Tennessee*, Texas, Vermont, Virginia*, Washington*, and Wisconsin*.

TABLE III

Amount of Death and Gift Taxes Levied by the United States Government and the Various State Governments, Octennially, 1924-1948

(In thousands of dollars)

Type of Tax	1924	1932	1940	1948
FEDERAL:				
Estate	$102,967	$ 47,422	$330,886	$ 822,380
Gift	- -	- -	29,185	76,965
Total	$102,967	$ 47,422	$360,071	$ 899,345
STATE (Estate, Inheritance and Gift)	79,308	149,416	112,996	180,855
GRAND TOTAL	$182,275	$196,838	$473,067	$1,080,200
Ohio only	3,352	5,167	6,681	8,658

Source: Ohio - Annual Reports of the Ohio Department of Taxation; Other-1924, 1932 and 1940 from Lutz, Harley L., Public Finance, Fourth Edition (Appleton-Century Company, Inc., 1947), p. 495, and 1948 from Tax Systems 1950, Twelfth Edition (Commerce Clearing House, Inc., 1950). (Both of the latter are Bureau of Census figures).

Maryland, New Hampshire, New Mexico and Wyoming have inheritance taxes with rates progressive as to relationship only; the first three states also have an additional levy for the Federal credit.

Rhode Island has an inheritance tax, an independent estate tax, an additional estate tax (for the Federal credit) and a gift tax.

Today all states except Nevada take advantage of the Federal eighty per cent credit provision. Many states probably have a higher rate than they would have if there were no Federal credit, but only a very few would have no levy; practically all of the states had some death tax before the beginning of the Federal credit. The most common tax system is an inheritance tax with an additional levy to absorb the full amount of credit in event the regular tax does not.

Chapter IV

THE DEVELOPMENT OF THE INHERITANCE TAX IN OHIO[1]

The first bill to tax inheritances in Ohio was submitted to the Senate Committee on Taxation in 1889.[2] This bill provided for the taxing of collateral inheritances only. Peculiarly enough, strangers were exempt from the tax. One would expect that they would be taxed before collateral relatives. The bill provided for a five per cent tax on the amount of the inheritance over one thousand dollars. It was not enacted into law.

In 1892 Mr. Holcomb introduced an inheritance tax bill into the House of Representatives of Ohio. It was brought to a vote on April 5th in the House and carried 60 to 18.[3] However, adjournment of the General Assembly within two weeks prevented action by the Senate. Early in the following session, however, the Holcomb Bill was passed and became law on January 27, 1893.[4]

The Act of 1893 provided for a 3 1/2% rate on the amount of property transferred in excess of $10,000.[5] It should be noted that the tax was actually on the property, not on the right to transfer or

1. For the history of the inheritance tax in Ohio until 1922, I am deeply indebted to L. Edwin Smart whose master's thesis, The Development of the Taxation of Inheritances in Ohio, (Ohio State University, 1923) served as an excellent source and guide to the tax's development during that period.
2. Report of Committee Appointed under Senate Joint Resolution #26 to Investigate the Question of Taxation, 1889, pp. 12-13.
3. House Journal, 1892, p. 150.
4. 90 Ohio Laws 14.
5. 90 Ohio Laws 14, Section 1.

succeed to property. "Father, mother, husband, wife, brother, sister, niece, nephew, lineal descendant of any adopted child, the wife or widow of a son, or the husband of a daughter during life or for a term of years" were specifically excluded from the provisions of the act.[1]

Excessive compensation to executors, trustees or residuary legatees and annuities or life estates were taxable.[2]

The tax was payable to the county treasurer within one year with a 6% interest charge after that time.[3] Funds ultimately went to the State General Revenue Fund.[4]

The Act of 1893 was copied largely from a Connecticut statute in existence in 1892.[5] Except for the rate and amount of exemption, a Maine statute, enacted shortly afterward, was very similar to this Ohio law.

The same session of the General Assembly that passed the Holcomb Bill also provided for a Special Tax Commission.[6] The Commission made an excellent report on December 23, 1893. It recommended, in part:

> "b. A privilege tax on transfers of property by deed, mortgage or will, and upon appeals, writs of error, etc.
>
> c. An extension of the collateral inheritance tax to classes exempted by the present law, and an increase of the tax."[8]

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1. Ibid., section 2.
2. Ibid., sections 3 and 12.
3. Ibid., section 4.
4. Ibid., section 9.
5. West, Max, The Inheritance Tax., (Columbia University Studies, 1893-1894), pp. 89-91.
6. 90 Ohio Laws 385.
7. Report of Tax Commission of Ohio of 1893.
8. Ibid., p. 70.

The first recommendation quoted, actually a recordation tax, was based on the benefit theory; and would presumably not have a graduated rate. The case for no graduated rate has been well stated as follows:

> "The principle of graduation need not be applied as it does not necessarily follow that a large estate will require more time on the part of the county probate court than a small one. In fact, in many cases the reverse is more likely to be true. Those having large estates usually dispose of them by will before death while those possessing small estates let them pass by the intestate laws of the state. Certainly the courts have more to do in the latter than in the former case."[1]

The Commission recognized inheritance as a privilege, not a right, and stated:

> "The whole body of rules which regulate inheritance and bequest are the creation of positive statutory law. There is no natural law either of bequest or inheritance. When a man acquires property in either of these ways, he does so by virtue of a privilege conferred by the state."[2]

The Commission then advocated the inheritance tax as a substitute for the intangible property tax:

> "The tax upon inheritances is another means of reaching personal property which otherwise escapes. It is to be approved because (it R.B.C.) is an effective substitute for the tax upon intangible property. It does not, of course, follow that it is either technically a tax on property. Technically speaking, it is a privilege tax upon the civil rights conferred by the statute."[3]

In 1894 the General Assembly enacted a graduated direct inheritance tax law.[4] The following beneficiaries were included as taxable

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1. Smart, L. E., _op. cit._, p. 27.
2. _Report of Tax Commission of 1893_, pp. 61-62.
3. _Ibid._, p. 62.
4. _91 Ohio Laws_ 166.

under the new act:

> "Father, mother, husband, wife, brother, sister, niece, nephew, lineal descendant, adopted child, or person recognized as an adopted child or made legal heir * * ** *, or the lineal descendant thereof, the lineal descendant of any adopted child, the wife or widow of a son, the husband of a daughter of decedent, or to any one in trust for such person or persons."[1]

It is interesting to note that grandparents were not included. Though of little practical effect, it would seem that they should be included as direct heirs. The tax was again on the property itself, not the right to succeed to property.

All estates of twenty thousand dollars or less were exempt from the tax. However, estates exceeding twenty thousand dollars were taxable on the whole amount of the inheritance. The rates were as follows:[2]

Value of Entire Estate	Rate on Entire Estate
Over $ 20,000 but not over $ 50,000	1%
Over 50,000 but not over 100,000	1 1/2
Over 100,000 but not over 200,000	2
Over 200,000 but not over 300,000	3
Over 300,000 but not over 500,000	3 1/2
Over 500,000 but not over 1,000,000	4
Over 1,000,000	5

Since the rates were applied to the estate rather than each separate inheritance this act was actually an estate tax.

Revenue from the tax was distributed 75% to the state and 25% to county of origin; costs were shared in the same ratio.[3]

On the same day as the direct inheritance tax was passed, the

1. Ibid., section 1.
2. Ibid., section 1.
3. Ibid., section 12.

collateral inheritance tax (applying to all persons not included in the direct inheritance tax) was reenacted.[1] The rate was changed to 5% on the amount of the succession in excess of two hundred dollars; and the distribution of the revenues was made the same as in the direct inheritance tax law.

When the direct inheritance tax was being considered by the General Assembly, the bill's enemies made sure that the twenty thousand dollars was not exempt on estates larger than that amount.[2]

With this provision in the act, the law was declared unconstitutional on June 27, 1895, by the Supreme Court of Ohio.[3] The Court conceded that the tax was on the right to succeed and not on the property itself, but held the act invalid with the following reasoning:

> "Section 2 of the bill of rights (of the Ohio Constitution - R.B.C.) provides as follows: 'All political power is inherent in the people, Government is instituted for their equal protection and benefit'.
>
> "The statute is indirect conflict with this section of the bill of rights. If government is instituted for the equal protection and benefit of the people, it follows that laws which are passed under a government so instituted, must likewise be for the equal protection and benefit of the people. This statute fails to protect equally the people who exercise the right and privilege of receiving or succeeding to property. The right to receive the first twenty thousand dollars of an estate not exceeding that sum, is protected from taxation, while the right to receive the first twenty thousand dollars of an estate exceeding that sum is taxed the sum of two hundred dollars. This is not equal protection. Again, the right to receive fifty thousand dollars worth of property of an estate not exceeding that sum is taxed five hundred dollars, while the right to receive

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1. 91 Ohio Laws 169.
2. West, Max, *op. cit.*, p. 136.
3. *State of Ohio, ex rel.* v. Ferris, 53 Ohio State 314.

fifty thousand dollars of an estate exceeding that sum is seven hundred and fifty dollars. This is not equal protection. The same may be said of the other graduations provided for in the statute.

"The right or privilege of receiving or succeeding to property is valuable in proportion to the value of the property received. It cannot be consistently said that the right to receive twenty thousand dollars is of no value, and that the right to receive twenty thousand and one dollars is of the value of two hundred dollars and one cent.

"Again, he who uses the right or privilege of receiving property of the value of twenty thousand and one dollars, and pays therefor a tax of two hundred dollars and one cent is not equally benefited for the tax paid, as he who uses the same right or privilege of receiving property of the value of twenty thousand dollars, without paying any tax whatever for the use of such right. The exemption of twenty thousand dollars, and the increase of the per cent as the value of the estate increases, renders this statute unconstitutional."[1]

The court's objection seemed not to be on exemption and graduated rates themselves, but on the type of graduation and exemption used in this statute. Thus, the inheritance tax was not objected to because it was not in accord with the uniform rule of property taxation. The tax was not a property tax, and therefore not subject to the uniform rule. The sole objection was the inequality of the tax.

With the direct inheritance tax held invalid, the General Assembly provided for a refunding of taxes collected under the act.[2] The Collateral Inheritance tax, since it was a separate act, was still effective.

In 1900 the legislature amended the collateral inheritance tax

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1. Ibid., pp. 336 and 337.
2. 92 Ohio Laws 374 and 93 Ohio Laws 95.

law to exempt transfers to certain public and charitable institutions.[1] On April 6 of that year transfers to the State of Ohio, municipal corporation or political subdivision thereof for public purposes, public institutions of learning, institutions for purposes of purely public charity,[2] were exempt.

At first out-of-state institutions were not included in this exemption provision; however, late in 1922 the Supreme Court of Ohio reversed previous decisions and ruled that out-of-state institutions were also exempt if they qualified according to the other provisions of the exemption amendment.[3]

On April 25, 1904, another attempt, this time successful, was made to levy a direct inheritance tax.[4] This time the objectionable and inequitable exemption and graduated rate provisions were eliminated. A proportional rate of 2% on the amount of the inheritance in excess of three thousand dollars was levied.[5]

This time the tax was levied specifically on the right to succession and not on the property itself.[6]

A discount for early payment of the tax of 1% for each month prior to the one year deadline was incorporated in the act.[7] All revenues went to the state; none to local governments.[8]

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1. 94 Ohio Laws 101.
2. Ibid., section 1.
3. The President and Fellows of Harvard College, et al., v. The State of Ohio, 106 Ohio State 303.
4. 97 Ohio Laws 398.
5. Ibid., section 1.
6. Ibid., section 1.
7. Ibid., section 2.
8. Ibid., section 6.

This act was upheld by the Supreme Court of Ohio which came to the following conclusions:

> "1. The power to impose taxes is a legislative power, and is vested in the general assembly by section one of article two of the constitution.
>
> "2. Section two of article twelve is a limitation upon the taxing power so far as the same applied to taxation of property, both as to the method of taxation and the character and amount of property which may be lawfully exempted from taxation, and furnishes the governing principle for all laws authorizing taxes for general revenue upon property. But this section has no application to taxes known as excise taxes.
>
> "3. The act of April 25, 1904, entitled 'An act to impose a tax upon the right to succeed to or inherit property'; being a tax not upon property but upon the right to inherit or succeed to property, the power to enact the same is not affected by the limitations of section two of article twelve of the constitution. Such right is derived from and regulated by municipal law; it arises from the relation of the individual to the state, and is not an inherent or constitutional right. It follows that in assessing a tax upon such right or privilege, the state may lawfully measure or fix the amount of the tax by referring to the value of the property passing, and is not precluded from this power by the provision of the constitution requiring uniformity and equality of taxation.
>
> "4. An excise tax which operates uniformly throughout the state, and bears equally upon all persons standing in the same category, does not deprive any of the equal protection of the laws.
>
> "5. The act of April 25, 1904, is not in conflict with the constitution or bill of rights because of the exemption therein contained, and is a valid law."[1]

At the request of Governor John M. Pattison who believed it was the people's will, the direct inheritance tax was repealed on April 16, 1906.[2] The repealing act provided that estates for which the inventory

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1. State of Ohio v. Guilbert, 70 Ohio State, pp. 254 and 255.
2. 98 Ohio Laws 229.

had already been filed would still be liable to the tax. This provision was invalidated by the courts in February, 1907.[1]

Two amendments to the Ohio Constitution affecting inheritance taxation were proposed by the Constitutional Convention of 1912, and were subsequently approved by the voters of the state.

The first amendment expressly permitted a graduated rate and an exemption limitation. This amendment, Article XII, Section 7 of the present Constitution states:

> "Laws may be passed providing for the taxation of the right to receive, or to succeed to, estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation."[2]

According to a Supreme Court ruling the twenty thousand dollar exemption applies to each share of the estate not the estate as a whole.[3]

The second amendment is Section 9 of Article XII of the state's constitution. It states:

> "Not less than fifty per centum of the income and inheritance taxes that may be collected by the state shall be returned to the city, village or township in which said income or inheritance tax originate."[4]

Subsequently, the question of which local government was the local government of origin arose. The Supreme Court decided that the origin in the case of real property was where the property was located, even if

1. Friend v. Levy, 76 Ohio State 26.
2. Constitution of the State of Ohio, Article XII, Section 7.
3. The President and Fellows of Harvard College, et al, v. The State of Ohio, 106 Ohio State 303.
4. Constitution of the State of Ohio, Article XII, Section 9.

executors have the power of sale.[1] New York courts made the same ruling for tangible personal property.[2]

In 1913 the collateral inheritance tax was amended in order to bring it up to date with the changes in the Ohio Constitution proposed by the Constitutional Convention of 1912 and approved by the voters.

The revenue distribution was changed to 50% for the state and 50% for the city, village, or township of origin.[3]

The rate was set at 5% with a five hundred dollar exemption.[4]

Exempt from the tax were "Father, mother, husband, wife, lineal descendant or adopted child."[5] Thus the field of exempt persons was narrowed somewhat.

With the advent of prohibition in 1919, Ohio was faced with a large loss in liquor revenue. In order to at least partially replace this loss the Inheritance tax of 1919 was enacted; this brought the law into a form very similar to the present statutes.[6]

The 1919 act provided that the tax would be levied on successions to property passing in the following cases:[7]

1. By will or intestate laws of Ohio if decedent is resident of Ohio at death.
2. When property is located in Ohio.

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1. The Village of Belle Center, et al. v. The Board of Trustees of Roundhead Township, et al., 99 Ohio State, pp. 51-56.
2. Matter of Estate of Romaine, 127 New York 80.
3. 103 Ohio Laws 463.
4. 103 Ohio Laws 463.
5. 103 Ohio Laws 463.
6. 108 Ohio Laws 561.
7. Ibid., section 5332.

3. When transfer is made in contemplation of death or to take effect at death without valuable consideration substantially equivalent to value of property.
4. When transfer is made through power of appointment.
5. When property is owned jointly and passes to survivor, entire amount is taxable.
6. When there is excessive compensation to executives.
7. When succession is determined by death or at time fixed with reference to death.

Property in another state is exempt to the extent it is taxed in the other state.[1]

The following transfers are exempt;[2] "Property passing to or for the use of the state of Ohio, or to or for the use of a municipal corporation or other political subdivision thereof for exclusively public purposes, or public institutions of learning, or to or for the use of an institution for purposes only of public charity, carried on in whole or in substantial part within this state."

The rates and exempt amounts were:[5]

Successor	Exemption	Rate: First $25,000 above exemption	Rate: Next $75,000	Rate: Next $100,000	Rate: Balance
1. Wife or minor child	$5,000	1%	2%	3%	4%
2. Parent, husband, adults or adopted child or lineal descendant	3,500	1	2	3	4
3. Brother, sister, niece, nephew, wife or widow of son, husband of daughter, or child to whom decedent for not less than ten years was mutually acknowledged parent	500	5	6	7	8
4. Other	-	7	8	9	10

1. Ibid., Section 5333.
2. Ibid., Section 5334.
3. Ibid., Sections 5334 and 5335.

The discount of 1% per month for early payment was continued, and interest (8% if avoidable, 5% if unavoidable) was charged after one year.[1]

In keeping with the constitution 50% of inheritance tax revenues were left with local governments who were required to allot one-half of their share to their sinking fund, if any.[2]

This statute also provided that the tax's origin was where the property is located in the case of real estate and at the decedent's residence otherwise. The situs of out-of-state property was the decedent's residence also.

After 1919 further changes were made in the inheritance tax law as follows:

1923 -

Transfers to institutions of learning in other states were exempted if that state granted similar exemption to Ohio.[4]

In the same year any transfer of property without valuable consideration within two years of death was termed in contemplation of death and therefore taxable.[5] This was an effort to prevent evasion of the inheritance tax by gifts shortly before death.

At first the courts considered that the burden of proof was on the state in proving a transfer was in contemplation of death.[6] Later, on June 22, 1927, the burden of proof was placed on the transferee if

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1. Ibid., Section 5338.
2. Ibid., Section 5348-11.
3. Ibid., Sections 5348-13 and 5348-14.
4. 110 Ohio Laws 26, Section 5334.
5. Ibid., Section 5332-2.
6. In Re Weber, 24 Ohio Nisi Prius Reports, New Series 33.

the transfer was made within two years of death.[1]

1925 -

If a tax on an inheritance taxable in Ohio is paid to another state, a credit is allowed on the tax due in Ohio to the extent of the tax paid in the other state.[2]

1927 -

Successors to a non-resident decedent's property are allowed a part of the exemption as is represented by the ratio of the amount of the Ohio succession to the amount of the aggregate succession.[3] There is no tax on intangible personal property or tangible property not in the state of a non-resident decedent if the decedent's state grants similar relief to Ohio decedents.[4]

In case the exact amount of the tax can not be determined due to contingencies, the minimum amount may be paid, and certain approved bonds may be deposited in an amount sufficient together with the amount paid, to equal the maximum amount payable.[5]

An additional tax was levied in 1927 in order to take advantage of the eighty per cent credit provision of the Federal Estate Tax of 1926.[6]

For the purposes of this tax the origin of the tax was the residence of the decedent and rates were set at eighty per cent of Federal Estate Tax rates, which were:[7]

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1. Tax Commission v. Parker, 117 Ohio State 215.
2. 111 Ohio Laws 97.
3. 112 Ohio Laws 103.
4. 112 Ohio Laws 103.
5. 112 Ohio Laws 190.
6. 112 Ohio Laws 421.
7. 112 Ohio Laws 421.

Rate		Net estate exceeds		Does not exceed
1%	on the amount by which the net estate exceeds	$ -	and does not exceed	$ 50,000
2	"	50,000	"	100,000
3	"	100,000	"	200,000
4	"	200,000	"	400,000
5	"	400,000	"	600,000
6	"	600,000	"	800,000
7	"	800,000	"	1,000,000
8	"	1,000,000	"	1,500,000
9	"	1,500,000	"	2,000,000
10	"	2,000,000	"	2,500,000
11	"	2,500,000	"	3,000,000
12	"	3,000,000	"	3,500,000
13	"	3,500,000	"	4,000,000
14	"	4,000,000	"	5,000,000
15	"	5,000,000	"	6,000,000
16	"	6,000,000	"	7,000,000
17	"	7,000,000	"	8,000,000
18	"	8,000,000	"	9,000,000
19	"	9,000,000	"	10,000,000
20	"	10,000,000	"	

An exemption of $100,000 was allowed.

1929 -

Article XII, Section 9 of the Ohio Constitution was amended to include counties and school districts among the list of governments which might receive the local share of the inheritance tax.[1]

Uses to which local governments could direct their share of tax changed. A municipality was to divert one-half to sinking or bond retirement fund and the remainder to the general revenue fund; townships were to use revenue for general revenue fund or for road and bridge building fund if the Board of Trustees so directs.[2]

The personal exemption which had previously been taken out of the top bracket was set to be taken out of the first bracket, the one with the lowest rate.[3] Previously the exemption was subtracted from

1. Article XII, Section 9 of Ohio Constitution, Adopted November 4, 1929.
2. 113 Ohio Laws 85.
3. 113 Ohio Laws 512.

the entire inheritance and then the first $25,000 of the remainder was taxed at the lowest tax rate. Thus the exemption in effect was subtracted from the bracket with the highest tax rate, resulting in a greater tax saving on large inheritances. The new practice taxed the first $25,000 less the exemption at the lowest rate; thus the exemption was taken from the first bracket which had the same tax rate for a given class of successors, and resulted in an equal tax saving regardless of the size of the estate. For example, Widow A who received $40,000 and Widow B who received $400,000 would benefit from the two systems as follows: When the exemption is subtracted from the total inheritance, the former practice, A has $35,000 to which tax rates are applied, $25,000 at 1% and $10,000 at 2%; the exemption resulted in a tax saving of $100.00, 2% of $5,000 (the amount of the exemption). B has $395,000 to which the rates are applied, $25,000 at 1%, $75,000 at 2%, $100,000 at 3% and the balance, $195,000 at 4%. Thus the exemption results in a tax saving of $200.00, 4% of $5,000. Widow B with a larger estate, saved $100.00 more since her exemption was taken from a bracket with a higher rate.

Under the revised exemption policy the exemption is always subtracted from the lowest tax bracket, the first $25,000 of the inheritance. Widow A thus has $25,000 less the exemption of $5,000, _i.e._, $20,000 taxable at 1% and the remainder, $15,000, taxable at 2%. The tax saving as a result of the exemption is 1% of $5,000, or $50.00 of tax. Widow B has $25,000 less $5,000 ($20,000) taxable at 1%, $75,000 taxable at 2%, $100,000 at 3% and the balance, $200,000, at 4%. Her tax saving as a result of the exemption is 1% of $5,000, or $50., the same as Widow A.

Under the revised practice which is used today, the tax saving is the same for a given class of successors regardless of the size of the inheritance; and the inequities of the former system, which allowed greater exemption in tax dollars to larger inheritances, are eliminated.

In the same year the General Assembly provided that the following intangible personal property would be considered "within this state":[1]

(a) Stock in a corporation organized under laws of this state and national banking associations located within this state.
(b) Demand or time deposits in banks, etc., located in this state.
(c) Partnership property located in this state.
(d) Notes, etc., secured by mortgage of real estate located in this state.
(e) Coupon or registered bonds of Ohio Municipal corporations or private corporations organized under laws of this state.
(f) Personal property used in commercial transactions in this state.
(g) Interest or investment trusts with situs in this state.
(h) Any obligation for payment of money owed by Ohio person or corporation.
(i) All other intangible personal property within the jurisdiction of the state.

1931 -

Life insurance proceeds unless payable to decedent's estate were exempted from the tax.[2]

1933 -

Permission was granted to municipal corporations or townships to issue bonds, with the approval of the Bureau of Inspection and Supervision of Public Offices, to raise money to make refund payments to estates which paid excess inheritance taxes due to contingencies.[3]

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1. 113 Ohio Laws 682.
2. 114 Ohio Laws 94.
3. 115 Ohio Laws 52.

1938 -

Local governments were permitted to use excess inheritance tax receipts for poor relief during 1938 and 1939.[1]

1939 -

The General Assembly provided that all of the local governments' share of the inheritance tax would go to the general revenue fund of the locality except in municipalities which are in default with either principal or interest of any outstanding notes or bonds.[2] In these municipalities one-half of inheritance tax receipts would go to the sinking or bond retirement fund and the remainder to the general revenue fund.

In the same year public non-profit hospitals were added to the list of institutions exempt from the inheritance tax.[3]

1941 -

It was enacted that no tax would be levied on transfers of intangible personal property of a non-resident unless the property was used by him in commercial transactions in Ohio.[4]

We have traced the development of the inheritance tax from its initiation in 1893 as a tax on collateral relatives to its present, more inclusive, form. An outline of the present law is given in the following chapter.

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1. 117 Ohio Laws 858.
2. 118 Ohio Laws 42.
3. 118 Ohio Laws 365.
4. 119 Ohio Laws 436.

Chapter V

THE PRESENT INHERITANCE TAX LAW IN OHIO[1]

The present Ohio Inheritance Tax Law is contained in the General Code, Sections 5331 to 5348-16. A brief summary of its provisions is presented in this chapter.

Definition of Terms:

The statutes defined certain terms as follows:[2]

Estate and property include "everything capable of ownership, or any interest therein or income therefrom, whether tangible or intangible, and, except as to real estate, whether within or without this state which passes to any one person, institution or corporation, from any one person whether by a single succession or not".

Succession means "the passing of property in possession or enjoyment, present or future".

Within this state: Tangible property, physically located within this state; intangible property, see page 73 above.

Decedent includes "a testator, intestate, grantor, assignor, vendor or donor".

Contemplation of death means "that expectation of death which actuates the mind of a person on the execution of his will". (Further

1. The source of this chapter is Page's Ohio General Code, Lifetime Edition as of December 31, 1949, and all material, unless stated otherwise, is from the indicated section number of that code.
2. Section 5331.

definition of "contemplation of death" is provided in the conclusions of the Supreme Court of Ohio on April 4, 1945, which stated: "The purpose of the transferor to distribute or partially distribute an estate or to do an act of generosity or kindness is the controlling test in determining whether a transfer of property is in 'contemplation of death'.[1] The court also decided that each transfer should be considered separately, and that providing for the needs of children is not a distribution of the estate).

Determination of Amount Taxable:

The tax is actually levied "upon the succession to any property passing, in trust or otherwise, to or for the use of a person, institution or corporation", in the cases outlined above.[2] Transfers within two years of death, without valuable consideration received, are deemed to be in contemplation of death and, therefore, taxable.[3] Any widow's or children's allowance in excess of three thousand dollars, is taxable on the excess amount,[4] and any property, which would otherwise be taxable, which is under the power of appointment of a non-resident is taxable.[5] Proceeds from life insurance policies, unless payable to the decedent's estate, are excluded from the taxable estate;[6] and intangible property of a non-resident is excluded, unless the property is used in business in the state.[7]

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1. In re Robinson, 145 Ohio State 55.
2. Sec. 5332; see page 67.
3. Sec. 5332-2.
4. Sec. 5332-1.
5. Sec. 5332-3.
6. Sec. 5332-4.
7. Sec. 5332-5.

Transfers to certain public and charitable institutions are exempt from taxation. The law states, "The succession to any property passing to or for the use of the state of Ohio, or to or for the use of a municipal corporation or other political subdivision thereof for exclusive public purposes, or public institutions of learning or any public hospital not for profit, within this state, or institution of learning or any public hospital not for profit within any state of the United States, which state does not impose an inheritance, estate or transfer tax on property given, devised or bequeathed by a resident thereof to an institution of learning, or any public hospital not for profit, within this state, or to or for the use of an institution for purposes only of public charity, carried on in whole or in substantial part within this state, or to an institution or organization not for profit and for the exclusive purpose of printing and distributing the Holy Bible, shall not be subject to the tax."[1] Unpaid property taxes are also deductible.[2]

In addition, certain classes of successors are allowed personal exemptions.[3] Transfers from non-resident estates are allowed a portion of the exemptions as is represented by the ratio of the Ohio succession to the total succession.[4]

Determination of the Amount of Tax:

Successions are taxable at rates ranging from 1% to 10% depending on the degree of relationship and size of succession.[5] In addition,

1. Sec. 5334.
2. Sec. 5342-2.
3. Sec. 5334; see page 68 for exact amounts.
4. Sec. 5334-1.
5. Sec. 5335; see page 68 for exact rates.

if these rates do not yield a tax at least equal to the Federal tax credit allowed, an additional tax equal to the difference between the yield of eighty per cent of the Federal 1926 rates and the yield of the inheritance tax is imposed.[1] The additional tax guarantees that Ohio will receive the full amount of the Federal credit on every estate.[2] In computing the additional tax the rules of the United States Revenue Act of 1926 are used.[3]

If an estate or inheritance tax has been paid in another state or country on the same property that is subject to the tax in Ohio, a credit is allowed for the tax paid to the other government to the extent of the Ohio tax payable on the property.[4]

If the tax payable is paid <u>prior to one year after</u> the death of the decedent, one per cent discount is allowed for each full month that the payment has been made prior to the expiration of one year.[5] After one year has expired any unpaid tax is subject to interest at 8% per annum unless litigation or other unavoidable cause delays the determination of the tax, in which case the interest is at 5% per annum. No discount is allowed on the additional tax, if any, and interest accrues from sixty days after determination of the Federal Estate Tax.[6]

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1. Sec. 5335-1 and 5335-3; see page 71 for rate schedule.
2. It is interesting to note that the additional tax is computed using a $100,000 exemption in direct violation of Article XII, Section 7 of the Ohio Constitution. The practice has not been challenged since there would be no tax saving to the taxpayer; he would merely pay more to the Federal government and less to the state.
3. Sec. 5335-2.
4. Sec. 5333.
5. Sec. 5338.
6. Sec. 5335-4.

Determination of Tax on Contingent Estates:

The value of a life income, annuity or future estate is determined by the Superintendent of Insurance by actuarial methods at a five per cent rate.[1] The present value of a remainder interest is equal to the difference between the entire estate and the value of the life estate or other estate created therein.[2] Estates held in abeyance are appraised at the time of actual transfer.[3]

When the exact amount of tax can not be determined due to contingencies, the tax is assessed at the highest possible rate and refund is granted, with three per cent interest, if subsequently the succession is actually taxable at a lower rate.[4] Or the minimum tax may be paid, and the remainder of the possible tax may be deposited in the form of certain approved securities with the County Treasurer.[5]

Procedure for Tax Assessment, Collection and Refund:

The executor of an estate must submit written notice to the Department of Taxation within thirty days after filing inventory and appraisement of the estate with the Probate Court.[6] Sixty days are allowed if there is no executor or administrator, and the deadline may be extended thirty days by the Tax Commissioner.

An application to determine the amount of inheritance tax must

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1. Secs. 5342 and 5342-3. In event of an annuitants death before other determination of value is made, the actual amount received is the value (Sec. 5342-4).
2. Sec. 5342-1.
3. Sec. 5344.
4. Secs. 5343 and 5343-1.
5. Sec. 5343-2.
6. Sec. 5345-3

be filed by the executor within one year of the decedent's death.[1] The Tax Commissioner may extend the period by six months, or may file the application himself, if the executor fails to do so.

Failure to give notice or file application without good cause is subject to a fine of 15% of the amount of tax; and false reports are penalized 25% of the tax; unless the Tax Commissioner cancels the penalty.[2]

The County Auditor appraises property subject to the inheritance tax and reports to the Probate Court and the Tax Commissioner.[3]

The Tax Commissioner or any other person may file exceptions to the appraisement or the amount of tax within sixty days.[4] The Probate Court holds a hearing within ten days thereafter and notifies the Tax Commissioner and County Auditor.

In all proceedings the Tax Commissioner is represented by the Attorney General and the County Auditor is represented by the Prosecuting Attorney.[5]

The Probate Court makes final determination of the value of the estate, amount of tax due and locality of origin; and sends notice to the interested parties.[6] The Probate Court is given jurisdiction over all questions arising under this act.[7]

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1. Sec. 5345-4.
2. Sec. 5345-5.
3. Sec. 5341.
4. Sec. 5346.
5. Sec. 5348-4.
6. Sec. 5345.
7. Sec. 5340.

If no exceptions are filed within sixty days, or five days after final determination the Court forwards a copy of the determination to the County Auditor who forwards the proper form to the County Treasurer for collection of the tax.[1]

The tax is paid to the County Treasurer.[2] It is a lien on the property; the property can not be transferred to the successor until the tax is paid or withheld by the executor.[3] Stocks or deposits can not be transferred by an institution unless the tax is withheld, the Tax Commissioner's permission is obtained or there is no knowledge of the death; the penalty may be the amount of tax plus five hundred to five thousand dollars.[4]

One copy of the receipt of payment is given the taxpayer and two copies are forwarded to the County Auditor who certifies the original to the Probate Court.[5] The court files the receipt with the docket of the estate which he is required to keep.[6]

If the tax is not collected within eighteen months the County Auditor notifies the Prosecuting Attorney who sues for collection in the Common Pleas Court.[7]

Refund of excess tax paid may be obtained if new debts are discovered or if the tax was levied at the highest rate pending certain

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1. Sec. 5347.
2. Sec. 5338.
3. Secs. 5336 and 5337.
4. Sec. 5348-2.
5. Sec. 5348-1.
6. Sec. 5348-7.
7. Sec. 5348-3.

contingencies and subsequently certain contingencies made the succession taxable at a lower rate or reduced the value of the estate.[1]

Distribution of Revenue:

Fifty per cent of inheritance tax revenues go to municipal corportion or township of origin and the remainder, less expenses, goes to the state general revenue fund.[2] The local governments' share is allotted as follows: In cities, all to general revenue fund unless the city is in default on the principal or interest of any outstanding bonds or notes, then, one-half of revenue to sinking or bond retirement fund, if any, and remainder to the general revenue fund. In villages, the same provisions as for cities apply, except, the village council may approve funds for use by the Bond of Education or investment in approved bonds if the funds are not needed at the time. In townships, funds go to the general revenue fund or to the Board of Education or investment as in villages.

The County Auditor at each semi-annual settlement notifies other localities of inheritance taxes due them.[3] Warrants are issued to reimburse each government in the amount of that government's share of the revenue minus any refunds due from that government. Governments that owe more in refunds than they are owed in revenue receive no revenue until refund payments are met.

The tax originates in the case of real estate or tangible property

1. Secs. 5339, 5342 and 5343. See also the proposed Bill (in Appendix) . which would permit refund in other justified cases.
2. Sec. 5348-11.
3. Sec. 5348-13.

in the municipal corporation or township where the property is located.[1] The tax from real estate which is situated in more than one district is divided in the proportion that the area is divided among the districts.

The origin of the tax on intangible personal property or tangible personal property not within the state is in the municipal corporation or township where resident decedent resided. The intangible personal property of a non-resident is deemed to originate as follows:[2]

> "1. In the case of shares of stock in a corporation organized or existing under the laws of this state, such taxes shall be deemed to have originated in the municipal corporation or township in which such corporation has its principal place of business in this state.
>
> "2. In case of bonds, notes, or other securities or assets, in the possession or in the control or custody of a corporation, institution or person in the state, such taxes shall be deemed to have originated in the municipal corporation or township in which such corporation, institution or person had the same in possession, control or custody at the time of the succession.
>
> "3, In the case of moneys on deposit with any corporation, bank, or other institution, person or persons, such tax shall be deemed to have originated in the municipal corporation or township in which such corporation, bank or other institution had its principal place of business, or in which such person or persons resided at the time of such succession."

The expenses of administering the tax are determined by the Probate Court, warrants are issued by the County Auditor and that amount is charged against the state's share of the tax.[3]

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1. Sec. 5348-13.
2. Sec. 5348-14.
3. Sec. 5348-10.

Probate judges receive annually as compensation for their services in inheritance tax cases "six cents per capita for each full one thousand of the first ten thousand population of the county and one and one-half cents per capital for each full one thousand over ten thousand population of the county"; but a maximum of three thousand dollars is set, except in counties of two hundred thousand and over where the maximum is four thousand dollars.[1] In no event will the total compensation of a probate judge exceed twelve thousand dollars per annum.

Other sections of the General Code provide for the appointment of agents by the Tax Commissioner and County Auditor to aid in certain administrative duties;[2] monthly reports by the County Auditor;[3] semi-annual reports by the County Recorder;[4] semi-annual settlement between the County Treasurer and County Auditor;[5] temporary provisions for bringing the tax into effect;[6] and other provisions.[7]

In short, as of December 31, 1949, Ohio has an inheritance tax with rates varying up to ten per cent with revenues being equally divided between local governments and the state, the state paying the costs of administration. Most of the present provisions were first enacted in 1919 with minor revisions since then.

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1. Sec. 5348-10a.
2. Secs. 5348-2b, 5348-5 and 5348-6.
3. Sec. 5348-8.
4. Sec. 5348-8a.
5. Sec. 5348-9.
6. Secs. 5348-10b, 5348-15 and 5348-16.
7. Secs. 5345-1 and 5345-2.

Chapter VI

A STATISTICAL ANALYSIS OF A SAMPLE OF OHIO INHERITANCE TAX RETURNS IN 1949

In 1949 there were 12,126 Ohio inheritance tax returns upon which a tax was assessed. Of these, 206 were returns on decedents who were not residents of the State of Ohio. The total tax assessed on these returns was $10,336,476.25. Of this total $1,153,870.07 represented the additional tax assessed upon 78 estates, pursuant to Ohio General Code Section 5335-1 in order to increase the tax to the full credit allowed by the Federal Government. The 12,126 estates which had taxes assessed against them were distributed as follows according to the size of the gross estate:

Gross Estate	Number
Under $ 10,000	4,299
$ 10,000 but under $ 25,000	4,385
25,000 but under 50,000	1,953
50,000 but under 100,000	861
100,000 and over	628
Total	12,126

It should be remembered that these are estates upon which tax was found due; estates which had exemptions enough to cover the entire estate, of course, paid no tax. There were undoubtedly a great number of these under $10,000 and a few which were larger; unfortunately a distribution of these estates is not available.[1]

1. Source of data in this paragraph was the Department of Taxation, Inheritance Tax Division.

The Sample

In order to learn more about the sizes of these estates, the amounts of tax paid, the manner in which they were divided and other facts, a sample of the returns was taken and analyzed. 1,200 resident returns were selected for tabulation, and the 24 non-resident returns randomly obtained as the 1,200 returns were selected were used as a sample of the non-resident returns in 1949. Random sampling methods were used in selecting the slightly over 10% sample.

In the writer's opinion the sample was representative. The distribution of the sample, by size of gross estate compares favorable with the distribution of all the returns for 1949.[1] The actual sample frequencies and the expected frequencies are very similar. The greatest differences are in the estates of $50,000 but less than $100,000 and the estates of $100,000 and over. A proportionate share of the extremely large estates was not obtained; this resulted in an underestimate of the total amount of tax collected. The total tax on the 1,224 returns tabulated was $761,303.24 while a proportionate share of the total collections in 1949, which were $10,336,476.25, is $1,043,365.24; the sample was $282,062.00 too low. This difference, though large in amount, is easily understood since failure to pick up just a few really large estates can have a tremendous effect on the amount of tax dollarwise. A much more accurate sample could be obtained in populations with a large range, such as this one, by including all the larger items and sampling the mass of smaller items. This was practically impossible in the present

1. See TABLE IV.

TABLE IV

Actual and Expected Distribution of 1224 Inheritance Tax Returns, by Size of Gross Estate, and Chi-Square Test of Significance of the Sample, Ohio, 1949

Size of Gross Estate in Thousands of Dollars	Actual	Expected(a)	Actual Minus Expected	Preceding Column Squared	Preceding Column Divided by Expected
Under 10	427	434	- 7	49	0.113
10 but under 25	445	443	2	4	0.009
25 but under 50	201	197	4	16	0.081
50 but under 100	102	87	15	225	2.586
100 and over	49	63	-14	196	3.111
Total	1,224	1,224	xx	xxx	5.900(b)

(a) Expected distribution was determined by dividing distribution of all 12,126 returns by 12,126 and multiplying by 1,224.

(b) This great or a greater value for chi-square would be obtained approximately 20% - 21% of the time due to sampling alone.

Source: Records of the Department of Taxation, Inheritance Tax Division.

TABLE V

Total and Mean Amount of Net Estate, Exemptions and Tax, Tax as a Percentage of Net Taxable Estate and of Tax Rate Base, and Number of Successors, 1200 Inheritance Tax Returns, Ohio, 1949

Item	Total	Mean
Net Estate	$29,528,043.60	$24,606.70
Exempt Successions	244,094.92	203.41
Net Taxable Estate	$29,283,948.68	$24,403.29(a)
Personal Exemptions	5,765,082.93	4,804.24
Tax Rate Base	$23,518,865.75	$19,599.05
Amount of Tax	$ 758,156.80(b)	$ 631.80
Tax as a Percentage of:		
Net Taxable Estate	2.59%	2.59%
Tax Rate Base	3.22%	3.22%
Number of Successors (Taxed)	4,656	3.9

(a) The median Net Taxable Estate was $10,800.50.
(b) This includes the additional estate tax assessed under G. C., Sec. 5335-1 on two estates, in the amount of $2,335.31 and $1,799.94, a total of $4,135.25.

Source: Records of the Department of Taxation, Inheritance Tax Division.

TABLE VI

Total and Mean Amount of Net Estate and Exemptions Allocated to Ohio, Amount of Tax, Tax as a Percentage of Net Taxable Estate, and Number of Successors, 24 Non-Resident Inheritance Tax Returns, Ohio, 1949

Item	Total	Mean
Net Estate	$239,488.19	$9,978.67
Exempt Successions	27.73	1.15
Net Taxable Estate	$239,460.46	$9,977.52
Personal Exemptions	51,940.71	2,164.20
Tax Rate Base	$187,519.75	$7,813.32
Amount of Tax	$ 3,146.44	$ 131.10
Tax as a Percentage of:		
Net Taxable Estate	1.31%	1.31%
Tax Rate Base	1.68%	1.68%
Number of Successors (Taxed)	75	3.1

Source: Records of the Department of Taxation, Inheritance Tax Division.

TABLE VII

Distribution of 1200 Inheritance Tax Returns, by Size of Net Taxable Estate and by Amount of Tax Levied, Ohio, 1949

Amount of Tax in Dollars	Total	Net Estate in Thousands of Dollars: Under 5	5 but under 10	10 but under 20	20 but under 30	30 but under 40	40 but under 50	50 but under 75	75 but under 100	100 but under 200	200 but under 500	500 but under 1000	1000 and over
Total	1,200	254	309	286	140	56	33	54	31	24	8	4	1
50,000 and over	1											1	
10,000 but under 50,000	8									2	2	3	1
5,000 but under 10,000	12								2	4	6		
1,000 but under 5,000	120			8	24	14	11	22	23	18			
500 but under 1,000	103		7	48	7	1	13	21	6				
200 but under 500	201	23	72	20	32	35	8	11					
100 but under 200	202	52	17	59	68	5	1						
50 but under 100	172	53	25	87	6	1							
20 but under 50	198	33	119	44	2								
10 but under 20	97	43	42	11	1								
Under 10	86	50	27	9									

Source: Records of the Department of Taxation, Inheritance Tax Division.

TABLE VIII

Distribution of 1200 Inheritance Tax Returns, by Size of Net Taxable Estate and by Number of Successors, Ohio, 1949

Number of Successors	Total	Net Estate in Thousands of Dollars											
		Under 5	5 but under 10	10 but under 20	20 but under 30	30 but under 40	40 but under 50	50 but under 75	75 but under 100	100 but under 200	200 but under 500	500 but under 1000	1000 and over
Total	1,200	254	309	286	140	56	33	54	31	24	8	4	1
1	504	121	178	92	51	17	11	14	14	4	2		
2	202	35	49	69	25	9	4	6	3	2	0		
3	122	20	17	38	20	7	3	7	3	6	1		
4	81	15	13	25	12	6	3	4	1	1	1		
5-9	195	39	33	40	24	14	9	15	8	8	4	1	
10-14	50	12	12	13	4	1	2	2	1	1		1	1
15-19	24	6	6	3	2	1	0	3	0	1		2	
20-29	12	4	0	3	2	0	0	2	0	1			
30-39	5	2	1	0		0	1	0	1				
40-49	1			1		0		0					
50-74	3			2		1		0					
75-99	0							0					
100 and over	1							1					

Source: Records of the Department of Taxation, Inheritance Tax Division.

TABLE IX

Number and Percentage Distribution, by Size of Net Taxable Estate, and Per Cent of Total Less Than and Equal to or Greater Than Stated Amounts, 1200 Inheritance Tax Returns, Ohio, 1949

Size of Estate in Thousands of Dollars	Number of Estates	Per Cent Of Total	Per Cent Less Than Lower Limit	Per Cent Equal to or Greater Than Lower Limit
Under 5	254	21.17%	0.00%	100.00%
5 but under 10	309	25.75	21.17	78.83
10 but under 20	286	23.83	46.92	53.08
20 but under 30	140	11.67	70.75	29.25
30 but under 40	56	4.67	82.42	17.58
40 but under 50	33	2.75	87.09	12.91
50 but under 75	54	4.50	89.84	10.16
75 but under 100	31	2.58	94.34	5.66
100 but under 200	24	2.00	96.92	3.08
200 but under 500	8	0.67	98.92	1.08
500 but under 1,000	4	0.33	99.59	0.41
1,000 and over	1	0.08	99.92	0.08
Total	1,200	100.00%	xxxxx	xxxxxx

Source: Table VII.

TABLE X

Number and Percentage Distribution, by Amount of Tax Levied, and Per Cent of Total Less Than and Equal to or Greater Than Stated Amounts, 1200 Inheritance Tax Returns, Ohio, 1949

Amount of Tax in Dollars		Number of Estates	Per Cent of Total	Per Cent Less Than Lower Limit	Per Cent Equal to or Greater Than Lower Limit
Under	10	86	7.17%	0.00%	100.00%
10 but under	20	97	8.08	7.17	92.83
20 but under	50	198	16.50	15.25	84.75
50 but under	100	172	14.33	31.75	68.25
100 but under	200	202	16.84	46.08	53.92
200 but under	500	201	16.75	62.92	37.08
500 but under	1,000	103	8.58	79.67	20.33
1,000 but under	5,000	120	10.00	88.25	11.75
5,000 but under	10,000	12	1.00	98.25	1.75
10,000 but under	50,000	8	0.67	99.25	0.75
50,000 and over		1	0.08	99.92	0.08
Total		1,200	100.00%	xxxxx	xxxxxx

Source: Table VII.

TABLE XI

Number and Percentage Distribution, by Number of Taxed Successors, and Per Cent of Total Less Than and Equal to or Greater Than Stated Numbers of Successors, 1200 Inheritance Tax Returns, Ohio, 1949

Number of Successors	Number of Estates	Per Cent of Total	Per Cent Less Than Lower Limit	Per Cent Equal to or Greater Than Lower Limit
1	504	42.00%	0.00%	100.00%
2	202	16.83	42.00	58.00
3	122	10.17	58.83	41.17
4	81	6.75	69.00	31.00
5-9	195	16.25	75.75	24.25
10-14	50	4.17	92.00	8.00
15-19	24	2.00	96.17	3.83
20-29	12	1.00	98.17	1.83
30-39	5	0.42	99.17	0.83
40-49	1	0.08	99.59	0.41
50-74	3	0.25	99.67	0.33
75-99	0	- -	99.92	0.08
100 and over	1	0.08	99.92	0.08
Total	1,200	100.00%	xxxxx	xxxxxx

Source: Table VIII.

TABLE XII

Amount of Net Taxable Estate and Amount and Average Rate of Tax Levied Thereon, by Size of Net Taxable Estate, 1200 Inheritance Tax Returns, Ohio, 1949

Size of Net Taxable Estate in Thousands of Dollars	Net Taxable Estate	Amount of Tax	Average Rate
Under 5	$ 738,542.22	$ 18,859.64	2.55%
5 but under 10	2,247,208.82	35,689.36	1.59
10 but under 20	4,061,640.26	67,323.09	1.66
20 but under 30	3,470,222.45	57,079.25	1.64
30 but under 40	1,957,060.20	38,624.79	1.97
40 but under 50	1,477,574.08	40,285.42	2.73
50 but under 75	3,215,607.08	81,342.56	2.53
75 but under 100	2,697,210.35	64,139.86	2.38
100 but under 200	3,087,074.52	87,508.19	2.83
200 but under 500	2,505,179.59	81,137.03	3.24
500 and over	3,826,629.11	186,167.61	4.87
Total	$29,283,948.68	$758,156.80	2.59%

Source: Records of the Department of Taxation, Inheritance Tax Division.

TABLE XIII

ESTATE TAX A: Amount and Number of Net Taxable Estates, Amount and Rate of Hypothetical Estate Tax A ($10,000 Exemption), and Amount of Inheritance Tax Actually Assessed, by Size of Net Taxable Estate, 1200 Inheritance Tax Returns, Ohio, 1949

Net Taxable Estate	Estate Tax Rate on Highest Bracket(a)	Number of Estates	Amount of Net Taxable Estate	Amount of Estate Tax	Amount of Inheritance Tax Actually Assessed
Under $ 10,000	1%	286	$ 1,201,640.26	$ 12,016.40	$ 67,323.09
$ 10,000 but under 25,000	2	167	2,674,213.81	36,784.28	76,926.14
25,000 but under 50,000	4	91	3,222,000.43	74,280.02	99,898.13
50,000 but under 100,000	6	62	4,341,699.38	161,301.96	123,108.12
100,000 but under 200,000	8	18	2,286,835.06	118,146.80	69,047.68
200,000 and over	10	13	6,201,808.70	521,380.87	267,304.64
Total	xx	637	$19,928,197.64	$923,910.33	$703,607.80
Exempt Estates (under $10,000) and Exemptions Allowed ($10,000 each) on Taxed Estates	--	563	9,355,751.04(b)	- -	54,549.00
Total	xx	1,200	$29,283,948.68	$923,910.33	$758,156.80

(a) This is the rate applied to the portion of the estate in the highest bracket; portions of the estate in the lower brackets are taxed at the rate for that bracket.
(b) Exemptions allowed under the inheritance tax totaled $5,765,082.93.

Source: Records of the Department of Taxation, Inheritance Tax Division.

TABLE XIV

ESTATE TAX B: Amount and Number of Net Taxable Estates, Amount and Rate of Hypothetical Estate Tax B ($20,000 Exemption), and Amount of Inheritance Tax Actually Assessed, by Size of Net Taxable Estate, 1200 Inheritance Tax Returns, Ohio, 1949

Net Taxable Estate	Estate Tax Rate on Highest Bracket(a)	Number of Estates	Amount of Net Taxable Estate	Amount of Estate Tax	Amount of Inheritance Tax Actually Assessed
Under $ 10,000	1%	140	$ 670,222.45	$ 6,702.22	$ 57,079.25
$ 10,000 but under 25,000	2	75	1,261,143.29	17,722.87	57,626.57
25,000 but under 50,000	4	61	2,166,012.69	50,040.51	95,265.11
50,000 but under 100,000	6	49	3,416,253.01	126,575.18	104,135.24
100,000 but under 200,000	8	14	1,822,217.62	95,377.41	60,017.92
200,000 and over	10	12	5,880,708.32	496,870.83	262,160.62
Total	xx	351	$15,216,557.38	$793,289.02	$636,284.71
Exempt Estates (under $20,000) and Exemptions Allowed ($20,000 each) on Taxed Estates	--	849	14,067,391.30(b)	- -	121,872.09
Total	xx	1,200	$29,283,948.68	$793,289.02	$758,156.80

(a) This is the rate applied to the portion of the estate in the highest bracket; portions of the estate in the lower brackets are taxed at the rate for that bracket.
(b) Exemptions allowed under the inheritance tax totaled $5,765,082.93.

Source: Records of the Department of Taxation, Inheritance Tax Division.

problem due to the filing system for the returns. Returning to the comparison in Table IV, we see that the value of Chi-Square is 5.900. A value this great or greater would be obtained about one time out of five due to sampling fluctuations. It seems reasonable that the differences here were just chance and that our sample is significant.

The Information Obtained from the Sample

Tables V - XIV contain the data tabulated from the sample of inheritance tax returns. Tables V and VI present, for the 1,200 resident and 24 non-resident returns, respectively, the mean amount of the net estate, exempt successions, net taxable estate, personal exemptions, tax rate base (amount to which tax rates are applied) and tax. The average number of successors is also shown. We see that the average amount of estates actually taxed is a little under $20,000. The Ohio schedule of exemptions and rates results in an average of $4,800 being allowed as personal exemptions and an average rate of 3.2% being applied to the remainder. One-half of the net taxable estates were less than $10,800.50, the median. All of these statistics seem to indicate that the tax reaches a great number of small estates.

The 1,200 returns are distributed by size of net taxable estate, amount of tax and number of successors in Tables VII - XI.

A two-way distribution of the returns, by size of estate and amount of tax, is given in Table VII. As would be expected, the amount of tax increases, generally, with an increase in the size of the estate. It will be noticed, however, that in each group of estates of similar size, there are usually two different points at which the amount of tax concentrates. For example, in net taxable estates which were $10,000

but under $20,000, the most frequently occurring amount of tax is $50 but under $100; 87 of these estates paid this amount of tax. The number of estates paying $100 but under $200 of tax was 59. There were 20 es-estates in the $200 but under $500 tax bracket. Then, in the $500 but under $1,000 tax interval there were 48 estates. The jump yields a bi-modal distribution which does not seem to be due to the difference in interval widths, since this interval is not so "popular" in the estates from $20,000 to $40,000. This two-hump distribution is due to the tax rate structure. The 87 estates were mainly estates going largely to direct heirs with large exemptions and a one per cent tax rate. Estates which passed to more distant relatives, taxed at five and seven per cent, would quite often have taxes of $500 to $1,000, accounting for the large number of states in this group. These two "peaks" each move one tax bracket higher in the next higher group of estate sizes, and drop one tax bracket in the next lower group of estate sizes. Careful study of this table will reveal much information on the different sized estates and the taxes paid thereon.

Another two-way distribution of the estates, this time by size of estate and number of successors, also provides interesting data on how these estates were divided among the recipients.[1] It can be seen that although some estates were divided among several people, in one case over one hundred, most estates were given to a very few recipients. Nearly one-half of the estates each went to a single successor. The estates which were under $100,000 seem to be distributed by number of successors

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1. See TABLE VIII.

about the same no matter what the size of the estate. Only the estates over $100,000 are markedly different in how they are distributed. There seems to be a trend toward a greater number of successors in the extremely large estates. This could be due to the wealthier decedent's difference in attitude, his ability to give to several people and still be generous with each, an attempt to lower the amount of tax by keeping each share small or a combination of these and other factors. The writer is inclined to discount the effect of savings in taxes; a large number of direct relatives would be necessary to effect substantial tax savings. If an estate is all given to a widow, no matter how large the estate the highest tax rate is four per cent. If additional successors who are not heirs of the first class are brought in, their share is taxed at least five or seven per cent, even if small in amount. This would increase the total amount of tax. Ohio's tax rate is graduated more severely by relationship than it is by size of inheritance. The way to keep taxes at a minimum is to divide the estate equally among all heirs of the first class (direct heirs), after giving $500 (the amount of the exemption) to all heirs of the second class (brothers, sisters and descendants): bequests to more distant relatives with no exemption, regardless of the number can not avoid resulting in a higher amount of total tax.

In Table XI we see that 42% of the estates went to a single successor, and over one-half of the estates went to one or two successors. Only one-fourth of the estates had five or more recipients each, and only 8% went to ten or more recipients.

Returning to a consideration of the sizes of net taxable estates, we can obtain more information from Table IX. As we saw above, a great

number of the estates were small in amount. Nearly one-half were less than $10,000, nearly three-fourths were less than $20,000 and only 3% of the estates were larger than $100,000. The Ohio tax is levied on a large group of small estates, along with the more sizable estates.

With Ohio's low rates, a relatively small amount of tax on many estates, especially since there are many small estates, would be expected. Table X confirms this expectation; nearly one-half of the estates paid less than $100 each, and 15% of them had taxes under $20. However, there were estates with higher amounts of taxes. Although the maximum tax rate is 10%, about one estate in eight had a tax assessed in excess of $1,000.

Table XII provides further idea of the relationship between the estate size and its tax. The average rate rises as the size of the estate increases, but not rapidly. The size of the estate does not have as large an effect on the rate as one might expect. Degree of relationship seems to be more important. This can be detected indirectly from the average rate for estates under $5,000. This rate is substantially higher than the rate for much larger estates. This results from the elimination of practically all estates under $5,000 which passed to heirs of the first class. These estates, with exemptions of $3,500 and $5,000 and more, were, in the great majority of cases, entirely exempt. Since there is no tax assessed, these estates are not included in the grouping. The estates which were included were, by and large, estates passing to more distant relatives, resulting in a higher average rate.

As stated above, Ohio's inheritance tax rates progress more with

relationship than with size of inheritance. In order to compare the tax burden, and its distribution by size of estate, of the inheritance tax with an estate tax, two hypothetical estate tax rate schedules were set up and applied to the 1200 estates sampled. The results are presented in Tables XIII and XIV. Estate Tax A provided for a $10,000 exemption per estate, and Estate Tax B allowed a $20,000 exemption. The following rates were applied to the remaining net taxable estate.[1]

Net Taxable Estate	Amount of Tax
Under $ 10,000	1%
$ 10,000 but under 25,000	$ 100 plus 2% of amount over $ 10,000
25,000 but under 50,000	400 plus 4% of amount over 25,000
50,000 but under 100,000	1,400 plus 6% of amount over 50,000
100,000 but under 200,000	4,400 plus 8% of amount over 100,000
200,000 and over	12,400 plus 10% of amount over 200,000

Estate Tax A's $10,000 exemption was designed to approximate the average exemption per estate allowed under the inheritance tax, i.e., $4,804.24 (Table V). An exemption lower than $10,000 was not deemed equitable since it would materially lower the total exemption of a widow and several children as compared with the inheritance tax exemptions. The $10,000 exemption eliminated 563 of the 1200 estates which were taxed under the inheritance tax from any taxation under the estate tax. The $20,000 exemption (Estate Tax B) eliminated over two-thirds of the previously taxed estates, namely 849 estates. $20,000 is the maximum exemption permitted by the Ohio Constitution.

The estimated revenue from Estate Tax A is $923,910, and Estate Tax B would yield $793,289. The actual inheritance tax yield from these

1. Note the difference in meaning from the "net taxable estate" used previously; the present meaning is net estate minus all exemptions. (See Introduction, Definition of Terms).

estates was $758,157. Moreover, the total estate tax yield would be slightly higher if estates which paid no inheritance tax could have been included; some of these would have been subject to at least a small amount of tax. A somewhat low tax rate schedule could be used for the estate taxes in order to collect approximately the same total amount of tax.

The annual yields from the estate tax would probably vary more than the present tax does. Since the tax depends on fewer, larger estates, it would be subject to greater fluctuation. A more serious problem with the adoption of an estate tax, especially with an exemption of $20,000, would be the wide fluctuations in yield in individual counties. In smaller counties there could be considerable tax in one year, and practically no taxable estate in other years. The fluctuation on a state-wide scope would be offset to a large degree by counter-movements in various counties and would be little problem. But in each municipality or township of origin, which receives one-half of the revenue by constitutional provision, large fluctuations in tax yield could create a severe financial problem. This will be discussed further in the next chapter.

Looking again at Tables XIII and XIV we can compare the tax yield of the inheritance and estate taxes, by size of estate. Both estate taxes yielded less from smaller estates and more from larger estates than the inheritance tax did. The estate taxes, of course, have no progression of rates by relationship, and under the hypothetical rate schedule set up, have more progression of rates by size of estate. The estate taxes began to yield more, on the average, on estates of $50,000 and over. Actually, of course, in most of the groups some estates would pay more tax and some

pay less, by perhaps substantial amounts, under the estate taxes as compared with the inheritance tax. An estate tax must be levied with a different theory than an inheritance tax, progression by size of estate only; differences in relationship of the decedent and successors is not recognized. If the latter is considered important enough, an inheritance tax must be used. This will be discussed, and the relative advantages of both types of tax, for Ohio, will be considered in the following chapter.

Further examination of the tables in this chapter will reveal other worthwhile information. It should be remembered that estates upon which there was no inheritance tax assessed could not be included, and that the sample does not fully represent the extremely large estates. Otherwise the sample appears to be very representative of the population and capable of meaningful interpretation.

Chapter VII

CONCLUSIONS AND RECOMMENDATIONS

From the results of the statistical analysis presented in the preceding chapter, keeping in mind the development and background of the present tax, the writer has drawn certain conclusions about Ohio's inheritance tax. Based on these conclusions, recommendations for changes in the present law and suggestions of further avenues of study were prepared. These are presented in this chapter.

Conclusions

It was seen in Chapter VI that the Ohio inheritance tax is levied, in part, against a great number of small estates which, with the low rates, resulted in many cases of only a few dollars tax being assessed on an estate. One-half of the net taxable estates were under $10,800; and 15% were taxed less than $20. This inclusion of a large number of small estates has important effects; some are advantages; the other are disadvantages.

The advantages of this broad tax base are its relatively uniform yield and the greater opportunity for small, rural local governments to have their proportionate share of revenue. Since townships and municipalities which may be very small units of government receive one-half of the revenue from inheritance taxes on decedents who were residents of, or who owned property in, a given township or municipality; exempting the mass of small estates may result in little revenue, or widely fluctuating revenues, in a given township or municipality. This inequity

exists with the present tax, but would be accentuated if only larger estates were taxed. A possible solution to the problem, which might be advisable even if the present tax is continued, would be to pool all inheritance tax revenues in one county and divide the revenue among the subdivisions on some other, more stable, basis. There is a possibility that this plan would not be in accord with the Ohio Constitution.[1] If the above suggestion would be unconstitutional, it would still seem advisable to give the local governments' share of revenue to larger units of government, i.e., municipalities and counties rather than the present practice of leaving one-half of the revenue in the city, village or township of origin. Tax originating inside incorporated municipalities could be divided between the state and the municipality of origin; and tax originating outside incorporated municipalities could be divided between the state and the county of origin. Using larger units of government would result in less fluctuation in the local share of revenue in any given jurisdiction.

The disadvantage to taxing a large group of small estates is the administration required. Processing of small estates by the taxing authorities may take as much or more time than processing large estates; in some cases the expense of tax assessment on an estate has exceeded

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1. Article XII, Section 9 of the Constitution of the State of Ohio states, "Not less than fifty per centum of the income and inheritance taxes that may be collected by the state shall be returned to the county, school district, city, village, or township in which said income or inheritance tax originates, or to any of the same, as may be provided by law."

the amount of tax collected.

Even moderate-sized estates may be subject to very little inheritance tax in Ohio, since all but a small part of the estate might be covered by personal exemptions. A ten dollar bequest to a friend, for example, would result in seventy cents tax on a $20,000 estate which was otherwise excluded from the tax by personal exemptions.

Let us examine an estate tax for Ohio in the light of the above advantages and disadvantages of Ohio's inheritance tax. As was seen in Tables XIII and XIV, Estate Taxes A and B would decrease the number of estates subject to tax to a little over one-half and slightly less than one-third, respectively, of the number of estates subject to the inheritance tax. This narrowing of the tax base would probably result in greater fluctuation of revenue and loss of revenue (or at least more extreme fluctuation) for smaller local governments, but would lessen the administrative burden; in short, the effects would be just opposite the present situation with the inheritance tax.

Besides lowering tax administration costs by decreasing the number of estates taxed, great savings could be made with an estate tax, since there no longer would be a need to determine each successors share of the estate, the value of life estates or trusts, or to what class of successor the property passed, unless exempt property was involved. At present, the tax administrators devote a substantial part of their time to determining these facts and assessing the correct tax against them. Possibility of part of the estate going to some heirs in the event of a certain happening, or to others in the event of other occurrences, results in a temporary tax at the highest tax rate which

is possible, and refund of the excess paid (with interest) if the ultimate successor is not taxable at the rate originally assessed. These temporary assessments, with refunds and interest (at three per cent) would be eliminated under an estate tax since the tax is the same no matter how the estate is divided. An estate tax requires only the correct determination of the amount of the net estate and application of the tax rates. Administratively, the estate tax is far superior to the inheritance tax.

An estate tax has its disadvantages, of course; *i.e.*, the greater fluctuation of revenue, especially on a local level, and the possible shift in tax collections so that poorer sections of the state received less than they received from the inheritance tax and other sections received more. This latter fault might not be significant over a long period of time, but it is fairly evident that townships in some sections of the state would not have many taxable estates, perhaps none, in most years. As was mentioned above, this extreme fluctuation could be moderated by pooling all revenues in one county and dividing the local share, one-half, among the various political subdivisions in that county or by allocating the local share to larger local governments than townships or small villages, as is done at present. In this manner, the only disparity would be among the counties. This would not be so great as would be possible with smaller units and, moreover, could be moderated by setting a minimum local share for each county.[1] For example, if the local portion of the tax in a county totaled less than five thousand dollars in any

1. This plan also might be held unconstitutional under certain circumstances, but could be set up in a workable form, in this writer's opinion.

year, the state could give the difference out of its share. Slightly higher revenues would reimburse the state, if necessary, for its loss. Even if an estate tax is not adopted, Ohio might do well to change to a distribution as outlined above; the present tax allows great fluctuations of revenue in some counties,[1] and there is even greater change in townships and municipalities.

Let us consider aspects of a proposed estate tax and the present inheritance tax in Ohio other than revenue and administration.

First of all, what effect do these two types of taxes have on the distribution of estates? We saw in the preceding chapter that most estates in Ohio under the present inheritance tax were given to very few people, over one-half went to one or two persons. This leads us to the conclusion that the tax has no effect on distribution or that the effect is contrary to the theory usually applied to an inheritance tax. There was no overwhelming attempt to split the estate in many small parts to avoid higher taxes. Under some inheritance taxes this would be expected, but, in Ohio it is often unwise to divide an estate among many successors. As explained in Chapter VI, Ohio's tax has graduated rates which progress more by degree of relationship than by size of succession. It is wiser, tax-wise, to give all the estate to a widow instead of giving part, even a small part, to a friend who will be taxed at least seven per cent. The highest tax, no matter how large

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1. For example, the inheritance tax in Pike County was $2,227.25 in 1945; $8,048.02 in 1946; and $463.73 in 1947. (Annual Report of the Department of Taxation, State of Ohio, 1947, p. 7).

an inheritance, on close heirs is only four per cent. Ohio's tax thus has the effect of concentrating the estate among a few close relatives and not scattering it to everyone in sight. Another point to remember is that the Federal Estate Tax is the big death tax and Ohio's smaller tax has its effects on distribution moderated by it.

The one big argument in favor of an inheritance tax rather than an estate tax is that the inheritance tax permits favoritism to close relatives through different exemptions and rates. Ohio allows very low exemptions, and the difference between classes of heirs is small when anything other than very small estates is considered. However, the Ohio rates do make considerable distinction by degree of relationship. This distinction has much support in theory,[1] and is the primary argument in behalf of Ohio's present tax. However, it would seem to this writer that a better practice would be to allow a large exemption to members of the decedent's family and tax all successors the same rate since a large inheritance can afford a sizeable tax even if it is to a widow. The large exemption would favor direct heirs, especially those receiving small amounts. Such a tax would eliminate more estates from administration, would otherwise simplify administration and would still, in this writer's opinion, be fair.

An estate tax would be very close to the inheritance tax outlined just above, but would allow the exemption regardless of the relationship and would tax the total estate rather than each share,

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1. See Shultz, <u>op. cit.</u>, pp. 217-219, for theories favoring the inheritance tax.

probably making the tax rate somewhat higher. The savings in administrative cost would perhaps offset the loss in favoritism to close relatives. Moreover, an estate tax could be set up which allowed varying exemptions to relatives, but taxed the remainder of the estate at a rate graduated only by the size of the estate. The complication of administration would have to be weighed against the theoretical advantages.

One problem of estate taxes and in certain states, also of the inheritance tax which should be mentioned is the possibility that the amount of tax will be subtracted from the residual share of the estate after the specified bequests are made, these bequests thus paying no tax. Since the residual share usually goes to the widow or children, the entire estate tax falls on them. This circumstance can be avoided by provisions of the will, of course, but is objected to since the will may not have such a provision. Two arguments can be advanced against this objection to an estate tax. The first is that the decedent provided a bequest of $100 to Uncle John, $25 to the church or other specific bequests because he wanted them to have that amount. These amounts when subtracted from the estate after taxes leave the residual share, usually the largest part, to go to the widow, children or other beneficiary. It is argued that it must be assumed that the decedent in preparing his will, allowed for his taxes, just as he allowed for debts and any other decrease in the value of his estate. Since he did not state the specific bequests lower, he intended that the residual share be sufficient whatever the amount.

The second argument is applicable to estates where the residual share has been pitifully small due to unexpected decreases in the size

of the estate, such as a drop in the price level either before or after the death of the decedent, and hardship has been brought to the direct heirs as a result. This could have been avoided by specifying a minimum amount that the estate should be before specific bequests are allowed. Failure to do this can bring hardship, but the estate tax has done less damage than the unexpected losses of the estate and is not to be blamed for the results. Again, the decedent stated certain amounts should be given to certain people, knowing they would lessen the residual share. True, he expected his estate to be larger; but the debts and losses which the estate incurred, including the tax, should have been allowed for by the decedent. His failure is unfortunate, but is an argument for education in preparing a will; not an argument just against the estate tax.

Nevertheless, it would be desirable to eliminate the taking of the entire estate tax from the residual share of an estate. Concern for the need for such a provision, and awareness of the need for an estate tax which would provide greater exemption to close relatives, has let the writer to what he believes is a novel form of the estate tax.

Under this estate tax an exemption would be allowed the entire estate in order to eliminate the great number of very small estates, and then the tax rates which would be progressive would be applied to the remainder of the estate to arrive at the total tax. Part of this tax would be paid by each of the successors in proportion to the size of his succession as compared with the total estate. Then, the heirs who were closely related to the decedent would be allowed additional

exemptions in tax dollars, due to their dependence on the decedent. The exemptions could be different for different classes of heirs.

For example, the estate tax might be as follows: A $5,000 flat exemption to the entire estate; tax rates from 4% to 20% according to the size of the estate; and personal exemptions to be subtracted from the actual amount of tax due from certain successors, i.e., a wife or minor child could each subtract $400 from the amount of tax levied upon her and a husband, adult child, other direct descendants and direct ancestors could each subtract $200 from the amount of tax levied upon him. Other similar exemptions could be granted to more distant relatives, but this would complicate the administration; and since these successors are usually not so dependent on the decedent and since they have been granted some exemption through the $5,000 exemption on the entire estate, the writer does not believe that they should be granted additional relief. If a direct heir's tax was not as great as his exemption he would, of course, only be allowed an exemption to the extent of his tax.

If, for example, a $50,000 estate was left one-half to a wife, one-fourth to an adult daughter and one-fourth to a brother of the decedent, the tax would be computed as follows: The tax rates would be applied to the entire estate less the $5,000 exemption, arriving at a tax of, let us say, $2,200. This would be assessed among the successors in proportion to their shares, $1,100 to the wife, $550 to the daughter and $550 to the brother. The wife would pay a tax of $1,100 less her personal exemption of $400, a net tax of $700; the daughter would pay $550 less her exemption of $200, a net tax of $350; and the brother would pay $550 since he had no additional exemption.

This form of tax would provide very substantial relief to close relatives, especially on small successions. When the inheritance was large and the tax was in the thousands of dollars, the exemptions of a few hundred dollars would become less significant; but the writer maintains that this is justified because a large inheritance can be taxed heavily even if it is received by a dependent of the decedent. Stating the personal exemptions in tax dollars provides greater relief to receivers of small inheritances.

The form of estate tax outlined above would discriminate among different classes of heirs, but would permit calculation of the tax on the estate as a whole and would eliminate to a large degree the complications caused by contingencies under inheritance taxes. If, under most inheritance taxes, part of the estate passes to the widow instead of to a cousin due to contingencies at a later date, the amount of tax is changed and a refund of tax must be made. Under the proposed estate tax there would be no change in the gross amount of tax; and if each successor affected had used his full exemption, there would be no change in the net tax due; one would owe more tax, the other would owe less by the same amount, and the administration would be greatly simplified. Moreover, the elimination of all estates under $5,000, or possibly $10,000, would decrease the number of estates handled and thus decrease administrative costs as a whole; this would permit better administration of the remaining estates at less administrative cost.

A needed change in the present Ohio inheritance tax was not brought forth in the preceding chapter. There is no provision for re-

fund when the tax is erroneously paid due to mistake of fact or law. The present law provides for refund only when new debts are discovered, the tax is paid on the same succession in another state, the value of the assets are below estimates due to certain occurrences or when an inheritance taxed under temporary order finally passes to an heir taxable at a lower rate. The present law should be amended to provide for refunds whenever the case is justified (See Recommendations below).

Recommendations

1. That the present inheritance tax law in Ohio be amended to provide for refund of tax erroneously paid due to mistake of fact or law. For this purpose, and in order to place all refund provisions in the same section of the General Code, it is recommended that the bill for this purpose prepared by the Inheritance Tax Division of the Department of Taxation be enacted (See Appendix). This bill, if enacted, would permit the Tax Commissioner to order the refund of taxes erroneously assessed if called to his attention within two years of the date of payment. The bill also would limit the refund of tax on property which is taxed in another state to estates of resident decedents, leaving to other states the responsibility of preventing double taxation of their residents.

2. That the present inheritance tax law be amended so that the local share of inheritance tax revenues would be pooled in each county, and distributed on some equitable basis, or if this is unconstitutional that the local share be given to the incorporated municipality or county of origin. In order to moderate fluctuations in revenue, a minimum for a county might be set (if constitutionally possible), and in event the

revenue is under the minimum, the state would furnish the amount lacking. A slight increase in tax rates might be necessary in order to maintain the states share of the tax revenue.

3. That an estate tax be considered in lieu of the present inheritance tax, and for this purpose a study of the relative merits of an estate tax and an inheritance tax should be conducted. It is believed that the estate tax has much to recommend it. Its main fault is the lack of distinction among various classes of heirs; but its easy administration and other advantages would permit cheaper and more effective administration and, all in all, a fairer tax.

If the principle of lower taxes for direct relatives is believed all important, this should be achieved through an estate tax with discriminating exemptions similar to the one outlined on pages 112-114 above. This form of estate tax would be somewhat more difficult to administer than a straight estate tax, although much simpler in administration than an inheritance tax, but this estate tax would provide tax relief to direct heirs.

4. That, if an estate tax is not adopted, the inheritance tax be amended by providing higher exemptions to direct heirs, a low exemption for everyone and uniform rates for all. These rates would be graduated by size of inheritance. This would encourage wider distribution of estates, one of the avowed purposes of the inheritance tax; would exclude many small estates, simplifying administration and permitting more exacting administration of larger estates; would tax larger inheritances at approximately the same rate regardless of relationship, which seems fair enough; and would still allow relief to direct heirs,

especially those who received smaller inheritances.[1] Next to an estate tax, this type of inheritance tax seems preferable.

5. That, if either recommendations 3 or 4 be enacted, recommendations 1 and 2 and the other applicable provisions of the present inheritance tax law be incorporated in the new tax law.

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1. See pages 109-110 above for analysis of these conclusions.

118.

A P P E N D I X

A BILL

To amend sections 5339, 5342, 5343 General Code and repeal section 5343-1 General Code and to enact supplemental sections 5332-6, 5332-7, 5339-1 and 5339-2 of the General Code relative to the assessment and refunder of inheritance tax.

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

SECTION 1. That sections 5339, 5342 and 5343 of the General Code be amended to read as follows:

Section 5339. All applications for refund of inheritance tax filed hereunder shall be set for hearing and the tax commissioner of Ohio shall be given not less than ten days notice in writing of the time and place of such hearing and shall be provided with a certified copy of the application and the tax commissioner or any interested party may file exceptions to any order of refunder made hereunder and appeal may be prosecuted as from an original determination of tax.

The exclusive grounds and procedure for refunder of inheritance tax, except as otherwise provided in General Code section 5339-2, shall be as follows:

1. If any debts shall be proven against the general estate after **1** inheritance tax has been determined and paid an application for modification of the order of determination and for refunder of such portion of the tax paid as exceeds what should have been assessed may be filed in the probate court wherein the tax was originally assessed. If, on hearing of the

application, the court finds that such debts as are set forth therein have in fact been proven against the general estate, after inheritance tax has been paid, the court shall make an order of refunder of such part of the amount paid as is in excess of the amount that should have been assessed had such debt been proven prior to determination of tax.

2. When, after assessment and payment of tax in this state on the successions to property from a resident of this state, a similar tax is assessed and paid in a foreign state or country on any of the successions taxed in this state an application for refund of a proportionate part of the tax paid in this state may be filed in the probate court wherein the tax was originally assessed. If on hearing of the application the court finds that a tax was in fact assessed and paid in a foreign state or country on any of the successions taxed in this state, the court shall order refunded an amount equal to the amount so paid in such foreign state or country. Provided, however, that the amount of refund so ordered shall not exceed the amount of tax paid in this state on the succession to the property subject to tax elsewhere.

3. Where, after payment of any inheritance tax in pursuance of an order determining same, such order is modified or reversed after hearing on exceptions filed pursuant to General Code section 5346, either by the probate court having jurisdiction over such exceptions or by any court to which proceedings on such exceptions may have been taken on appeal, an application

for refund may be filed in the probate court wherein the tax was originally assessed. If, on hearing of the application, the court finds that the tax actually paid exceeds the amount that should have been paid, the court shall redetermine the inheritance tax giving full effect to the final order on exceptions and order a refund equal in amount to the excess tax paid.

4. Where, in determining inheritance tax the probate court, pursuant to the provisions of General Code section 5342, omits to make allowance on account of any contingent encumbrance or contingency as defined therein and such contingent encumbrance or contingency subsequently takes effect as an actual burden upon the interest of any beneficiary or in the event the interest of any beneficiary shall be abridged, defeated or otherwise diminished by reason of such contingent encumbrance or contingency taking effect as an actual burden, an application for refunder of a proportionate amount of the tax theretofore paid may be filed in the probate court wherein the original assessment was made. If on hearing of the application the court finds that said contingent encumbrance or contingency, allowance for which had been omitted, has in fact taken effect as an actual burden upon the interest of any beneficiary and that the interest of such beneficiary has in fact been abridged, defeated or otherwise diminished, the court shall order a refund of such amount of tax paid as may be found to have been excessive due to the nonallowance of such contingent encumbrance or contingency.

5. In any estate where tax has been assessed by temporary order at the highest rate pursuant to the provisions of General Code section 5343 the executor or trustee, shall, immediately upon the happening of any such conditions or contingencies as are described in said section 5343, file an application in the probate court wherein the tax was originally assessed, setting forth all of the facts and containing a prayer for an order modifying the temporary order of said probate court and for a final assessment and determination of the tax in accordance with the ultimate succession. Upon hearing of the application, if the court finds that said tax was in fact previously assessed by temporary order pursuant to General Code section 5343, and that such contingencies as are therein described have happened to the end that the estate or any part thereof passes so that the ultimate succession or successions thereto would be exempted from taxation or taxable at a rate less than was imposed and paid, the court shall make an order modifying the temporary order theretofore made so as to provide for a final assessment and determination of tax in accordance with the ultimate succession. When the court makes the final assessment and determination of tax in accordance with the ultimate successions as hereinabove provided, it shall determine the excess amount, if any, paid under the temporary order and shall order a refunder of such excess amount. The amount so determined shall bear interest to be computed by the court and included in the order of refunder at the rate of

three per centum per annum from the date of payment of the tax pursuant to the temporary order until the date on which the final assessment and determination is made, but in no case longer than one year after the happening of the contingency. Interest at the same rate shall also be allowed and paid on all excess amounts which may hereafter be found to have been paid in under temporary orders prior to the time at which this act takes effect but in such eases such interest shall begin to run from July 10, 1925 and not earlier. No interest shall be allowed on any refund of inheritance tax except those ordered pursuant to this sub-paragraph.

Where, in any estate, the probate court has ordered a refunder of inheritance tax as hereinabove provided, the court shall determine the successors who are entitled to share in such refund and the particular township or municipality against which such refunder is chargeable.

The provisions of this section shall be exclusive as to refunder of inheritance tax, except as provided in General Code section 5339-2, and no probate court shall have jurisdiction either in law or in equity, to order or direct a refund of inheritance tax for reasons or by procedures other than those hereinabove set forth.

Section 5342. The value of a future or limited estate, income, interest or annuity for any life or lives in being, or of any dower interest or other estate or interest upon which any estate or interest the succession to which is tax-

able under this chapter is limited, shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of annuities for the determination of liabilities of life insurance companies, except that the rate of interest shall be five per centum per annum. The superintendent of insurance shall, without a fee, on the application of any probate court or of any county auditor, determine the value of any such estate, income, interest or annuity, upon the facts contained in any such application, and other facts to him submitted by such court or auditor, and certify the same in duplicate to such court or auditor, and his certificate thereof shall be conclusive evidence that the method of computation therein is correct.

In estimating the value of any estate or interest on property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled, no allowance shall be made on account of any contingent encumbrance thereon, nor on account of any contingency upon the happening of which the estate, or some part thereof, or interest therein, may be abridged, defeated or diminished. **2**

Section 5343. When, upon any succession, the rights, interests or estates of the successors are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon such successions at the highest rate which, on the happening of any such contingencies or conditions, would be possible

under the provisions of this subdivision of this chapter, and such taxes shall be due and payable forthwith out of the property passing, and the probate court shall enter a temporary order determining the amount of such taxes in accordance with this section. **3**

SECTION 2. That section 5332 be supplemented by the enactment of supplemental sections 5332-6 and 5332-7 and that section 5339 be supplemented by the enactment of supplemental sections 5339-1 and 5339-2 to read as follows:

Section 5332-6. If any debts shall be proven against the general estate, after the determination of inheritance tax has been made, an application for modification of such order of determination may be filed. Of this application and of the hearing thereof the tax commissioner shall have notice. If the court finds that the tax has not been paid and that the assessment as made should be amended, it shall so order and shall furnish the tax commissioner with a copy of the entry of determination as amended.

Section 5332-7. Where it shall be shown to the satisfaction of the probate court that deductions for debts were erroneously allowed or that assets existed which were not taken into consideration when tax was determined, such court shall enter an order assessing the tax upon the amount erroneously deducted or upon such omitted assets.

Section 5339-1. In all cases where a refunder is ordered pursuant to General Code section 5339, a certified copy of the court's order of refunder shall be transmitted forthwith to the tax commissioner and to the county auditor of the county wherein the original assessment of tax was made. Upon receipt by the tax commissioner of such copy of such order of refunder, he may make an order confirming the same and transmit such confirmation order, or a certified copy thereof, to the county auditor of the county wherein the original assessment of tax was made. The court's order of refunder together with the order of the tax commissioner in confirmation thereof shall constitute the county auditor's authority for drawing his warrant for the amount of refunder ordered, and such auditor shall thereupon draw his warrant for the amount ordered refunded. In no cases other than those arising under General Code section 5339-2 shall any county auditor draw a warrant for refund without first procuring a copy of the court's order and the confirmation order of the tax commissioner.

The warrant of the county auditor shall be paid by the county treasurer out of any moneys in his hands to the credit of inheritance taxes and said payment shall be charged one-half to the undivided inheritance tax fund standing to the credit of the state of Ohio and one-half to the undivided inheritance tax fund standing to the credit of the political subdivisions that received the revenue produced by the original assessment.

Section 5339-2. The tax commissioner of Ohio, with the approval of the attorney general, hereby is authorized and empowered to order the refund and repayment, without interest, of all inheritance taxes heretofore or hereafter erroneously, wrongfully or illegally imposed on any estate or the successions thereto, and of all such taxes that are excessive in amount or in any manner wrongfully collected, whether such taxes were imposed through a mistake of fact or mistake of law and whether or not such taxes were paid voluntarily and without protest, and notwithstanding any claim heretofore filed for such refund. Proceedings under this section shall be by verified application addressed to the tax commissioner of Ohio and said application shall contain a complete statement of facts giving rise to the claimed right of refund. There shall be appended to said application such orders, entries or other matter, or certified copies thereof, as is necessary to show the error complained of, but the tax commissioner shall not be precluded from considering any relevant matter whether or not such relevant matter is presented by the applicant or others. No such application shall be considered by the tax commissioner unless the same be filed with him within two years after the date of the order assessing the tax sought to be refunded. Upon the filing of said application the tax commissioner may, and if application in writing is made therefor, the tax commissioner shall set said application for hearing either at his office in Columbus, Ohio, or at the county seat

of the county where the original assessment of tax was made.

For the purpose of conducting any hearing hereunder the tax commissioner shall have power to appoint by an order in writing an agent whose duties shall be prescribed in such order. In the discharge of his duties such agent shall have every power whatsoever of an inquisitorial nature granted by law to the tax commissioner and the same powers as a notary public, and in addition thereto such agent shall have power to administer oaths, issue subpoenas, and compel the attendance of witnesses and the production of records, documents and testimony and to report his findings in writing to the tax commissioner together with a recommendation based thereon. Notice of the time and place of said hearing, if any, shall be given to all parties named in the application and the giving of such notice shall be deemed sufficient if the same is mailed to the parties entitled to such notice at the addresses set forth in said application. The decision of the tax commissioner when approved by the attorney general, shall constitute a final determination on said application.

Provided, however, that relief under this section shall not be granted in any case wherein the error complained of could have been remedied by exceptions filed pursuant to section 5346, General Code.

In all cases arising under this section wherein a refund is ordered as hereinabove provided, the order of the tax commissioner, when approved by the attorney general, shall be

transmitted to the county auditor of the county wherein the tax was originally assessed and such order shall constitute the auditor's authority for drawing his warrant for the amount of refund ordered. Said warrant shall be paid by the county treasurer out of any moneys in his hands to the credit of inheritance taxes and said payment shall be charged one-half to the undivided inheritance tax fund standing to the credit of the state of Ohio and one-half to the undivided inheritance tax fund standing to the credit of the political subdivisions which have received or would otherwise be entitled to receive portions of the revenue produced by the original assessment.

SECTION 3. That existing sections 5339, 5342, 5343 and 5343-1 of the General Code hereby are repealed.

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1 the determination of inheritance tax has been made, an application for modification of such order of determination may be filed. Of this application and of the hearing thereof the tax commission shall have notice. If the court finds that the tax has not been paid and that the adjudication as made should be amended, it shall so order and shall furnish the commission with a copy of the entry of determination as amended. But if the tax as assessed has been paid the court shall make an order of refunder of such a part of the amount paid as

is in excess of what should have been assessed. It shall further find the successors who are entitled to share in such refunder and the particular township or municipality against which such refunder is chargeable. Exceptions may be filed to such order of refunder by the tax commission or by any interested party and appeal or error may be prosecuted as from an original determination of tax. On receipt by the tax commission of a copy of such refunding order it may make an order confirming the same and transmit it to the probate court, which order and a copy of the order of refunder shall be filed by the court with the county auditor who shall thereupon draw his warrant for the proper amount of refund which warrant shall be paid by the county treasurer out of any moneys in his hands to the credit of inheritance taxes. Similar proceedings for modification and refunder may be had in connection with any estate when after the assessment or payment of tax, a similar tax is assessed and paid in a foreign state or country on any of the successions taxed in this state. If after the payment of any such tax in pursuance of an order fixing the same, such order, after due notice to the tax commission and opportunity to be heard, be modified or reversed, in a manner provided by law, by the probate court having jurisdiction or by

any court to which the proceeding may have been taken on appeal or error, the commission on notice from the probate court having jurisdiction, shall, unless further proceedings on appeal or error are contemplated, direct a refunder of the proper amount to be made in the same manner as hereinabove provided. Where it shall be shown to the satisfaction of the probate court that deductions for debts were erroneously allowed or that assets exist which were not taken into consideration when tax was determined, such court may enter an order assessing the taxes upon the amount wrongfully or erroneously deducted or upon such omitted assets.

2 but in the event of such encumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgement, defeat, or diminution of such estate, or interest therein, as aforesaid, a refunder shall be made in the manner provided by section 5339 of the General Code, to the person properly entitled thereto of a proportionate amount of such tax on account of the encumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate enjoyed.

3 but on the happening of any contingency whereby the said property, or any part thereof, passes so that such ultimate succession would be exempt from taxation under the

provisions of this subdivision of this chapter, or taxable at a rate less than that so imposed and paid, the successor shall be entitled to a refunder of the difference between the amount so paid, and the amount payable on the ultimate succession under the provisions of this chapter, without interest; and the executor or trustee shall immediately upon the happening of such contingencies or conditions apply to the probate court of the proper county, upon a certified petition setting forth all the facts, and giving at least ten days' notice by mail to all interested parties, for an order modifying the temporary order of said probate court so as to provide for a final assessment and determination of the taxes in accordance with such ultimate succession. Such refunder shall be made in the manner provided by 5339 of the General Code.

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