

77-2004

Statutes and Session Law

Chapter 77. Revenue and Taxation

20. Inheritance Tax, 77-2001 to 77-2040.

77-2004 Inheritance tax; rate; transfer to immediate relatives; exemption.

77-2004 Inheritance tax; rate; transfer to immediate relatives; exemption.

In the case of a father, mother, grandfather, grandmother, brother, sister, son, daughter, child or children legally adopted as such in conformity with the laws of the state where adopted, any lineal descendant, any lineal descendant legally adopted as such in conformity with the laws of the state where adopted, any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent, or the spouse or surviving spouse of any such persons, the rate of tax shall be one percent of the clear market value of the property in excess of forty thousand dollars received by each person. Any interest in property, including any interest acquired in the manner set forth in section 77-2002, which may be valued at a sum less than forty thousand dollars shall not be subject to tax. In addition the homestead allowance, exempt property, and family maintenance allowance shall not be subject to tax. Interests passing to the surviving spouse by will, in the manner set forth in section 77-2002, or in any other manner shall not be subject to tax.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S. 1913, § 6622; C.S. 1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S. 1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S. Supp., 1941, § 77-2201; R.S. 1943, § 77-2004; Laws 1951, c. 267, § 3, p. 900; Laws 1953, c. 282, § 2, p. 914; Laws 1957, c. 337, § 1, p. 1174; Laws 1965, c. 497, § 1, p. 1585; Laws 1975, LB 481, § 31; Laws 1976, LB 585, § 4; Laws 1977, LB 456, § 1; Laws 1982, LB 480, § 4; Laws 1988, LB 845, § 1; Laws 1997, LB 16, § 1; Laws 2007, LB502, § 1.

Annotations:

1. Family member

The language "any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent" is not limited in application to blood relatives, and includes parties to whom the decedent stood "in loco parentis". In determining if the requisite acknowledged parental relationship exists for purposes of this section, the following factors should guide the trial court: (1) the family, (2) assumption of the responsibility for support beyond occasional gifts and financial aid, (3) exercise of parental authority and discipline, (4) relationship by blood or marriage, (5) advice and guidance to the child, (6) sharing of time and affection, and (7) existence of written documentation evincing the decedent's intent to act as parent. *In re Estate of Ackerman*, 250 Neb. 665, 550 N.W. 2d 678 (1996).

For the purpose of determining whether a devisee under a will is a "person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent" under this section, it is not necessary that there be a written acknowledgment. *In re Estate of Stanton*, 245 Neb. 942, 516 N.W. 2d 586 (1994).

Section 77-2005.01 expands the operation of this section and section 77-2005, extending the same tax treatment to the relatives of a former spouse to whom the deceased person was married at the time of the spouse's death, but in no sense conflicts with either of the other two statutes. *In re Estate of*

Morse, 241 Neb. 40, 486 N.W. 2d 195 (1992).

Physical absence from home of testatrix, while attending school, did not of itself prevent stepdaughter from being member of household of testatrix for inheritance tax purposes. *Wondra v. Platte Valley State Bank & Trust Co.*, 194 Neb. 41, 230 N.W. 2d 182 (1975).

Persons standing in loco parentis for ten years prior to death are within provisions of this section even though they are not relatives of the blood. In re *Estate of Dowell*, 149 Neb. 599, 31 N.W. 2d 745 (1948).

Persons standing in loco parentis are within the intent and scope of this section. The fact that a parent-child relationship may start when both parties are adults, or may begin when the child is a minor and continue after that child reaches adulthood, is not a bar to a claim brought under this section. While a child's residence is necessarily a factor to be considered in determining whether a parent-child relationship exists for purposes of this section, it is not the only factor. In re *Estate of Quinn*, 1 Neb. App. 1025, 510 N.W. 2d 488 (1993).

2. Tax rate

An inheritance by the widower of a daughter is not taxable at the rate prescribed by this section. *Todd v. County of Box Butte*, 169 Neb. 311, 99 N.W. 2d 245 (1959).

For purpose of inheritance tax, property should be valued at amount of money which it would produce if offered and sold for cash at time of death of decedent. In re *Woolsey's Estate*, 109 Neb. 138, 190 N.W. 215 (1922).

Law abolishing estates of dower and curtesy gives surviving spouse enlarged estate of same kind and nature as that of dower or curtesy, and, like dower, is not subject to inheritance tax. In re *Estate of Strahan v. Wayne County*, 93 Neb. 828, 142 N.W. 678 (1913).

Where widow elects to take under the will, her interest, to extent of statutory interest, is exempt from tax. In re *Estate of Sanford*, 91 Neb. 752, 137 N.W. 864 (1912).

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77-2005

Statutes and Session Law

Chapter 77. Revenue and Taxation

20. Inheritance Tax. 77-2001 to 77-2040.

77-2005 Inheritance tax; rate; transfer to remote relatives.

77-2005 Inheritance tax; rate; transfer to remote relatives.

In the case of an uncle, aunt, niece, or nephew related to the deceased by blood or legal adoption, or other lineal descendant of the same, or the spouse or surviving spouse of any of such persons, the rate of tax shall be thirteen percent of the clear market value of the property received by each person in excess of fifteen thousand dollars. If the clear market value of the beneficial interest is fifteen thousand dollars or less, it shall not be subject to tax.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S. 1913, § 6622; C.S. 1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S. 1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S. Supp., 1941, § 77-2201; R.S. 1943, § 77-2005; Laws 1947, c. 262, § 1, p. 851; Laws 1951, c. 267, § 4, p. 900; Laws 1959, c. 353, § 5, p. 1245; Laws 1965, c. 497, § 2, p. 1586; Laws 1976, LB 585, § 5; Laws 2007, LB502, § 2.

Annotations:

Section 77-2005.01 expands the operation of section 77-2004 and this section, extending the same tax treatment to the relatives of a former spouse to whom the deceased person was married at the time of the spouse's death, but in no sense conflicts with either of the other two statutes. In re Estate of Morse, 241 Neb. 40, 486 N.W. 2d 195 (1992).

The Legislature may properly distinguish inheritance tax laws in favor of blood relations, since such distinction is neither arbitrary nor unconstitutionally ambiguous. Ralston v. County of Dawson, 200 Neb. 678, 264 N.W. 2d 868 (1978).

A more burdensome tax is imposed in the case of named remote relatives by blood or legal adoption. Todd v. County of Box Butte, 169 Neb. 311, 99 N.W. 2d 245 (1959).

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77-2005.01

Statutes and Session Law

Chapter 77. Revenue and Taxation

20. Inheritance Tax. 77-2001 to 77-2040.

77-2005.01 Relatives of decedent; computation of inheritance tax.

77-2005.01 Relatives of decedent; computation of inheritance tax.

(1) For the purposes of sections 77-2004 and 77-2005, relatives of the decedent shall include relatives of a former spouse to whom the decedent was married at the time of the death of the former spouse and relatives of a spouse to whom the decedent was married at the time of his or her death.

(2) The computation of any tax due pursuant to sections 77-2004, 77-2005, and 77-2006 shall be made without regard to Nebraska inheritance tax apportionment.

Source: Laws 1976, LB 585, § 6; Laws 1977, LB 456, § 2

Annotations:

This section expands the operation of sections 77-2004 and 77-2005, extending the same tax treatment to the relatives of a former spouse to whom the deceased person was married at the time of the spouse's death, but in no sense conflicts with either of the other two statutes. In re Estate of Morse, 241 Neb. 40, 486 N.W. 2d 195 (1992).

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77-2006

Statutes and Session Law

Chapter 77. Revenue and Taxation

20. Inheritance Tax. 77-2001 to 77-2040.

77-2006 Inheritance tax; rate; other transfers.

77-2006 Inheritance tax; rate; other transfers.

In all other cases the rate of tax shall be eighteen percent on the clear market value of the beneficial interests in excess of ten thousand dollars. Such rates of tax shall be applied to the clear market value of the beneficial interests in excess of ten thousand dollars received by each person. If the clear market value of the beneficial interest is ten thousand dollars or less, it shall not be subject to any tax.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S. 1913, § 6622; C.S. 1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S. 1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S. Supp., 1941, § 77-2201; R.S. 1943, § 77-2006; Laws 1947, c. 262, § 2, p. 851; Laws 1965, c. 497, § 3, p. 1586; Laws 1988, LB 845, § 2; Laws 2007, LB502, § 3.

Annotations:

The Legislature may properly distinguish inheritance tax laws in favor of blood relations, since such distinction is neither arbitrary nor unconstitutionally ambiguous. *Ralston v. County of Dawson*, 200 Neb. 678, 264 N.W. 2d 868 (1978).

Physical absence from home of testatrix, while attending school, did not of itself prevent stepdaughter from being member of household of testatrix for inheritance tax purposes. *Wondra v. Platte Valley State Bank & Trust Co.*, 194 Neb. 41, 220 N.W. 2d 102 (1975).

An inheritance by the widower of a daughter is taxable at the rate prescribed by this section. *Todd v. County of Box Butte*, 169 Neb. 311, 99 N.W. 2d 245 (1959).

Tax is imposed upon the clear market value of the beneficial interest taken by the taxpayer. *County of Keith v. Triska*, 168 Neb. 1, 95 N.W. 2d 350 (1959).

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