

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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December 7, 2006

RE: Our File No. LR-06-155
Estate Tax Legislation

Dear

This letter is in response to your written request – dated September 18, 2006 – for written confirmation of your present understanding regarding recently enacted estate tax legislation. Following is the Tax Commission's response to your presentation of those issues:

House Bill 1172xx relating to Oklahoma Estate Tax was passed -- and subsequently signed by the Governor -- during the 2006 Legislative Session (2nd Extraordinary Session).

Section 1 of this bill amends 68 O.S. Section 803 by removing the separate (higher) tax rate for collateral heirs and providing one tax rate structure for both lineal and nonlineal net estate and transfers. The tax rate currently provided by Section 803 for lineal estates and transfers shall be utilized for all estates and transfers until the Oklahoma Estate Tax is repealed, effective January 1, 2010. The referenced repeal is enacted pursuant to the provisions of Sections 6 & 8 of HB 1172xx.

Section 2 of House Bill 1172xx amends 68 O.S. Section 809 by granting collateral heirs the same \$1,000,000.00 exemption as lineal heirs for deaths occurring on or after January 1, 2007, and before January 1, 2008. The maximum exemption is to be limited to \$1,000,000.00 per estate tax return.

The maximum exemption amount shall be increased as set forth below until January 1, 2010, when the Oklahoma Estate Tax shall be repealed pursuant to the provisions of Sections 6 & 8 of HB 1172xx:

- 1) For deaths occurring on or after January 1, 2008, and before January 1, 2009, the exemption amount shall be \$2,000,000.00.
- 2) For deaths occurring on or after January 1, 2009, and before January 1, 2010, the exemption amount shall be \$3,000,000.00.

Section 7 of the bill provides that Sections 1 through 5 of HB 1172xx shall become effective January 1, 2007.

You have set forth two (2) categories of decedents who may be affected in a potentially non-uniform and inequitable manner by Tax Commission interpretations and administration of the provisions of HB 1172xx. Following is a response as to the manner in which the Tax Commission intends to administer each of the two (2) referenced categories.

Category 1 Decedents: A decedent, who died in 2006, with an Oklahoma estate that is taxable because it has property passing to one or more collateral heirs, and whose Personal Representative **has** timely and diligently filed the Oklahoma Estate Tax Return and **has** paid the estate taxes due under the currently effective law. The Tax Commission would consider the estate of such a decedent to be in compliance with Oklahoma Estate Tax laws and the provisions of HB 1172xx.

Category 2 Decedents: A decedent, who died in 2006, with an Oklahoma estate that is taxable because it has property passing to one or more collateral heirs, and whose Personal Representative **has not** filed the Oklahoma Estate Tax Return and **has not** paid the estate taxes due under the currently effective law. The Tax Commission would consider the estate of such a decedent that does not timely file and pay any estate taxes due to be in non-compliance with Oklahoma Estate Tax laws and the provisions of HB 1172xx.

In your written request you state that it would appear from the new wording of **68 O.S. 809**, which will go into effect on January 1, 2007, that the estate of the **Category 2 Decedent** can either wait until the Oklahoma Estate Return may become due after January 1, 2007 **or** get an extension of time to file that would take the return filing past January 1, 2007, and then pay no estate taxes based on a reasonable interpretation of the new wording of the statute.

The Tax Commission will consider the estate of a decedent that either waits to file or applies for an extension as you have referenced above to be subject to the provisions of 68 O. S. 809 prior to the amendments enacted by the provisions of HB 1172xx. Section 7 of HB 1172xx provides that the amendment granting collateral heirs the same exemption amount as that granted to lineal heirs shall become effective January 1, 2007. The Tax Commission considers the January 1, 2007, effective date to be controlling on this issue and will administer the estate tax laws accordingly.

In conclusion, the Tax Commission will administer the provisions of Section 2 of HB 1172xx as follows:

- 1) For the estate of a decedent who dies on or after January 1, 2006, and before January 1, 2007, transfers to lineal heirs as set forth in 68 O.S. Section 809 prior to the enactment of HB 1172xx shall be granted an exemption amount \$1,000,000.00.
- 2) For the estate of a decedent who dies on or after January 1, 2007, and before January 1, 2008, transfers to both lineal and collateral heirs shall be granted an exemption amount of \$1,000,000.00.

This response applies to **your** request for written guidance dated September 18, 2006, and may be generally relied upon only by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law. Oklahoma Tax Commission Rule 710:1-3-73(e). If you have any additional questions or comments please feel free to contact me at (405) 521-3133

Sincerely,

Oklahoma Tax Commission

A handwritten signature in cursive script that reads "Rick Miller".

Rick Miller,

Tax Policy Analyst