

CHAPTER 35. ESTATES

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[**Authority:** 68 O.S. §§116, 203, 806]

[**Source:** Codified 12-30-91]

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CHAPTER 35. ESTATES

SUBCHAPTER 1. GENERAL PROVISIONS

710:35-1-1. Purpose

The provisions of this Chapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq, and to facilitate the administration, enforcement, and collection of taxes and other levies enacted by the Oklahoma Legislature with respect to decedents' estates.

710:35-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property. The disclaimer must be timely made as provided by statute. [See: 84 O.S. §§22 et seq.; 60 O.S. §§751 et seq.]

710:35-1-3. Annual report available to public

(a) After July 1, 1988, an annual listing of years for which an index is available will be displayed for public inspection at the offices of the Estate Tax Section of the Oklahoma Tax Commission during normal working hours.

(b) The Annual Report will contain the following information:

- (1) Name of Decedent
- (2) Date of Death
- (3) Address of Decedent
- (4) Probate County
- (5) Probate Number

(c) Any reproduction costs will be based on the current rates prescribed by the Commission. [See: 68 O.S. §116]

[Source: Amended at 28 Ok Reg 934, eff 6-1-11]

SUBCHAPTER 3. RETURNS; REMITTANCE; RELEASES

PART 1. FILING AND PAYMENT

710:35-3-1. Duty to file estate tax return

The executor or administrator of a decedent's estate must file the Estate Tax Return. If there is no duly qualified executor or administrator appointed, qualified and acting within this State, the person actively or constructively in possession of the decedent's property shall file a return.

710:35-3-2. Time for filing relating to weekends and holidays

When the last day prescribed for the performance of any act required by the Oklahoma Estate

Tax Law falls on a Saturday, Sunday or legal holiday, the act shall be considered performed timely if done on the next day which is not a Saturday, Sunday or legal holiday.

710:35-3-3. Extension to file estate tax return

The time for filing the Estate Tax Return may be extended, up to a maximum of six (6) months, upon request by the representative of the estate for an extension of time to file. Written application is to be addressed to the Estate Tax Section.

[Source: Amended at 14 Ok Reg 2695, eff 6-26-97]

710:35-3-4. Liability for payment of estate tax

(a) **Individuals Liable.** The Oklahoma Estate Tax imposed by statute with respect to the estates of residents and nonresidents, is payable by the executor or administrator of the decedent's estate. This duty applies to the entire tax, regardless of the fact that the gross estate consists in part of property which does not come within the possession of the executor or administrator. If there is no executor or administrator appointed, qualified and acting in this state, any person in actual or constructive possession of any property of the decedent is required to pay the entire tax to the extent of the value of the property in his possession. This is applicable to any interest due and owing. [See: 68 O.S. §§802, 804, 806]

(b) **Accountability for Debts Paid Prior to Payment of Tax.** Every executor, administrator or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the tax due to Oklahoma from such person or estate, shall become accountable to the extent of such payments for the tax so due to Oklahoma, or for so much thereof as may remain due and unpaid.

710:35-3-5. Payment plans

Requests for estate tax payment plans should be made in writing to the Estate Tax Section Administrator. [See: 68 O.S. §806(b)]

710:35-3-6. Computation and due date of interest

Interest on Oklahoma Estate Taxes is due and payable nine (9) months from the date of the death of the decedent, except as otherwise provided in 710:35-5-72. Interest is computed at the following rates and increments:

FOR TIME PERIOD	RATE
July 1, 1988 to present	1¼ percent per month
March 23, 1983 to June 30, 1988	1½ percent per month
Prior to March 23, 1983	1 percent per month

710:35-3-7. Application for reduction of interest

(a) **Notice.** Notice of application to a District Court for the reduction of interest on Oklahoma Estate Taxes shall be served on the Division Administrator of the Estate Tax Section, who shall determine the correctness of the action. [See: 68 O.S. §806(b)]

(b) **Qualifications for reduction.** The application must set out the reason(s) as specified by statute that qualify for the reduction of interest and the portion of the estate so affected. [See: 68 O.S. §806(b)]

(c) **Procedure.** Upon issuance of a court order stating that a situation reasonably exists that would warrant the reduction, a certified copy shall be delivered to the Division Administrator of the Estate Tax Section.

(d) **Interested party defined.** The terms "**pending litigation**", "**contingent claims**", or "**disagreements between interested parties**" as used in 68 O.S. §806(b) shall relate only to inclusion or exclusion of those specific properties to which the litigation, claim or disagreement pertains. The reduction of interest does not apply to the remaining property reported in the estate. Neither the Oklahoma Tax Commission, nor the Internal Revenue Service, are considered to be interested parties. [See: 68 O.S. §806(b)]

710:35-3-8. Taxes paid under protest

In any case where a taxpayer files a written protest of a proposed estate tax assessment with the Commission, the taxpayer may pay the taxes or additional taxes, as the case may be, and designate that the payment is being made under protest. Such payment will stop the accrual of interest, if any, upon the taxes so paid. If the Commission sustains the protest in whole or in part, the amount determined by the Commission not to be due shall be refunded to the taxpayer, without interest. [See: 68 O.S. §221]

710:35-3-9. Estate tax lien

(a) **General rule.** For decedents who die on or before December 31, 2009, Oklahoma estate taxes shall be and remain a lien upon all property which is part of the gross estate of the decedent, as defined in 68 O.S. § 807, immediately upon the death of the decedent.

(b) **Exceptions.** The Oklahoma estate tax lien does not attach to the following categories of property:

(1) Property used for the payment of charges against the estate and expenses of administration, allowed by the court having jurisdiction thereof;

(2) Property reported to the Oklahoma Tax Commission by the responsible party or parties which shall have passed to a bonafide purchaser of value in which case the tax lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, distributees, donees or transferees; and

(3) Property passing to the surviving spouse, either through the estate of the decedent, by joint tenancy, or otherwise.

(c) **Duration.** The Oklahoma estate tax lien shall continue as a lien on all property of the decedent's gross estate, except for the categories of property described in subsection (b), for ten (10) years from the death of the decedent, unless an order releasing taxable estate or order exempting the estate from estate tax is obtained from the Tax Commission. The Oklahoma estate tax lien is extinguished upon the expiration of ten (10) years from the date of the death of the decedent unless prior thereto the Tax Commission causes a tax warrant to be filed and appear of record in which case the Oklahoma estate tax lien then shall continue as a lien on all property of the decedent's gross estate, except for the categories of property described in subsection (b), until a release of the tax warrant is obtained and filed of record

[Source: Added at 19 Ok Reg 2037, eff 7-1-08]

PART 3. RELEASES

710:35-3-20. Estate tax releases

- (a) For purposes of this Part and administration of the Oklahoma Estate Tax Code, the word "**release**" shall mean and include the words "**acquittance**," "**waiver**," "**disclaimer**," "**order exempting**" or other similar language used in the Estate Tax Code.
- (b) The Division Administrator of the Estate Tax Section of the Oklahoma Tax Commission is authorized to issue releases of Oklahoma Estate Tax liability and liens thereby as to all property listed in the Oklahoma Estate Tax Return or other information filed with the Oklahoma Tax Commission in accordance with 710:35-3-21 and 710:35-3-24. Such releases shall be upon forms approved by the Commission, issued under facsimile signature of the Commissioners and the official seal of the Oklahoma Tax Commission, and shall constitute orders of the Commission.
- (c) The Division Administrator of the Estate Tax Section of the Tax Commission or his designee shall have authority to attest the signatures and affix the official seal of the Oklahoma Tax Commission to releases and liens associated with Estate Taxes. [See: 68 O.S. §806(c)]

710:35-3-21. Release upon full payment; order releasing taxable estates

- (a) Upon payment of all Estate Tax and interest, an Order Releasing Taxable Estates will be issued as to both real and personal property of the estate either:
- (1) Listed upon the Oklahoma Estate Tax Return which reports Oklahoma Estate Tax to be due and payable; or
 - (2) Listed in an audit performed by the Estate Tax Section. The Order Releasing Taxable Estate shall include a recitation of the name of the decedent, the amount of tax paid, the account number, receipt number and date of payment and that the reported estate of said decedent, consisting of real property or personal property or both, is released from Oklahoma Estate Tax liability and lien therefor. Recitation of legal description of real property or of the personal property of the estate shall not be set out in the Order Releasing Taxable Estates.
- (b) For deaths occurring on or after January 1, 2010, no release of estate tax liability is required.

710:35-3-22. Order exempting non-taxable estates

- (a) Upon audit by the Estate Tax Section of any Oklahoma Estate Tax Return and determination made that no Oklahoma Estate Tax is due, an Order Exempting Non-Taxable Estate will be issued as to both real and personal property of the Estate.
- (b) The Order Exempting Non-Taxable Estates shall include a recitation of the name of the decedent and that the net value of the estate of said decedent reported to the Commission is less than the applicable statutory exemptions and credits, and that the reported estate of the said decedent, consisting of real property or personal property or both, is released from Oklahoma Estate Tax liability and any associated lien. Recitation of the legal description of real property or of personal property of the Estate will not be set out in the Order Exempting Non-Taxable Estates. [See: 68 O.S. §821]

710:35-3-23. Order releasing property subject to Oklahoma Estate Tax liability and lien; partial release of specific property subject to the determination of tax

- (a) In matters where the Oklahoma Estate Tax Return has been filed with the Commission, or arrangements for filing the return have been made with the Estate Tax Section, the Division Administrator may issue an Order Releasing Property Subject to Estate Tax Liability and Lien, upon therefor and a showing that payment of any Estate Tax liability has been otherwise provided for.
- (b) The Order Releasing Specific Property Subject to Estate Tax Liability and Lien shall recite the legal description of the real property or the full description of the personal property for which the partial release is requested.
- (c) For deaths occurring on or after January 1, 2010, no release of estate tax liability is required.

710:35-3-24. Estate passing to a surviving spouse**(a) Order Exempting Estate Passing to a Surviving Spouse.**

(1) Upon audit by the Estate Tax Section and a determination that no Oklahoma Estate Tax is due, an Order Exempting Estate Passing to a Surviving Spouse will be issued as to both real and personal property of the Estate.

(2) An Oklahoma Estate Tax affidavit must be submitted by the surviving spouse, along with a certified Death Certificate. [See: 68 O.S. §815]

(b) **Contents.** The Order Exempting Estate Passing to a Surviving Spouse shall include a recitation of the name of the decedent and that all of decedent's property included in estate passing to the Surviving Spouse is released from any Estate Tax Lien.

(c) **Requirements.** No Order described in this Section will be issued without submission of either:

(1) An Oklahoma Estate Tax Return; or

(2) An Oklahoma Estate Tax Affidavit and accompanying certified Death Certificate.

(d) **Effect.** No Order described in this Section will be issued where the estate does not pass wholly and solely to the surviving spouse; nor where there is any Oklahoma Estate Tax liability determined to be due; nor where there is tax determined to be due under 68 O.S. §804.

SUBCHAPTER 5. DETERMINATION OF OKLAHOMA TAXABLE ESTATE**PART 1. PROPERTY TO BE DISCLOSED ON RETURN****710:35-5-1. Identification fully of all property**

All property included in the Estate Tax Return shall be fully identified. This shall include, but not be limited to:

(1) Real estate: Complete legal description and address.

(2) Minerals: Complete legal description, interest owned.

(3) Stocks: Issue name, identifying number and number of shares, documentation to support non-traded stock values.

(4) Bonds: Issue name, identifying number, par value, value at valuation date, and issue date.

(5) Personal property:

(A) Accounts at financial institutions - account number, name of institution, type of account, accrued interest to date of death, account balance at date of death.

- (B) Accounts receivable, Contracts of Sale, Partnerships within or without the State of Oklahoma, Notes, Mortgages, Liens: List name of payee, due date of amount owing, accrued interest to date of death, copy of instrument and amortization schedule, Federal Form K-1 for year of death. The interest of a nonresident decedent in a partnership will be taxed by the state where the partnership does business.
- (C) Other personal property - description and fair market value.
- (D) Proceeds received as a result of a "wrongful death" claim are not includable as an asset of the estate; but where it can be established that the wrongful death proceeds represent damages to which the decedent became entitled during his lifetime (such as for pain and suffering and medical expenses) rather than damages for his premature death, the value of these amounts will be includable.
- (6) Life insurance: Company, policy number, beneficiaries and addresses, face value and amount payable. This includes cash surrender value for policies owned by the decedent on the lives of others.
- (7) Prior transfers: Property description, date of actual transfer, any consideration and Federal Gift Tax Return Form 709 or schedule G of Federal Estate Tax Return concerning information on the transfer(s).
- (8) Property outside Oklahoma - total gross value.

710:35-5-2. Transfers in contemplation of death

Any transfer of property referred to in 68 O.S. 807(A)(2) is to be disclosed in the Oklahoma Estate Tax Return (Form 454-R82). In addition, copies of Federal Gift Tax, Form 709, shall be included with the Oklahoma Estate Tax Return. This requirement is made notwithstanding a determination by an executor or administrator that the transfer was not made in contemplation of death or was not a material part of the estate.

710:35-5-3. Joint interests

- (a) **Joint interests.** In general, a decedent's gross estate includes the value of property held jointly at the time of the decedent's death, by the decedent and another person or persons with right of survivorship, as follows:
- (1) To the extent that the property was acquired by the decedent and the other joint owner or owners by gift, devise, bequest or inheritance, the decedent's fractional share of the property is included.
 - (2) In all other cases, the entire value of the property is included except such part of the entire value as is attributable to the amount of consideration in money or money's worth furnished by the joint owner or owners.
- (b) **Definition. "Property held jointly"** specifically covers but is not limited to:
- (1) Property held jointly by the decedent and any other person or persons, whether listed individually or as a member of a partnership or other legally constituted entity;
 - (2) Property held by the decedent and spouse as tenants by the entirety; and
 - (3) Deposit of money, or a bond or other instrument, in the name of the decedent and any other person and payable to either or the survivor.
- (c) **Applicability.** This Section applies to all classes of property, whether real or personal, and regardless of when the joint interests were granted. Furthermore, it makes no difference that the

survivor takes the entire interest in the property by right of survivorship and that no interest therein forms a part of the decedent's estate for purposes of administration. The joint tenancy provision has no application to property held by the decedent and any other person or persons as tenants in common.

(d) **Claims.** Where a joint owner claims an interest in property included in decedent's estate, and the interest was acquired from the decedent, the claimant must submit facts to show that the transfer was supported by adequate consideration.

(e) **Proof.** Whether consideration is adequate may be determined, in part, by a comparison of the consideration furnished to the total cost of acquisition plus capital additions for the property. The ratio the consideration furnished bears to the total value of the property must be proportional to the quantum of property transferred.

(f) **Determination.** The executor, administrator, or claimant may submit facts to show that property included in decedent's estate was not acquired entirely with consideration furnished by the decedent; or was acquired by the decedent and the other joint owner or owners by gift, bequest, devise or inheritance. [See: 68 O.S. §807(A)(4)]

710:35-5-4. Cash surrender value of life insurance

There shall be included in the Estate Tax Return the cash surrender value of any life insurance policy owned by the decedent on the life of any other person or persons.

710:35-5-5. Unreported assets discovered

Assets that are not reported or disclosed in an Estate Tax Return shall be subject to the tax if discovered by the Commission within ten (10) years of the date of death.

PART 3. VALUATION

710:35-5-20. Valuation of all properties

(a) **Fair market value.** Valuation of all property included in the Estate Tax Return shall be at fair market value and, in the case of real property, shall not be valued at the rate it is assessed for local taxes, nor shall it be valued at the "special use valuation" applicable for some Federal Estate Tax purposes.

(b) **Appraisals.** If an appraisal has been obtained, submit with filing. The Oklahoma Tax Commission is not restricted to the appraised value submitted in determining the value of the taxable estate.

710:35-5-21. Mineral values

In the absence of an evaluation of mineral value by a geologist or petroleum engineer, the minimum value to be reported on the Estate Tax Return is:

(1) **Producing minerals.** Except as noted, oil income should be valued at 48 times the average monthly income for the six months preceding to six months after the date of death. Gas should be valued at 84 times the average income for the period six months before to six months after the date of death. The Oklahoma Tax Commission shall not be bound by the submitted evaluation.

(2) **Non-producing leased.** For non-producing leased properties, the value should be one and

one half (1 1/2) times the lease bonus if the last lease was made within one year of the date of death.

(3) **Non-producing non-leased.** The value for non-producing non-leased interests should be computed by reference to monthly lease values.

710:35-5-22. Valuation of stocks and bonds

Stocks and bonds are to be valued on the Estate Tax Return as follows:

- (1) If publicly traded the value shall be the average of the high and low quotation on the valuation date.
- (2) Non-publicly traded items shall be valued in accordance with IRS Revenue Ruling 59-60.
- (3) Oklahoma Turnpike Bonds are exempt from Oklahoma Estate Tax. [**First National Bank and Trust Company of Tulsa v. Oklahoma Tax Commission**, 447 P.2d 441 (1968)]

710:35-5-23. Valuation of household goods and other tangible personal property

Valuation of household goods and other tangible personal property is to be either by professional appraisal with an inventory included with the Estate Tax Return or by estimation of the appraised value of the property in which the household goods are located subject to approval by the Estate Tax Section. Whether an appraisal or estimation is used, an inventory of items is to be submitted with the return.

710:35-5-24. Valuation of partnership or proprietorship

The fair market value of any interest of a decedent in a business, whether a partnership or proprietorship, is the net amount which a willing purchaser, whether an individual or a corporation, would pay for the interest to a willing seller, neither being under any compulsion to buy or to sell and both having a reasonable knowledge of relevant facts. The net value is determined on the basis of all relevant factors including but not limited to:

- (1) The fair market value as of the applicable valuation date of all assets of the business, tangible and intangible, including goodwill;
- (2) The demonstrated earning capacity of the business; and
- (3) IRS Revenue Ruling 59-60.

PART 5. ALTERNATE VALUATION

710:35-5-30. Alternate valuation election; properties includable in the estate; explanation of "lapse of time"

(a) **Alternate valuation of estate property; election by executor/administrator; when election must be made.** At the election of the executor or administrator, all values will be determined by using the alternate valuation date, and for property sold within six (6) months of the date of death, the actual sale price. The election is made with the timely filing of the Estate Tax Return or an extension period granted by the Commission. The election is revocable within the filing period or the extended filing period. [**See:** 68 O.S. §816]

(b) **Properties includable.** If a binding contract for the sale, exchange or other disposition of estate property is entered into, the property is considered as sold, exchanged, or otherwise disposed of on

the effective date of the contract, unless the contract is not subsequently carried out substantially in accordance with its terms. The phrase "**distributed, sold, exchanged or otherwise disposed of**" comprehends all possible ways by which property ceases to form a part of the gross estate. The term does not, however, extend to transactions which are mere changes in form. Nor does it include an exchange of stock or securities in a corporation for stock or securities in the same corporation or another corporation in a transaction, such as a merger, recapitalization, or reorganization. [See: 68 O.S. §816(B)(1)]

(c) **Explanation of lapse of time.** Properties, interests, or estates which are "**affected by mere lapse of time**" include patents, estates for the life of a person other than the decedent, remainders, reversions, and other like properties, interests, or estates. The phrase "affected by mere lapse of time" has no reference to obligations for the payment of money, whether or not interest-bearing, the value of which change with the passing of time. [See: 68 O.S. §816(B)(1)(C)]

710:35-5-31. Minerals - alternate valuation

Upon election of alternate valuation date, producing minerals owned by the estate will be valued at the alternate valuation date and inclusion of production income between date of death and alternate valuation date will be made in addition to alternate valuation date value. [See: 68 O.S. §816]

710:35-5-32. Debts and expenses - alternate valuation

Debts and expenses incurred in relation to income earned between date of death and alternate valuation date are not allowable as estate deductions.

PART 7. DEBTS AND EXPENSES

710:35-5-40. Verification of debts and expenses

All debts or administrative expenses of an estate are subject to verification by the Estate Tax Section.

710:35-5-41. Selling expenses

Expenses for selling property including documentary stamps purchased for deed recordation, auction fees and abstract costs of the estate are deductible, to the extent of the decedent's interest in the property with approval of the Court.

710:35-5-42. Interest expense

The amounts that may be deducted as claims against the decedent's estate are such only as represent personal obligations of the decedent existing at the time of death, whether or not then matured, and interest thereon which has accrued at the time of death. Only interest that had accrued at the date of death is deductible even though the executor or administrator may elect the alternate valuation date.

710:35-5-43. Claims based on contracts

The allowance of a deduction on the Estate Tax Return for a claim founded upon a promise or agreement is limited to the extent that the liability was contracted bona fide and for adequate and full

consideration in money or money's worth.

710:35-5-44. Federal gift taxes

Unpaid federal gift taxes on gifts made by the decedent before his death are deductible; however, if a gift is considered as made one-half by decedent and one-half by spouse under 26 U.S.C.A. §2513, the gift tax deductible is the amount attributable to a gift in fact made by the decedent only. No portion of gift tax considered attributable to spouse's one-half of a gift is deductible.

710:35-5-45. Losses from casualties and theft

A deduction is allowed for losses incurred during the settlement of the estate arising from fires, storms, shipwrecks, or other casualties, or from theft, if the losses are not compensated for by insurance or otherwise. If the loss is partly compensated for, the excess of the loss over the compensation may be deducted. Losses which are not the nature described are not deductible. In order to be deductible a loss must occur during the settlement of the estate. If a loss with respect to an asset occurs after its distribution to the distributee it may not be deducted. Notwithstanding the foregoing, no deduction is allowed under this section if the estate has elected to take this deduction pursuant to the alternative provisions for income tax purposes.

710:35-5-46. Income taxes

(a) **General Rule.** Unpaid income taxes are deductible on the Estate Tax Return if they are on income properly includable in an income tax return of the decedent for a period before his death. Taxes on income received after the decedent's death are not deductible.

(b) **Income included on joint return.** If income received by a decedent during his lifetime is included in a joint income tax return filed by the decedent and his spouse, or by the decedent's estate and his surviving spouse, the portion of the joint liability for the period covered by the return for which a deduction will be allowed is the amount for which the decedent's estate would be liable under Oklahoma law, as between the decedent and his spouse, after enforcement of any effective right of reimbursement or contribution.

(c) **Presumption.** In the absence of evidence to the contrary, the deductible amount is presumed to be an amount bearing the same ratio to the total joint tax liability for the period covered by the return that the amount of income tax for which the decedent would have been liable if he had filed a separate return for that period bears to the total of the amounts for which the decedent and his spouse would have been liable if they had both filed separate returns for that period. Thus, in the absence of evidence to the contrary, the deductible amount is a sum equal to the decedent's separate tax, divided by both spouses' separate taxes, times the joint tax liability.

(d) **Limitation.** However, the deduction cannot in any event exceed the lesser of:

- (1) The decedent's liability for the period (as determined in this paragraph) reduced by the amounts already contributed by the decedent toward payment of the joint liability, or
- (2) If there is an enforceable agreement between the decedent and his spouse or between the executor and the spouse pertaining to the payment of the joint liability, the amount which pursuant to the agreement is to be contributed by the estate toward payment of the joint liability.

(e) **Refunds.** If the decedent's estate and his surviving spouse are entitled to a refund on account of an overpayment of a joint income tax liability, the overpayment is an asset includable in the decedent's gross estate in the amount to which the estate would be entitled under Oklahoma law, as

between the estate and the surviving spouse. In the absence of evidence to the contrary, the includable amount is presumed to be the amount by which the decedent's contributions toward payment of the joint tax exceeds his liability determined in accordance with the principles set forth in this Section. [See: 68 O.S. §808(b)]

710:35-5-47. Property taxes

Property taxes are not deductible on the Estate Tax Return unless they accrued before the decedent's death. However, they are not deductible merely because they have accrued in an accounting sense. Property taxes in order to be deductible must be an enforceable obligation of the decedent at the time of his death on property within the State of Oklahoma. [See: 68 O.S. §808(a)]

710:35-5-48. Unpaid mortgages

A deduction is allowed from a decedent's gross estate of the full unpaid amount of a mortgage upon, or of any other indebtedness in respect of any property of the gross estate, including interest which had accrued thereon to the date of death. Only interest accrued to the date of the decedent's death is allowable even under the alternate valuation method. [See: 68 O.S. §§808, 816]

[Source: Amended at 18 Ok Reg 2809, eff 6-25-01]

710:35-5-49. Attorney fees

Reasonable attorney fees allowed by the court and paid for by the legal representative as a cost of administering the estate shall be allowed as a deduction on the Estate Tax Return. [See: 68 O.S. §808]

710:35-5-50. Executor's fees

Executor fees shall be allowed as a deduction on the Estate Tax Return as provided for by statute. [See: 58 O.S. §527]

710:35-5-51. Interest on federal estate tax not deductible

Interest on Federal Estate Taxes is **not** deductible on the Oklahoma Estate Tax Return.

710:35-5-52. Miscellaneous and administration expenses

Miscellaneous administration expenses include such expenses as court costs, accountants' fees, appraisers' fees. Expenses necessarily incurred in preserving and distributing the estate are deductible on the Estate Tax Return. Expenses for preserving and caring for the property may not include outlays for additions or improvements; nor will such expenses be allowed for a longer period than the executor is reasonably required to retain the property.

PART 9. DEDUCTIONS; EXCLUSIONS; EXEMPTIONS

710:35-5-60. Public, charitable and religious deductions

The deduction for transfers for public, charitable and religious uses is allowed from the gross estate of a decedent who was a citizen or resident of the United States at the time of death for the value of property included in the decedent's estate and transferred by the decedent during his

lifetime or by will. This deduction shall only apply to transfers to organizations that have received a tax exempt classification from the Internal Revenue Service. The value of the charitable deduction shall be reduced by a proration of expenses, debts, taxes or other obligations if such reduction is determined as a result of an Oklahoma Estate Tax audit and review. Qualifying organizations will be determined by reference to 26 U.S.C.A. §501(C)(3), which grants tax exempt status. [See: 68 O.S. §808]

[Source: Amended at 9 Ok Reg 3019, eff 7-13-92]

710:35-5-61. Qualified terminal interest property; life estates

The qualified terminal interest property election provided for Federal Estate Tax use is not allowable for purposes of Oklahoma Estate Tax, except that a life estate for a surviving spouse may be deducted.

710:35-5-62. Wrongful death claim

Court approved proceeds paid as a result of a "wrongful death" claim are excludable for purposes of Oklahoma Estate Taxes. [But See: 710:35-5-1(5)(D)]

710:35-5-63. Not lineal exemptions

Neither step-grandparents nor step-grandchildren are eligible for a lineal exemption in the Oklahoma Estate Tax Return.

710:35-5-64. Lineal heir exemption for assets of qualifying family farm or business [REVOKED]

[Source: Revoked at 23 Ok Reg 2815, eff 6-25-06]

**PART 11. FEDERAL ESTATE TAX CREDIT AND
ADDITIONAL ASSESSMENT OF OKLAHOMA ESTATE TAX**

710:35-5-70. Separate credit provision

The credit against Oklahoma Estate Tax provided for by statute on certain prior transfers may not be used to offset any additional assessment levied to absorb federal credit pursuant to 68 O.S. §804. [See: 68 O.S. §802.1]

710:35-5-71. Federal credit for state death taxes

The amount of the federal credit for state death taxes due the State of Oklahoma shall be adjusted, if necessary, after determination and adjustments, if any, of the value of the property to be taxed in this State. The percentage of the credit due this State shall be determined based on the ratio of the adjusted value of the property in Oklahoma to the adjusted value of the total estate. [See: 68 O.S. §804]

710:35-5-72. Interest on federal credit

Interest accruing on taxes imposed under 68 O.S. §804 shall begin nine months after date of death

or thirty (30) days from the date of the Internal Revenue Service assessment letter for additional taxes.

710:35-5-73. Adjustments affecting federal credit

Any adjustments by the IRS affecting the State Death Tax Credit shall be submitted to the Oklahoma Tax Commission within thirty (30) days of agreed settlement along with a copy of the revenue agents report. [See: 68 O.S. §804]