

MEMORANDUM

OKLAHOMA TAX COMMISSION
TAX POLICY AND RESEARCH

DATE: August 16, 2007

SUBJECT: Estate Tax (LR 07-106)

TO:

FROM: Michael C. Kaufmann, Tax Policy Analyst

You requested guidance on the following:

Problem # 1:

68-825 states "If the estate passes to lineal heirs and also collateral heirs, determine the tax separately as to each as if there were two estates," For 2007 (and after) deaths, lineal and collateral heirs share the same exemption and tax rates. By splitting the estate to calculate the tax, the tax rate used may be lower than would be used if the tax were calculated on the net estate as a whole (i.e., all going to lineal heirs). I'm assuming that it was not the Legislature's intent to tax a mixed (lineal and collateral heir) estate at a lower rate than an all lineal heir estate.

It is our view that the entire estate gets the exemption (\$1 million for deaths during 2007). After the exemption is applied, then the estate is subject to the single rate structure found in 68 O.S. § 803. The rate for collateral heirs (68 O.S. § 803(2) is no longer valid.

Problem # 2:

The statutes don't appear to address the apportionment of the exemption among lineal and collateral heirs. If the preparer is allowed to determine how to apportion the exemption, the software designer must come up with a complicated algebraic equation for computing the optimum allocation to minimize the tax due.

68-825 states, "Unless, the will otherwise provides, the tax shall be apportioned among lineal and collateral persons," If the "tax" must be apportioned, should we assume that the exemption used to calculate the tax must also be apportioned?

The definition of apportion is "to divide and assign by a plan", Prior to 2007 deaths, we never apportioned the exemption to collateral heirs, I assume that the OTC's policy, for 2007 (and after) deaths, is to apportion the exemption among lineal and collateral heirs based on each heir's percentage of the total distribution, I have not found any specific statutory basis for this method. Do we have an apportionment policy or are the tax preparers free to use the method which most benefits their clients?

If the Legislature eliminates the requirement to separate the (2007 and after) estates into lineal and collateral estates for tax calculation purposes, there would be no reason to apportion the exemption.

As mentioned above, our view is that the entire estate gets the exemption. The remaining value of the estate (after the exemption) is taxed at the rate prescribed in 68 O.S. § 803. This rate structure is the old lineal heir rate.


