

## **CHAPTER 57-37.1 ESTATE TAX**

### **57-37.1-01. Definitions.**

The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, except when the context clearly indicates a different meaning:

1. "Federal gross estate" means the gross estate of a decedent as determined for federal estate tax purposes pursuant to the provisions of the United States Internal Revenue Code of 1986, as amended through December 31, 1990.
2. "Federal taxable estate" means the taxable estate of a decedent as determined for federal estate tax purposes pursuant to the provisions of the United States Internal Revenue Code of 1986, as amended through December 31, 1990.
3. "Nonresident decedent" means an individual who at the time of death was not a resident decedent.
4. "Personal representative" or "personal representative of an estate" means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within this state, then any person in actual or constructive possession of any property having a situs in this state which is included in the federal gross estate of the decedent.
5. "Resident decedent" means an individual whose residence at the time of death was in North Dakota according to the rules for determining residence as provided in section 54-01-26.
6. "Situs of property" means, as to real property, the state or country in which it was situated at the time of the decedent's death; as to tangible personal property, the state or country in which it was normally kept or located at the time of the decedent's death; as to intangible personal property, the state or country in which the decedent was a resident at death; and when used in reference to property having a situs in North Dakota it also means the county in which the property has its situs as determined in accordance with this subsection. Provided, however, that as to intangible personal property a resident may specify in that person's will that the situs of all, or of particular items of, intangible personal property is at any location within a county or counties in this state at which that person had resided for at least fifteen years after attaining eighteen years of age.
7. "Tax commissioner" means the tax commissioner of the state of North Dakota.

### **57-37.1-02. Tax on transfer of estates.**

A tax is hereby imposed upon the transfer of the North Dakota taxable estate of every decedent as prescribed in this chapter.

### **57-37.1-03. Determination of North Dakota taxable estate.**

Repealed by S.L. 1979, ch. 600, § 4.

### **57-37.1-04. Computation of tax.**

1. The amount of tax imposed upon the transfer of the North Dakota taxable estate must be equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to a decedent's estate which has a taxable situs in this state. If only a portion of a decedent's estate has a taxable situs in this state, such maximum tax credit must be determined by multiplying the entire amount of the credit allowable against the federal estate tax for state death taxes by the percentage which the value of the portion of the decedent's estate which has a taxable situs in this state bears to the value of the entire estate. For the purposes of this section, "federal estate tax" means the tax imposed on transfers of estates of decedents pursuant to the United States Internal Revenue Code of 1954, as amended, and "North Dakota taxable estate" means all property in a decedent's federal gross estate that has a situs in North Dakota.

2. When property subject to the tax imposed by this chapter qualifies for valuation based on its use under section 2032A of the Internal Revenue Code, it has the same value for North Dakota estate tax purposes as it has for federal estate tax purposes. If, after the final determination of the tax imposed by this chapter, the property valued under section 2032A of the Internal Revenue Code is transferred or otherwise fails to qualify and an additional tax is imposed under section 2032A(c) of the Internal Revenue Code, any increase in the credit for state death taxes must be reported by the personal representative to the tax commissioner within ninety days after final determination of the increased credit. Upon notification, the tax commissioner shall reassess the estate tax.

**57-37.1-05. Property previously taxed.**

Repealed by S.L. 1981, ch. 584, § 5.

**57-37.1-06. Estate tax return required - Tax commissioner to assess tax - District court to apportion federal and state estate taxes.**

The personal representative of an estate shall file with the tax commissioner the estate tax return required by this chapter. The tax commissioner shall assess the tax payable pursuant to the provisions of this chapter and furnish the personal representative with a statement thereof; if all or any part of the property included in the federal gross estate is being administered by the district court serving any county in this state, the tax commissioner shall also furnish a copy of the statement to that district court. The federal and North Dakota estate taxes must be apportioned as provided in section 30.1-20-16.

**57-37.1-07. Taxes payable as of date of death - Interest rate.**

The tax imposed by this chapter is due and payable at the death of the decedent, and if not paid within fifteen months after the date of death, must bear interest at the rate of one percent per month or fraction thereof to be computed from the expiration of fifteen months after death until the amount is paid. The tax commissioner may for good cause waive all or any part of any interest that attaches under the provisions of this section.

**57-37.1-08. Collection and distribution of tax - Refunds.**

1. The tax commissioner shall collect the tax imposed by this chapter and shall pay over the same to the state treasurer at the end of each calendar month and at the time of payment shall provide the state treasurer with a listing of estates of decedents from which the taxes were collected, together with a certificate as to the location and value of real estate and personal property for each estate. If the decedent was a resident of this state at the time of death, the certificate must also show the situs of those items of intangible personal property, if any, for which the decedent's will had, in accordance with subsection 6 of section 57-37.1-01, specified a situs different from that of the decedent's residence at the time of death.
2. Following the end of each calendar quarterly period, the state treasurer shall pay over to the county treasurer of the appropriate county, for its general fund, the amount of tax collected on the transfer of the property in that county. If any part of the decedent's property at the time of the decedent's death had a legal situs within the limits of a city, the share of tax based on such property must be divided by the state treasurer between the city and the county in proportion to their respective mill levies, except school levies, for the calendar year preceding the year of death. If any part of the decedent's property had a legal situs outside the limits of a city, the share of tax based on said property must go entirely to the county. If the tax determined to be due pursuant to this chapter is in an amount which is one hundred dollars or less, no further apportionment pursuant to this section may be made and the entire amount due must be distributed to a county or counties in which the legal situs of the property is located for their general fund.

3. In case an overpayment of such tax has been made for the estate of a decedent, such overpayment must be repaid out of any undistributed estate taxes in the hands of the state treasurer upon an order of the tax commissioner. Any overpayment to be repaid must bear interest at the Bank of North Dakota's money market demand account rate on the date of the tax commissioner's order to the state treasurer. Interest is to be computed from the time the tax was paid until the overpayment is repaid. Any interest owed by the state must be paid by the state treasurer from the general fund appropriation for miscellaneous refunds approved by the legislative assembly. The state treasurer shall thereupon present and file with the appropriate county treasurers and city auditors a verified claim of such overpayment accompanied by a copy of the order of the tax commissioner for such refund and the county treasurers and city auditors shall pay such claim to the state treasurer.

**57-37.1-09. Beneficiaries to share burden of tax.**

The beneficiaries are personally liable for their respective share of the tax imposed by this chapter, as well as the personal representative, and if the personal representative pays the tax, the personal representative may recover the tax from the beneficiaries in accordance with the provisions of section 30.1-20-16. No general statute of limitation may be considered as a bar to the collection of the respective share of the estate tax from each beneficiary. For the purposes of this chapter, the term "beneficiary" means any person receiving an interest in property of a decedent which is subject to inclusion in the decedent's federal gross estate and which had a situs in North Dakota at the time of the decedent's death.

**57-37.1-09.1. Lien for tax.**

Whenever any estate is liable to pay a tax, the amount of the tax, including any interest or addition to the tax, is a lien in favor of the state of North Dakota on the real and personal property of the estate from the time the tax commissioner files a notice of estate tax lien with the recorder of a county in which the real or personal property is situated. If the real or personal property is conveyed or transferred by the estate before the tax commissioner files a notice of estate tax lien, the tax, and any interest or addition to the tax, is a liability of the beneficiaries of the estate under the provisions of section 57-37.1-09 and the liability becomes a lien upon the property of the beneficiaries named in the notice of estate tax lien.

**57-37.1-10. Personal representative to furnish necessary documents to the tax commissioner.**

The personal representative shall furnish to the tax commissioner:

1. A North Dakota estate tax return.
2. A copy of the federal estate tax return.
3. Other information as the tax commissioner shall require.

**57-37.1-11. Valuations, reports, inventories, estate tax applications, and supplements.**

1. The valuation of all property includable in the North Dakota taxable estate of a decedent is subject to review and approval of the tax commissioner.
2. It is the duty of the personal representative to file an estate tax return and, before the final settlement of an estate, to furnish a supplemental or amended inventory and amended estate tax return listing all property and taxable transfers or other events that have come to the personal representative's knowledge since the first inventory or estate tax return was made which would result in a change in either the amount of the estate tax initially determined or the statements made by the affiant therein. The personal representative also shall furnish copies of any documents or records, and any other information pertaining to the estate, or the value thereof, upon request of the tax commissioner.
3. It is the further duty of the personal representative to file an amended estate tax return within ninety days after any amended estate tax return is filed pursuant to the provisions of the United States Internal Revenue Code. If no amended federal estate

tax return is filed but the federal estate tax return is changed or corrected, such change or correction must be reported to the tax commissioner within ninety days after the final determination of such change or correction is made, and the tax commissioner shall reassess the estate tax thereon. Upon receipt of an amended estate tax return, or upon notification of any change or correction made on the federal estate tax return, the tax commissioner shall reassess the estate tax.

4. Notwithstanding any other provisions of this chapter, the tax commissioner is not bound by any action or determination made in regard to any federal estate tax return by the United States internal revenue service.

**57-37.1-12. Duties of depositories - Inventory of contents of safe deposit box required.**

Repealed by S.L. 1997, ch. 497, § 4.

**57-37.1-13. Depositories - Notice of transfer of decedent's assets.**

Repealed by S.L. 1997, ch. 497, § 4.

**57-37.1-14. Penalties.**

Repealed by S.L. 1997, ch. 497, § 4.

**57-37.1-15. Liability of representatives.**

A personal representative is liable for all taxes payable on the estate with interest as provided in this chapter until the same have been paid. In no case may such personal representative be liable for a greater sum than is actually received by the personal representative.

**57-37.1-16. Penalty for false statements or reports.**

Every person who willfully and knowingly subscribes or makes any false statement of facts, or knowingly subscribes or exhibits any false paper or false report with intent to deceive the tax commissioner, or any appraiser appointed pursuant to the provisions of this chapter or title 30.1, is guilty of a class A misdemeanor.

**57-37.1-17. Supervision by tax commissioner.**

1. The tax commissioner shall have complete supervision of the enforcement and collection of all taxes due under this chapter and shall make such rules as may be necessary for the interpretation and enforcement thereof. The tax commissioner may call upon other departments of the state government for cooperation and assistance in the enforcement and collection of these taxes and may employ such attorneys, examiners, and special agents as may be necessary to carry out the intent and the purposes of this chapter.
2. The duly promulgated federal estate tax rules and regulations apply to this chapter insofar as they are not inconsistent with any specific provision of this chapter or are not inconsistent with any rule duly promulgated by the tax commissioner.
3. The tax commissioner may prescribe such forms, application blanks, and printed matter as may be necessary for the carrying out and enforcement of this chapter. The tax commissioner also shall keep such records as are indicated by good accounting practice in such manner as to provide statistical information to the legislative assembly.

**57-37.1-18. Preliminary appraisal if no estate tax return is filed.**

1. If the tax commissioner has reason to believe that the estate of a decedent may be subject to assessment of tax under the provisions of this chapter and no estate tax return has been filed within fifteen months following the death of the decedent, the tax commissioner shall cite the personal representative, said citation to include a demand for the filing of a return and payment of the tax within thirty days.

2. If any personal representative cited under subsection 1 refuses or neglects within thirty days after such notice to file a proper return, or files a fraudulent or incorrect return, the tax commissioner shall determine the North Dakota taxable estate of the decedent in question according to the tax commissioner's best information and belief and shall assess the tax at not more than double the amount that would otherwise be assessed.

**57-37.1-19. Assessment or determination of additional tax liability by tax commissioner - Hearing.**

If the tax commissioner has disapproved a return, or an assessment or determination has been made by the tax commissioner pursuant to the provisions of this chapter and said assessment results in a liability that is in addition to that which has been reported, or is as a result of action taken by the tax commissioner pursuant to the provisions of section 57-37.1-17, the personal representative or any beneficiary has a right to a hearing before the tax commissioner. Written demand for a hearing must be made of the tax commissioner within thirty days from the disapproval of a return, or notice of assessment, or determination on such disapproval of return, or assessment, or determination and such person making demand for a hearing has a right to appeal to the district court from the decision of the tax commissioner on such hearing and all of the provisions of chapter 28-32 relating to proceedings before an administrative agency, including the right to appeal to the courts from the decision of the tax commissioner in such a proceeding, are applicable to and govern the notice of hearing, the hearing, and the right of appeal from the decision of the tax commissioner thereon.

**57-37.1-20. Actions to quiet title to property.**

An action may be brought against the state by any interested person for the purpose of quieting title to any property against a lien, or claim of lien, for an estate tax under this chapter, or for the purpose of having it determined that any such property is not subject to any lien and is not chargeable with any tax under this chapter. No such action may be maintained if proceedings are pending in any court in this state in which the liability of such property for taxes under this chapter may be determined. All parties interested in said property and in the taxability thereof must be made parties thereto, and any interested person who refuses to join as plaintiff therein may be made a defendant. A summons for the state in such action must be served upon the state's attorney of the county where commenced and upon the tax commissioner.

**57-37.1-21. When return required.**

1. The personal representative shall file an estate tax return pursuant to this chapter for the estate of any decedent for whom a federal estate tax return is required to be filed if the federal gross estate includes any property or interest in property that has a situs in North Dakota.
2. If the tax commissioner finds that a required estate tax return has not been filed, the tax commissioner shall notify the personal representative of the tax commissioner's finding and the basis for the finding.

**57-37.1-22. Secrecy as to returns.**

The secrecy of returns must be guarded except as follows:

1. Except when otherwise directed by judicial order or as provided in section 57-37.1-08 or as is otherwise provided by law, the tax commissioner and the tax commissioner's deputies, agents, clerks, and other officers and employees may not divulge nor make known, in any manner, the particulars set forth or disclosed in any return required under this chapter, including the copy or any portion thereof or information reflected in the federal estate tax return that is required to be attached to, furnished with, or included in the state estate tax return. This provision may not be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular returns, and the items thereof, or the inspection by the attorney general or other legal representatives of the state of the return for any estate if an action or proceeding to set aside or review the tax based thereon is brought by the personal representative of the

- estate or any other person or if an action or proceeding is instituted by the tax commissioner to recover any tax, penalty, or interest imposed by this chapter.
2. The tax commissioner, however, may permit the commissioner of internal revenue of the United States or the proper officer of any state or of the District of Columbia or of any territory of the United States imposing a tax similar to that imposed by this chapter, or the authorized representative of any such officer, to inspect the estate tax return for any estate, or may furnish to such officer or the officer's authorized representative an abstract of the return for any estate, or supply the officer with information concerning any item contained in any return, or disclosed by the report of any investigation of the estate, but such permission may be granted, or such information furnished, to such officers or representatives only if the statutes of the United States or of such other state or of the District of Columbia or of any territory of the United States, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter; provided, that any information furnished or made available by the tax commissioner to any other person pursuant to this subsection may be used by such person only for the administration of tax laws administered by such person; and provided, further, that similar information furnished or made available to the tax commissioner by a representative or officer of any other state or of the United States or of the District of Columbia or of a territory of the United States may be used by the tax commissioner only for the administration of tax laws administered by such commissioner.