

Bulletin No. 76

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Legislative Commission

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Senator Carl F. Dodge	Assemblyman Zelvin D. Lowman
Senator James I. Gibson	Assemblyman Marvin L. White
Senator Archie Pozzi, Jr.	Assemblyman James E. Wood

Assembly Concurrent Resolution No. 22--Committee on Taxation

FILE NUMBER 109 (1967)

ASSEMBLY CONCURRENT RESOLUTION--Directing the legislative commission to make a study of the need and feasibility of establishing an estate tax in this state.

WHEREAS, The Federal Government allows a credit on estate taxes imposed by the states; and

WHEREAS, There have been attempts in the past to amend the constitution of the State of Nevada to permit the imposition of a state inheritance or estate tax but all such attempts have been unsuccessful; and

WHEREAS, The cost of good government requires that all possible means of financing the operations of state government be considered; now, therefore, be it

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE SENATE CONCURRING, That the legislative commission is hereby directed to make a study of the need and feasibility of establishing an estate tax in the State of Nevada and report the results of such study and make any recommendations for specific measures which it deems advisable to the 55th session of the legislature.

REPORT OF THE LEGISLATIVE COMMISSION

This study was directed by Assembly Concurrent Resolution No. 22 of the 1967 session of the legislature. Because all previous proposals to establish a general inheritance or estate tax have met defeat, the legislative commission made the initial determination that this study be focused upon an estate tax designed solely to collect for state use the amount allowable as a credit against the federal estate tax when applicable. Such a tax would impose no additional burden on any taxpayer but would make available to the state a limited amount of revenue. Because the only substantial determination of policy required had thus already been made by the full commission, the study was not referred to a subcommittee but directly to the staff of the legislative counsel bureau.

Because the constitution of Nevada at this time expressly forbids the imposition of any estate or inheritance tax (Art. 10, § 1), a constitutional amendment is first required before any such tax, even the limited one contemplated, may be imposed. Such an amendment was drafted. For purposes of discussion only, in order to understand the effect of the proposed amendment and not for any immediate adoption, a statute which would implement the proposed amendment by actually levying the tax was also prepared.

As an initial guide the staff first examined the constitutions and statutes of other states to determine which ones already have such a tax, commonly denominated a "pick-up" tax. These are Alabama, Arkansas, Florida and Georgia. The key to the imposition of pick-up taxes is Section 2011 of the United States Internal Revenue Code (26 U.S.C. § 2011), which provides a credit, not to exceed tabulated amounts specified in that section, against the federal estate tax for the amount of "any estate, inheritance, legacy or succession taxes actually paid to any state." The effect of this credit is that so long as the tax imposed by the state of residence of the decedent, combined with similar taxes imposed by any state in which he held property, does not exceed the amount of the allowable federal credit, the total tax paid by the estate of the decedent is not increased by the imposition of a state tax upon inheritances or estates.

The staff wrote to appropriate officials of each of the states listed to ascertain how the tax in their states is actually administered so as to achieve the result of absorbing the entire allowable federal tax credit without exceeding the amount of this credit in any instance and thus imposing an actual tax upon any decedent resident of the state. The replies received were helpful, and the legislative commission gratefully acknowledges the cooperation of these state officials.

From this information a draft constitutional amendment and statute were prepared. These drafts were then circulated to the State Bar of Nevada, the Nevada Society of Certified Public Accountants, and the Nevada Society of Public Accountants. In each instance, a copy of the draft was sent to the president of the organization concerned and to those persons whom the organization named as members of its relevant committee to study this particular problem. Comments and suggestions for use in the

preparation of the final draft were requested from each of these interested persons and committees. The State Bar of Nevada never responded directly to this request, but its federal and state taxation committee reported to the board of governors in opposition to the proposal. The committee's arguments were:

1. The tax received would be nominal unless a substantial estate is involved.
2. Ancillary administration of the real or personal property outside the State of Nevada often more than absorbs the federal tax credit.
3. There is presently no machinery set up in the State of Nevada to collect the proposed estate tax. The amount of tax which would be collected under the Nevada estate tax may not justify the cost of its administration and collection.
4. The possibility of sealing safe deposit boxes upon the death of a resident who is required to file a Nevada estate tax return would be a deterrent to wealthy persons who propose to move into the State of Nevada.
5. The sole fact that Nevada has an estate tax would be a psychological deterrent to wealthy persons who seek a Nevada domicile for tax purposes.

The committee noted that of three persons signing the report one member favored the proposed Nevada estate tax and did not concur in the arguments made by the other members of the committee. It may also be noted with respect to argument 2 that (1) Nevada would collect a proportionate share of the allowable credit from the estates of nonresident decedents who held property in this state, and (2) with respect to resident decedents Nevada would properly be entitled to first consideration against the federal estate tax credit available, and if more than the total allowable credit were in fact used up it would be only because other states in which the decedent held property had not adopted the same form of estate tax. With respect to argument 4 it will be noted from the final draft that no provision is made for the sealing of safe deposit boxes or any other means of physically blocking property transfers, under the draft statute.

The Nevada Society of Certified Public Accountants responded with a general endorsement of the proposed pick-up estate tax and certain detailed comments. Their substantive comments were directed to Sections 14 and 15 of the draft statute and suggested in both instances that the form required to be submitted to the Federal Government should suffice without any requirement of additional information on the part of the state. In this connection it may be noted that:

- (a) The requirement of written notice independently of the federal preliminary notice form if the latter is not filed is designed to provide a checklist against which the ultimate filing or nonfiling of a Nevada estate tax return can be verified. It may well be that, as a practical matter, following up any such checklist would require a much more elaborate policing system than Nevada can afford to contemplate. The inclusion or exclusion of this requirement is therefore a matter of policy for the legislature to determine if and when it finally enacts an estate tax statute.

- (b) The requirement for supplemental data to accompany the copy of the federal estate tax return which is filed as the final Nevada estate tax return is optional with the Nevada tax commission. Such a requirement may be necessary if the form of federal estate tax return used does not disclose all the information with respect to the location of taxable property which would be required in the particular case to determine correctly the amount of the Nevada estate tax due.

The Nevada Society of Public Accountants responded with an unqualified endorsement of the pick-up estate tax. They quoted with emphasis from the Zubrow study "to the extent that Nevada does not enact such legislation, it is in effect contributing an unwarranted subsidy to the other states of the nation."

In light of these comments the drafts submitted to the State Bar of Nevada and to the accountants' groups have not been changed, and are the drafts which accompany this report as Exhibits A and B.

Respectfully submitted,

Legislative Commission
State of Nevada

Carson City, Nevada
January, 1969

SUMMARY--Proposes constitutional amendment authorizing legislature to impose tax limited to amount which Federal Government may allow as credit against any estate or inheritance tax it may levy.

(Senate or Assembly) JOINT RESOLUTION--Proposing a constitutional amendment authorizing the legislature to impose a tax limited to the amount which the Federal Government may allow as a credit against any estate or inheritance tax which it may levy.

RESOLVED BY THE (Senate and Assembly, or Assembly and Senate) OF THE STATE OF NEVADA, JOINTLY, That section 1 of article 10 of the constitution of the State of Nevada be amended to read as follows:

Section 1. The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, when not patented, the proceeds alone of which shall be assessed and taxed, and when patented, each patented mine shall be assessed at not less than five hundred (\$500), except when one hundred dollars (\$100) in labor has been actually performed on such patented mine during the year, in addition to the tax upon the net proceeds; shares of stock (except shares of stock in banking corporations), bonds, mortgages, notes, bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and shall be exempt. Personal property which is moving in interstate commerce through or over the territory of the State of Nevada, or which was consigned to a warehouse, public or private, within the State of Nevada from outside the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterward, shall be deemed to have acquired no

situs in Nevada for purposes of taxation and shall be exempt from taxation. Such property shall not be deprived of such exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged. The legislature may exempt motor vehicles from the provisions of the tax required by this section, and in lieu thereof, if such exemption is granted, shall provide for a uniform and equal rate of assessment and taxation of motor vehicles, which rate shall not exceed five cents on one dollar of assessed valuation. [No inheritance or estate tax shall ever be levied, and there shall also be excepted such property as] Property may be exempted by law for municipal, educational, literary, scientific or other charitable purposes. No inheritance or estate tax shall ever be levied, except that the legislature may provide for the assessment, levying and collection of a tax not to exceed in the aggregate the amounts which may by any law of the Federal Government be allowed to be credited against or deducted from any tax upon inheritances or estates assessed or levied by the Federal Government. The legislature shall have the power to levy such a tax only so long as an inheritance or estate tax is imposed upon Nevada inheritances or estates by the Federal Government.

SUMMARY--Imposes tax limited to amount Federal Government will credit against its estate tax.

AN ACT to amend Title 32 of NRS, relating to revenue and taxation, by adding a new chapter imposing a tax limited to the amount that the Federal Government will credit against its estate tax; providing penalties; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND
ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 32 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 30, inclusive, of this act.

Sec. 2. Unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this act have the meanings ascribed to them in such sections.

Sec. 3. "Executor" means the executor, administrator, trustee or other legal representative of a decedent, or, if there is no executor, administrator or other legal representative appointed, qualified and acting, then any person who is in the actual or constructive possession of any property of the decedent.

Sec. 4. "Intangible personal property" means incorporeal personal property, and includes deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt and choses in action generally.

Sec. 5. "Person" includes corporations, associations, partnerships, joint-stock companies and business trusts.

Sec. 6. "Secretary" means the secretary of the Nevada tax commission.

Sec. 7. "Tangible personal property" means corporeal personal property, including money.

Sec. 8. "Tax commission" means the Nevada tax commission.

Sec. 9. "Transfer" means the passing of property or interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment by decedent with the purpose, effected at his death, of having it pass to another.

Sec. 10. "United States" when used in a geographical sense includes only the states and the District of Columbia.

Sec. 11. A tax is imposed upon the transfer of the estate of every person who, at the time of death, was domiciled in this state, the amount of which shall be a sum equal to the amount by which the credit allowable under the applicable federal revenue act for estate, inheritance, legacy and succession taxes actually paid to the several states exceeds the aggregate amount of all constitutionally valid estate, inheritance, legacy and succession taxes actually paid to the several states of the United States, other than this state, in respect to any property owned by such decedent or subject to such taxes as a part of or in connection with his estate.

Sec. 12. 1. A tax is imposed upon the transfer of:

- (a) Real property situate in this state;
- (b) Tangible personal property having an actual situs in this state;
- (c) Intangible personal property having a business situs in this state; and
- (d) Stocks, bonds, debentures, notes and other securities or obligations of corporations organized under the laws of this state, of every person who at the time of death was not domiciled in this state, but was domiciled in the United States, the amount of which shall be a sum equal to such proportion of the amount of the credit allowable under the applicable federal revenue act for estate, inheritance, legacy and succession taxes

actually paid to the several states, as the value of the property taxable in this state bears to the value of the entire gross estate wherever situate.

2. If the decedent at time of death was a domiciliary of a state which provides an exemption from transfer or death taxes to domiciliaries of this state, then the estate of such decedent is exempt from the payment of such estate or inheritance tax in this state to the extent of such exemption to residents of this state.

Sec. 13. 1. Unless prohibited by treaty, a tax is imposed upon the transfer of:

- (a) Real property situate in this state;
- (b) Tangible personal property having an actual situs in this state; and
- (c) Intangible personal property having a business situs in this state,

Plus of every person who at the time of death was not domiciled in the United States, the amount of which shall be a sum equal to such proportion of the credit allowable under the applicable federal revenue act for estate, inheritance, legacy and succession taxes actually paid to the several states, as the value of the property taxable in this state bears to the value of the estate taxable by the Federal Government.

2. For the purpose of this section:

- (a) Stock in a corporation organized under the laws of this state shall be deemed physically present within this state.
- (b) The amount receivable as insurance upon the life of a decedent who at the time of his death was not domiciled in the United States, and any moneys deposited with any person carrying on the banking business by or for such decedent who was not engaged in business in the United States at the time of his death, shall not be deemed physically present in this state.

Sec. 14. Within 60 days after the death of the decedent or the date on which the legal representative qualifies as such, whichever is later, or within 90 days after the death of the decedent if there is no legal representative, the executor shall give written notice of the death of the decedent to the tax commission. If a federal estate tax return is required by the applicable federal revenue act then a copy of the preliminary notice filed with the Federal Government may be filed with the tax commission and will be sufficient notice within the provisions of this section.

Sec. 15. The executor of every estate containing property subject to the tax imposed by this chapter shall file with the tax commission within 15 months from the date of death a return consisting of:

1. An executed copy of the federal tax return; and
2. All supplemental data, if any, necessary to determine the correct tax under the provisions of this chapter.

Sec. 16. 1. The tax imposed by this chapter shall be due and payable 15 months after the death of the decedent and shall be paid by the executor to the tax commission.

2. Where the tax commission finds that the payment on the due date of the tax or any part thereof would impose undue hardship upon the estate, the tax commission may extend the time for payment of the whole or any part of the amount due. No extension shall be for more than 1 year, and the aggregate of extensions with respect to any one estate shall not exceed 5 years from the original due date.

3. If an extension is granted, the amount so extended shall be paid on or before the date of the expiration of the period of the extension unless a further extension is granted, and there shall be collected, in addition to such amount, interest thereon at the rate of 10 percent per annum from the original due date of the tax to the date such tax is paid.

Sec. 17. 1. In case the federal authorities increase or decrease the amount of the federal estate tax after the filing of the return with the tax commission, the executor shall file an amended return with the tax commission within 3 months from the date the change was made, showing all the changes made in the original return and the amount of final increase or decrease in the federal estate tax.

2. If the amended return shows an increase in the amount of the federal estate tax, the tax commission shall assess against such estate any deficiency in the tax paid or assessed, and such deficiency shall be paid within 60 days after notice of the assessment is received by the executor.

3. If the amended return shows a decrease in the federal estate tax and the tax imposed by the provisions of this chapter has been paid, the tax commission shall cause to be repaid to the executor from the taxes collected under this chapter an amount equal to the excess tax paid. All claims for refund shall be paid from the general fund upon claims presented by the tax commission, approved by the state board of examiners and allowed and paid as other claims against the state are allowed and paid.

Sec. 18. Until the tax and any interest or penalty thereon are paid in full, they shall be a lien upon all property in the estate of the decedent, except such lien shall be divested from such part of the estate as is:

1. Used for payment of charges against the estate and expenses of its administration; or

2. Transferred from the estate of a domiciliary decedent to a bona fide purchaser, mortgagee or pledgee, for an adequate and full consideration; but such lien shall then attach to the consideration received for such property.

Sec. 19. If the tax commission is satisfied that no tax liability exists or that the tax liability of an estate has been fully discharged or provided for, the secretary may issue a waiver releasing any or all property of such estate from the lien imposed by section 18 of this act. A fee of \$5 shall be charged for each waiver so issued.

Sec. 20. If any executor:

1. Makes distribution either in whole or in part of any property of an estate to the heirs, next of kin, distributees, legatees or devisees or obtains the release of such property pursuant to section 19 of this act from the lien imposed by section 18 of this act without having paid or secured the tax due under this chapter; or

2. Fails to pay the tax or any part thereof due under this chapter,

then he shall become personally liable for the tax so due, or so much thereof as may remain due and unpaid.

Sec. 21. Where a return is not made as required by section 15 of this act, the estate may be appraised and assessed for estate taxes by the tax commission, which may require the production of all evidence necessary to enable it to determine the value of all property of such estate subject to taxation under this chapter.

Sec. 22. Whenever the executor of any estate fails to pay within the required period the tax due under this chapter and no extension has been granted, the secretary shall institute proceedings for the collection of such tax in the proper court.

Sec. 23. The tax commission is charged with the administration and enforcement of the provisions of this chapter and may:

1. Make such rules and regulations consistent with the provisions of this chapter as are necessary for such administration and enforcement.

2. Prescribe such forms as it deems necessary for the proper administration of this chapter.

Sec. 24. The tax commission shall, upon request received from an official to whom is entrusted the enforcement of estate or death tax laws of any other state, if such other state furnishes like information to this state, forward to such officer any information relative to such tax which it may have in its possession.

Sec. 25. All taxes, fees, penalties and costs received by the tax commission under this chapter shall be transmitted by the tax commission to the state treasurer to be deposited in the state treasury to the credit of the general fund.

Sec. 26. Funds for the administration of the provisions of this chapter shall be provided by direct legislative appropriation from the general fund upon the presentation of budgets in the manner required by law.

Sec. 27. When not otherwise provided for in this chapter, the rules of construction applicable to the estate and inheritance tax laws of the Federal Government shall apply to the interpretation of this chapter.

Sec. 28. Any person who knowingly makes any false statement in any notice or return required to be filed under this chapter or who willfully aids, procures or counsels the preparation or presentation of a false or fraudulent return, affidavit, claim or document in connection with any matter arising under this chapter is guilty of a gross misdemeanor.

Sec. 29. Any person required under this chapter or by regulation made under authority of this chapter to pay any tax, make a return, keep any records or supply any information for the purposes of computation, assessment or collection of any tax imposed by this chapter, who willfully fails to pay such

tax, make such return, keep such records or supply such information at the times required, is, in addition to other penalties provided by law, guilty of a misdemeanor.

Sec. 30. This chapter shall remain in force and effect only so long as an inheritance or estate tax is imposed upon inheritances or estates in this state by the Federal Government.