



Legislative Fiscal Bureau

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February 10, 1998

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Substitute Amendment 1 to Senate Bill 330: Probate Fees

On November 18, 1997, Senate Substitute Amendment 1 (SSA 1) to Senate Bill 330 was recommended for passage by the Senate Committee on Judiciary, Campaign Finance Reform and Consumer Affairs by a vote of 5 to 0.

BACKGROUND

Under current law, in probate proceedings, the fee for filing a petition to commence the administration of a person's estate is \$10 if the gross estate or value of property is \$10,000 or less. If the gross estate is more than \$10,000, the fee is 0.1% of the amount of the gross estate.

In cases involving administration of a deceased person's estate, to determine the value of the gross estate, the register in probate must: (1) exclude the value of property that passes under a revocable inter vivos trust (a trust that becomes effective during the life of the person making the trust); (2) exclude life insurance, retirement benefits or annuities unless paid or payable to the estate; (3) include United States government bonds payable to another person upon the death of the original registered owner; and (4) diminish the value of the decedent's interest in real estate by the unpaid balance on recorded or filed liens or mortgages. In addition, current law requires a personal representative to file with the probate court an inventory of the estate to be administered. The inventory must include a list of any joint and life tenancies, in addition to all property subject to administration. A statement of any encumbrances, liens or other charges upon each item must also be included in the inventory.

SUMMARY OF SUBSTITUTE AMENDMENT 1 TO SENATE BILL 330 (SSA 1)

SSA 1 would modify the probate filing fee for administration of estates of deceased persons to be \$10 if the property subject to administration, less any encumbrances, liens or charges, is \$10,000 or less. If the value of the property subject to administration, less any encumbrances, liens or charges, is more than \$10,000, then the fee would be 0.1% of the value of the property to be administered less any encumbrances, liens or charges. The substitute amendment would also specify that the fee may not be based on the value of any property not subject to administration. Under the substitute amendment, the inventory to be filed with the court would include all property subject to administration, but would no longer include joint and life tenancies. A list of encumbrances, liens or charges upon each item would continue to be required.

The substitute amendment would also repeal the statutory language specifying that the register in probate, in determining the amount of the fee, do all of the following: (1) exclude the value of property that passes under a revocable inter vivos trust; (2) exclude life insurance, retirement benefits or annuities unless paid or payable to the estate; (3) include United States government bonds payable to another person upon death of the original registered owner; and (4) diminish the value of the decedent's interest in real estate by the unpaid balance on recorded or filed liens or mortgages. The elimination of these specifications would have no practical effect on the implementation of the fee schedule, because these would already either be included or excluded in the definition of property to be administered under the substitute amendment.

SSA 1 would also specify that the fees for filing a petition for guardianship or application for conservatorship of an estate under Chapter 880 (Guardians and Wards) be based on the value of the property, less encumbrances, liens or charges, instead of being calculated on the value of the gross estate as provided under current law.

ANALYSIS

According to state probate officials, the calculation of probate fees varies among registers in probate. In cases involving the administration of an estate of a deceased person, some include in the calculation the value of property held jointly, while others do not. Those who include jointly held property indicate that since it is included in the inventory filed with the court and it is not specifically excluded under statutes, it should be included in the calculation. Those who do not include the value of jointly held property in the calculation of the probate fee indicate that since it is not property to be administered in probate proceedings, it should not be included in the calculation.

SSA 1 would clarify that the probate fee is to be calculated only on property to be administered by the court (less encumbrances, liens or charges). In addition, it would eliminate jointly held property from the inventory list that must be filed with the probate court. As a

result, jointly held property, and any other property that would not be administered in court, would be excluded from the calculation of the probate fee.

In addition, in probate cases involving guardianship of an estate or an application for conservatorship, the statutes currently do not provide for the exclusion of amounts owed out of the person's estate for the purposes of calculating the probate fee. However, in practice, some counties exclude these in the determination of the fee, while others do not. SSA 1 would require exclusion of any encumbrances, liens or charges in the calculation of probate filing fees in guardianship and conservatorship cases.

FISCAL EFFECT

Probate fees are split evenly between the state and counties. In 1996-97, almost \$2.8 million was collected in probate fees and divided between the state and counties. State revenues are deposited to the general fund.

There would be some loss of revenue under SSA 1 to SB 330, mainly resulting from lower fees in counties which currently include the value of jointly held properties in determining probate fees. Additional revenue would be lost in counties which include encumbrances, liens and charges against property in calculating the filing fee in guardianship and conservatorship cases. While the total value of property that would be affected is unknown, given recent discussions with county officials responsible for administering the fee it, would appear that the bill would not have a significant impact on the actual amount of fees collected.

Prepared by: Carri Jakel

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