



## Ohio Revised Code

### Section 2113.86 Apportionment of taxes.

Effective: April 6, 2017

Legislation: House Bill 432 - 131st General Assembly

---

(A) Unless a will or another governing instrument otherwise provides, and except as otherwise provided in this section, a tax shall be apportioned equitably in accordance with the provisions of this section among all persons interested in an estate in proportion to the value of the interest of each person as determined for estate tax purposes.

(B) Except as otherwise provided in this division, any tax that is apportioned against a gift made in a clause of a will other than a residuary clause or in a provision of an inter vivos trust other than a residuary provision, shall be reapportioned to the residue of the estate or trust. It shall be charged in the same manner as a general administration expense. However, when a portion of the residue of the estate or trust is allowable as a deduction for estate tax purposes, the tax shall be reapportioned to the extent possible to the portion of the residue that is not so allowable.

(C)(1) A tax shall not be apportioned against an interest that is allowable as an estate tax marital or charitable deduction, except to the extent that the interest is a part of the residue of an estate or trust against which tax is reapportioned pursuant to division (B) of this section.

(2) Estate tax of this state or another jurisdiction shall not be reapportioned against an interest that is allowable as a deduction for federal estate tax purposes, to the extent that there is other property in the estate or trust that is not allowable as a deduction for federal estate tax purposes and against which estate tax of this state or another jurisdiction can be apportioned.

(3) A provision in a will or other governing instrument that apportions tax to an interest that is otherwise allowable as an estate tax marital or charitable deduction is ineffective unless it refers to the marital or charitable deduction and expressly and unambiguously acknowledges and accepts any resultant partial loss of the deduction.

(D) A tax shall not be apportioned against property that passes to a surviving spouse as an elective share under section 2106.01 of the Revised Code or as an intestate share under section 2105.06 of the



Revised Code, to the extent that there is other property in the estate that is not allowable as a deduction for estate tax purposes against which the tax can be apportioned.

(E)(1) Any federal estate tax credit for state or foreign death taxes on property that is includible in an estate for federal estate tax purposes, shall inure to the benefit of the persons chargeable with the payment of the state or foreign death taxes in proportion to the amount of the taxes paid by each person, but any federal estate tax credit for state or foreign death taxes inuring to the benefit of a person cannot exceed the federal estate tax apportioned to that person.

(2) Any federal estate tax credit for gift taxes paid by a donee of a gift shall inure to the benefit of that donee for purposes of this section.

(3) Credits against tax not covered by division (E)(1) or (2) of this section shall be apportioned equitably among persons in the manner in which the tax is apportioned among them.

(F) Any additional estate tax that is due because a qualified heir has disposed of qualified farm property in a manner not authorized by law or ceased to use any part of the qualified farm property for a qualified use, shall be apportioned against the interest of the qualified heir.

(G) If both a present interest and a future interest in property are involved, a tax shall be apportioned entirely to the principal. This shall be the case even if the future interest qualifies for an estate tax charitable deduction, even if the holder of the present interest also has rights in the principal, and even if the principal is otherwise exempt from apportionment.

(H) Penalties shall be apportioned in the same manner as a tax, and interest on tax shall be apportioned to the income of the estate or trust, unless a court directs a different apportionment of penalties or interest based on a finding that special circumstances make an apportionment as provided in this division inequitable.

(I) If any part of an estate consists of property, the value of which is included in the gross estate of the decedent by reason of section 2044 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 N 2044, as amended, or of section 5731.131 of the Revised Code, the estate is entitled to recover from the persons holding or receiving the property any amount by which the estate tax payable exceeds



AUTHENTICATED,  
OHIO LEGISLATIVE SERVICE  
COMMISSION  
DOCUMENT #252550

the estate tax that would have been payable if the value of the property had not been included in the gross estate of the decedent. This division does not apply if the decedent's will or another governing instrument provides otherwise and the will or instrument refers to either section mentioned in this division or to qualified terminable interest marital deduction property.