

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 361—Chapters 3 and 11
“Inheritance Tax Payments”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 450.6
State or federal law(s) implemented by the rulemaking: Iowa Code section 450.6

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 27, 2023
12 noon

Room G9, Iowa State Capitol
1007 East Grand Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Executive Council no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nate Ristow
Governor’s Office, Iowa State Capitol
1007 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.314.2998
Email: nate.ristow@governor.iowa.gov

Purpose and Summary

This proposed rulemaking provides the criteria by which the Executive Council will approve an inheritance tax credit for transfer of property to a public entity.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Persons who owe inheritance tax will bear the costs of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Persons who owe inheritance tax, state and local governments will benefit from the proposed rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There are minimal costs to apply for the credit and obtain certification from the transferee government. Actual costs are hard to identify because the Department of Revenue is not aware of anyone ever utilizing this credit.
 - Qualitative description of impact:
An individual must apply to the Executive Council to be granted the credit. The local government that received the transferred land must certify the transfer.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
These costs are negligible because no one uses this credit.
- Anticipated effect on state revenues:
No effect on state revenues is anticipated.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

If someone wants to claim this credit before the inheritance tax sunsets in 2025, the costs imposed by this rule are very low. Without this chapter, the process for claiming the credit would be unclear.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The limitations on transfer of land could be loosened, which may encourage more individuals to use the credit.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
Alternative methods were not seriously considered at this time because the inheritance tax sunsets in two years.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The inheritance tax sunsets in two years, so there is no reason to change the existing process for claiming the credit at this time.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rule does not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 361—Chapter 3:

CHAPTER 3 INHERITANCE TAX PAYMENTS

361—3.1(450) Prior tax payment. If the inheritance tax has been paid and the payment is not excessive and, therefore, not subject to refund under Iowa Code section 450.94(3), the council will not approve, as a tax credit, any property transfer as a substitute for the prior tax payment.

361—3.2(450) Real property and tangible personal property. The tax credit is applicable for transfers of real property or of tangible personal property located in Iowa. Transfers of intangible property or of property located outside of Iowa will never qualify for the tax credit.

3.2(1) *Real property.* The executive council will not approve a credit for a transfer of a joint interest in real property or for property which is encumbered by liens. However, the council may approve a credit for an interest in real property which is less than full legal and equitable title if the interest is an easement for public access, a conservation or preservation easement, dedication for preserves or for other public use, or other similar interest which by virtue of the location and nature of the property is of significant, unique value to the public or to the environment. Property encumbered by liens of creditors will not qualify for the tax credit. Proposals to transfer a partial interest will not qualify for the tax credit.

3.2(2) *Tangible personal property.* Tangible personal property is tangible property which can be touched or handled. It is corporeal and is contrasted with intangible property. Intangible property includes but is not limited to cash, choses in action, copyrights, patents, stocks, bonds, trademarks, or annuities. *Ramco, Inc. v. Director, Department of Revenue*, 248 N.W.2d 122 (Iowa 1976).

361—3.3(450) Type, use, and purpose of transfers. The transferred property for which tax credit will be claimed should be useful to the public generally. Thus, for example, transfers of real property to be dedicated and used as a park or wildlife area will generally be approved by the council for the tax credit. In addition, at the time of the transfer, the governmental entity receiving the property should intend to own and use it for a public purpose for an indefinite period of time. The council will not approve a tax credit if the property transferred is to be sold or otherwise transferred again. However, mere retention of authority to dispose of or transfer property does not preclude the council from granting the credit if the donee has rules or policies to ensure that the property may only be transferred to a similar entity or affiliated organization for a similar purpose or sold in a reasonable manner with the proceeds pledged to the same purpose as the original gift. The property transferred should have real significance to the public and should be permanently used for the public's benefit. Personal property transferred should have significant historical or cultural value or be transferred and used in association with any real property transferred for which the council will approve the tax credit.

361—3.4(450) Political subdivisions. A political subdivision of the state of Iowa is a geographic or territorial portion of the state in which local governmental functions are performed. An agency or instrumentality of a political subdivision is part of the political subdivision. 1976 Op. Att'y Gen. 823.

361—3.5(450) Eligible taxes. The tax credit provisions in Iowa Code section 450.6 are applicable to the Iowa inheritance tax imposed by Iowa Code chapter 450. The taxes imposed by Iowa Code chapter 450A (generation skipping tax) and by Iowa Code chapter 451 (Iowa estate tax) will not be eligible for the tax credit for property transfers.

361—3.6(450) Partial payment. If the value of the property to be transferred is less than the inheritance tax liability of the beneficiary, heir, surviving joint tenant or other transferee who proposes such transfer and if the council approves the transfer, the remaining portion of the liability shall be paid to the department of revenue before the tax credit will be granted.

361—3.7(450) Timeliness of application. An application for approval of a proposed transfer shall be filed with the council within eight months of the death of the decedent, unless, for good cause, the council extends the period for filing such application. In no case will such extension be granted beyond the due date for the filing of the inheritance tax return and due date for payment of the tax or, if applicable, an extended date obtained pursuant to 701—subrule 900.2(9).

361—3.8(450) Notice of donee agencies. Any state agency which is the transferee of the property in question will receive notice of any pending application on the agenda of the executive council.

361—3.9(450) Scope of rules. These rules do not foreclose any transfers of property of any kind to the state or its political subdivisions. These rules are only concerned with whether such transfers will qualify for the tax credit authorized by Iowa Code section 450.6. The council's intent is to demonstrate that its discretion to approve the tax credit will not be broadly exercised.

361—3.10(450) Forms. The application to pay inheritance tax by a transfer of property and the certifications necessary under these rules is made on forms available from the department of revenue.

361—3.11(88GA,SF619) Sunset. This chapter shall cease to be operative on January 1, 2026.
These rules are intended to implement Iowa Code sections 17A.3 and 450.6.

ITEM 2. Rescind and reserve **361—Chapter 11.**