

EXECUTIVE COUNCIL [361]

Notice of Intended Action

The Executive Council hereby proposes to adopt Iowa Administrative Code 361—chapter 3, “Inheritance Tax Payments”, and rescind chapter 11, “Inheritance Tax Payments”.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in 450.6.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 450.6.

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.

Fiscal Impact

This rulemaking has no fiscal impact to the state of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Executive Council for a waiver of the discretionary provisions, if any, pursuant to 17A.9A, Iowa Code.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Executive Council no later than 4:30 p.m. on January 3, 2024. 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

Public Hearing

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

January 2, 2024
12:00 p.m.

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

January 3, 2024
12:00 p.m.

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Nate Ristow, nate.ristow@governor,iowa.gov, and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action proposed:

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.**