

CHAPTER 11
INHERITANCE TAX PAYMENTS
[Prior to 5/1/91, see Executive Council[420]]

361—11.1(450) Authority of executive council. Iowa Code section 450.6 authorizes the executive council to allow a beneficiary, heir, surviving joint tenant or other transferee who transfers real property or tangible personal property to the state of Iowa or its political subdivisions to receive a tax credit against inheritance tax liability to the extent of the value of the property transferred, provided the property is used for public purposes. If the transfer is to be made to a political subdivision, the governing body thereof must approve the transfer prior to a request for approval by the council. The council is not required to approve the tax credit for such transfers, but can do so in the exercise of reasonable discretion.

361—11.2(450) Decedent's gross estate. Transfers to be eligible for the tax credit must consist of property that is included in the decedent's gross estate for Iowa inheritance tax purposes.

361—11.3(450) Value of property. The value of the property for payment of the tax and the tax credit is the same as its value established for inheritance tax purposes. If the value of the property transferred exceeds the tax liability, the excess value shall not be refunded.

361—11.4(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 subsection 450.94(3), the council will not approve, as a tax credit, any property transfer as a substitute for the prior tax payment.

361—11.5(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.

11.5(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.

EXAMPLE: A and B inherit a remainder interest in land from an estate. C is the life tenant. Any request for tax credit for a proposal which would only transfer the remainder interest or only transfer a life estate will not be approved by the council. If A, B, and C propose to transfer their entire interests, such transfers would become eligible for the tax credit.

EXAMPLE: D inherits land from an estate. The land is encumbered by a mortgage lien. D proposes to transfer the land to a school district, which has accepted the transfer, and requests a tax credit. Since the land is encumbered with a mortgage lien, the council will not approve the tax credit.

EXAMPLE: E and F inherit land from an estate as tenants in common. E proposes to transfer E's interest to the state. Because the proposal is to transfer a partial interest, the council will not approve the tax credit.

11.5(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—11.6(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.

EXAMPLE: G, a beneficiary of an estate, proposes to transfer land to a city which has accepted the transfer, and upon which the city will build a recreational facility. Provided all other criteria are met, the council will generally approve the tax credit with respect to such transfer.

EXAMPLE: H, a surviving joint tenant, proposes to transfer property held in joint tenancy, consisting of ten acres of land, to a county which has accepted the transfer. The county intends to sell the land and use the proceeds to purchase other property that will be used for a public purpose. Since the county will not use the transferred property for an indefinite period of time, the council will not approve the tax credit.

EXAMPLE: I, an heir, proposes to transfer assets received from an estate. These transfers will be a pickup truck to a county, a computer to a school district, a carpet to a city community center, a portrait of someone to hang on a courthouse wall, decedent's clothing to a county hospital, and some silver and gold coins to a drainage district. All political subdivisions have accepted these transfers. The personal property does not have significant historical value. The council will not approve the tax credit for any of these transfers as they do not constitute personal property of significant historical value or the transferred property will not be used by the political subdivisions for an indefinite period of time.

361—11.7(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—11.8(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—11.9(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—11.10(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 department of revenue rule 701—86.2(13), Iowa Administrative Code.

361—11.11(450) Notice of donee agencies. Any state agency which is the transferee of the property in question shall receive notice of any pending application on the agenda of the executive council.

361—11.12(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—11.13(450) Forms. The application to pay inheritance tax by a transfer of property and the certifications required by these rules shall be made on forms prescribed by the executive council. The following forms are hereby adopted.

APPLICATION TO PAY INHERITANCE TAX
BY TRANSFER OF PROPERTY FOR PUBLIC PURPOSES

TO: _____, the governing body of
_____, a political subdivi-
sion of the State of Iowa.

As required by Iowa Code § 450.6, the undersigned submit(s) the following application to pay inheritance tax by a transfer of property for public purposes, subject to the approval of the Iowa Executive Council.

1. Name(s) of applicant(s) _____

2. Estate in which the tax is to be paid _____

3. Property to be transferred _____

4. Public purpose _____

Under penalty of perjury, I (we) affirm the foregoing application has been examined by me (us), and is to the best of my (our) knowledge and belief true and correct.

Date _____

Applicant(s) Address

Certification of the Local Governing Body

I, _____ hereby certify that I am the
_____ of _____ and at a meeting held
on the _____ day of _____, 20_____, the _____ of
_____ did (accept)(reject) the offer of the applicant(s) to transfer the above
described property for the purpose stated in the application, subject to the approval of the Iowa
Executive Council.

(Seal)

APPLICATION TO PAY INHERITANCE TAX
BY TRANSFER OF PROPERTY FOR PUBLIC PURPOSES

TO: THE HONORABLE EXECUTIVE COUNCIL OF IOWA

Pursuant to the provisions of Iowa Code § 450.6, the undersigned submit(s) the following application to pay inheritance tax by a transfer of property for public purposes.

- 1. Name(s) of applicant(s) _____

- 2. Estate in which the tax is to be paid _____
- 3. Amount of tax due \$ _____
- 4. Property to be transferred _____

- 5. To be transferred to _____
- 6. Public purpose _____

- 7. \$ _____ is the value of the property to be transferred.
See attached certification of the Department of Revenue or
see attached independent appraisal.
- 8. Form No. 1, if applicable showing acceptance of the political subdivision is attached.
- 9. This application is for (full)(partial) payment of the inheritance tax.

Under penalty of perjury, I (we) affirm the foregoing application has been examined by me (us), and is to the best of my (our) knowledge and belief true and correct.

Date _____

Applicant(s) Address

CERTIFICATION OF THE DEPARTMENT OF REVENUE
AS TO VALUE OF PROPERTY AND INHERITANCE TAX DUE

TO: THE HONORABLE EXECUTIVE COUNCIL OF IOWA

As required by Iowa Code § 450.6, the Department of Revenue certifies the following information for the purpose of paying an inheritance tax obligation by a transfer of property:

1. The value of the following described property _____

in the estate of _____ for inheritance tax purposes is \$ _____ .

2. The inheritance tax obligation of _____

is \$ _____. If the property transfer is less than the tax obligation, the balance of the tax due (has been)(has not been) paid.

IOWA DEPARTMENT OF REVENUE

by _____

Title

CERTIFICATION OF ACCEPTANCE OR REJECTION OF A
TRANSFER OF PROPERTY IN PAYMENT OF INHERITANCE TAX

TO: DIRECTOR, IOWA DEPARTMENT OF REVENUE

On the _____ day of _____, 19_____, the
Executive Council, (accepted) (rejected) the offer of _____

heir(s) or beneficiary(ies) of the estate of _____
_____ County

Probate No. _____, Department of Revenue No. _____,
to pay the inheritance in the amount of \$ _____
by the transfer of the following described property:

to _____
for the following public purpose _____

You are directed to give _____
_____ beneficiary(ies) or heir(s) in this
estate, credit against the inheritance tax obligation in the amount of \$ _____.

Date _____

Secretary, Iowa Executive Council

These rules are intended to implement Iowa Code sections 17A.3 and 450.6.
[Filed 6/19/90, Notice 12/27/89—published 7/11/90, effective 8/15/90]
[Filed emergency 4/9/91—published 5/1/91, effective 4/9/91]