"THE UGLY STEPSISTER" – INHERITING THE DEFECTS OF NEBRASKA’S INHERITANCE TAX

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I. INTRODUCTION

Almost every Nebraskan will become subject to the inheritance tax at some point in their lifetime.1 Whether the tax is paid, avoided, or unpaid due to lack of knowledge of the tax’s existence, most Nebraskans will encounter the tax, and thereby be required to abide by its requirements and structure.2 American law has acquired two types of

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2. Compare Hearing on L.B. 1102 Before the Revenue Comm., 2012 Leg., 102d Sess. 69 (Neb. 2012) (statement of Sen. Paul Schumacher, Member, Revenue Comm.) [hereinafter Hearings February 2012] (stating that, although they are subject to it, some beneficiaries unknowingly fail to pay the inheritance tax), with Curt S. Steger, Dodging the Tax Bullet: The Use of Foreign Limited Liability Companies by Retired Farmers to Limit State Inheritance Tax Liability for the Next Generation of Small Farmers, 15 Drake J. Agric. L. 167, 179 (2010) (explaining how the inheritance tax impact leads individuals to seek ways to avoid it).
taxation for an individual’s property at death: inheritance and estate taxes. Estate taxes are imposed upon the rights of a decedent to transmit property after death and are charged to the actual estate. Conversely, inheritance taxes are assessed upon a beneficiary’s apportionment of a decedent’s property. Therefore, the amount of the inheritance tax is based upon the value of property received by each beneficiary.

Nebraska is one of eight states with an active inheritance tax. Nebraska’s inheritance tax imposes a tax rate on transfers to a beneficiary based upon their relationship to the decedent. While spouses are completely exempt from the tax, all other beneficiary exemptions correspond to relationships with the decedent. Nebraska’s inheritance tax was originally codified in 1901. Although the law has experienced changes, most of the law’s substance and purpose remains the same. Ultimately, this structure greatly impacts Nebraskan families, both traditional and nontraditional in several ways.

This Note will first review the legislative history of Nebraska’s inheritance tax. Second, this Note will discuss the background of the law and its function both in the past and present. Then, this Note will examine structural flaws within the inheritance tax statutes. In doing so, this Note will explain how the law is inconsistently administered, leading individuals to seek ways of avoidance. This

3. Steger, supra note 2, at 171.
6. Id.
8. See Neb. Rev. Stat. § 77-2001 (imposing inheritance tax upon a beneficiary’s receipt of a decedent’s property at death); see also id. §§ 77-2004 to -2006 (explaining tax rates and exemptions corresponding to each class of beneficiaries).
9. See id. §§ 77-2004 to -2006 (explaining tax rates and exemptions corresponding to each class of beneficiaries).
10. See id. § 77-2001 (noting the codification of the inheritance tax in the laws of 1901).
12. See Steger, supra note 2, at 179-80 (explaining ways residents choose to avoid the inheritance tax); see also Neb. Rev. Stat. § 77-2004 (taxing all other transfers outside of traditional family structures at 18%).
13. See infra notes 20-63 and accompanying text.
14. See infra notes 64-110 and accompanying text.
15. See infra notes 111-122 and accompanying text.
16. See infra notes 120-62 and accompanying text.
Note will demonstrate that the statute creates tension with federal estate tax law. The Note will also discuss the ways in which the law unfairly penalizes nontraditional families. Finally, this Note will examine potential ways the Nebraska Legislature can address the structural issues posed by the inheritance tax, in order to achieve a system that does not negatively impact Nebraskan families; traditional or otherwise.

II. NEBRASKA’S INHERITANCE TAX AND LEGISLATIVE HISTORY

A. ENACTMENT

Nebraska enacted its first inheritance tax law in 1901. At its inception, most federal and state taxes did not exist, so its enactment was a practical decision for vital revenue generation within Nebraskan counties. Nebraska also enacted the law in part to prevent individuals from evading taxes at death. For example, when a decedent executed and delivered a deed with the intention of retaining a life estate and evading the inheritance tax, the law required the beneficiary to become subject to taxation at the death of the decedent grantor.

In its original form, the law required beneficiaries to pay a tax upon the amount of inheritance they received from a decedent. In order to impose the tax, the law required the decedent to have a present interest in the property at the time of his or her death. The law accounted for all property regardless of whether the decedent lived in Nebraska. For example, if a decedent owned real property in Nebraska, but resided in Kansas at death, the decedent’s beneficiaries would be subject to the inheritance tax based upon the fact that the...
property was located in Nebraska.\(^{27}\) It also detailed the ways in which the counties could spend the revenue, and subjected all gifts, sales, or grants to the tax.\(^{28}\) Although later additions would do so, the original law did not delineate classes of individuals, but instead taxed all beneficiaries at the same rate.\(^{29}\) While the law has experienced some changes over time, its original meaning and concept remains the basis of Nebraska’s inheritance tax today.\(^{30}\) However, the law and its function received critical amendments in 1981 when it came before the eighty-seventh Nebraska Legislature.\(^{31}\)

B. L.B. 480: THE BEGINNING OF THE “MODERN” INHERITANCE TAX

In 1981 the Nebraska Legislature sought considerable changes to the inheritance tax law.\(^{32}\) The eighty-seventh Nebraska Legislature was replete with concern over the tax’s structure and operation.\(^{33}\) The legislative sessions and committee hearings revealed a need for repeal, or restructure of the inheritance tax.\(^{34}\) Two major amendments occurred during the session.\(^{35}\) First, the amendments exempted transfers to surviving spouses and simplified the system of gift reporting.\(^{36}\) Second, the amendments rectified problematic liens imposed upon spouses.\(^{37}\) Aside from these amendments, the Legislature also removed obsolete language and the descriptions of the ways the counties could spend the proceeds of the tax.\(^{38}\)

\(^{27}\) See Laws 1901, ch. 54, § 1, 414 (taxing transfers of real, personal, and intangible property, regardless of whether the decedent was a resident of Nebraska).

\(^{28}\) Id.

\(^{29}\) Compare Neb. Rev. Stat. §§ 77-2004 to -2006 (adding classes of beneficiaries with separate tax rates), with Laws 1901, ch. 54, § 1, 414 (taxing all beneficiaries at the same rate).

\(^{30}\) Compare Minutes, supra note 11, at 3 (explaining that the tax is problematic because of its outdated structure), with Burbridge, supra note 11, at 870 (describing how the inheritance tax statute had substantially the same form in 1963 that it had in 1901).


\(^{32}\) See Debates, supra note 31, at 8920 (introducing three critical amendments to the statute).

\(^{33}\) See id. (proposing amendments to help the overall function and structure of the statute).

\(^{34}\) Compare Minutes, supra note 11, at 3-4 (recommending repeal of the tax due to its archaic structure), with Debates, supra note 31, at 8920 (proposing amendments to increase inheritance tax efficiency).

\(^{35}\) See Debates, supra note 31, at 8920 (noting the substantive changes posed by the amendment, although a third proposed change was simply to the language of the statute).

\(^{36}\) Id.

\(^{37}\) Id. at 8921.

\(^{38}\) Id. at 8920.
1. Spousal Exemptions and Gifting

One of the key changes the Revenue Committee sought was to allow spouses to become exempt from the inheritance tax.39 As such, the surviving spouse of a decedent is not liable to pay taxes on property in which they shared a one-half possessory interest.40 This right belongs to a surviving spouse independently and absolutely from the right of inheritance.41 The Legislature readily passed this amendment without much debate.42

The Legislature also discussed and implemented an amendment that simplified the system of filing state gift tax returns.43 Prior to the amendment, the law included as taxable any gifts made within three years prior to the decedent’s death.44 In amending this provision, the Legislature mirrored the federal estate tax law by only taxing gifts which federal law required a taxpayer to include within a federal gift tax return.45

2. The Lingering Lien Problem

Prior to the floor debates of the eighty-seventh Nebraska Legislature, the Nebraska Revenue Committee held several hearings to discuss a problematic imposition that the Nebraska inheritance tax developed: joint tenancy spousal liens.46 Before the subsequent amendments, the inheritance tax subjected surviving spouses to liens on property owned with the decedent.47 At the death of a decedent, the law placed a ten-year lien upon the decedent’s real property, removable only by the county when paid or determined that the beneficiary owed no taxes.48 Thus, when a spouse died and both spouses owned the real estate, the lien attached to the property, which the

39. DEBATES, supra note 31, at 8921 (providing the statement of Senator Peter Hoagland).
40. Strahan v. Wayne Cnty. (In re Inheritance Tax of Strahan’s Estate), 142 N.W. 678, 680 (Neb. 1913); see also BLACK’S LAW DICTIONARY 1284 (9th ed. 2009) (defining a possessory interest as “[a] present or future right to the exclusive use and possession of property”).
41. Strahan’s Estate, 142 N.W. at 680.
42. See DEBATES, supra note 31, at 8921 (noting the inclination of the Legislature to accept spousal exemptions outright).
43. See id. at 8920 (discussing the implementation of gift tax returns complying with federal estate tax law).
44. DEBATES, supra note 31, at 8920.
45. Id.
46. See Minutes, supra note 11, at 3 (discussing the burden the lien places upon surviving spouses).
47. See id. (imposing a lien upon the property of unmarried decedents and upon surviving spouses who held the property in joint tenancy).
48. Minutes, supra note 11, at 3.
surviving spouse needed legal aid to remove. The application of this portion of the law was problematic for surviving spouses because it imposed attorney fees and administrative costs upon the estate of the decedent. These costs were troublesome because estates were often too small to accumulate an inheritance tax, but would nevertheless require legal aid to remove the lien. Thus, the tax's lien imposition upon surviving spouses created frustration among Nebraskan citizens that inevitably beckoned the Legislature to respond.

While the Revenue Committee minutes exposed problems with the spousal liens, no results were achieved until the Legislature acted one month later. Senator Peter Hoagland proposed a provision that would eliminate the lien on property between spouses when there was no inheritance tax due. The Legislature expanded this amendment to include situations between spouses when an inheritance tax is due. The Legislature moved to completely eliminate the inheritance tax lien upon the property of surviving spouses who held title in joint tenancy.

C. Gripes About County Benefits

In the 1980s, another pervading frustration with the inheritance tax surfaced when individuals began to voice their concerns with the counties' benefit from the tax's proceeds. During the floor debates of the eighty-seventh Legislature, senators opined on the amount of the funds being sent to the counties. Senator Emil Beyer noted that the counties had raised revenue by other means since the tax's enactment in 1901, thereby making the funds gained from the inheritance tax a
small portion of county revenue.\textsuperscript{59} Other senators also expressed similar concerns during the legislative sessions, as the general reluctance to have the counties benefit from the proceeds continued.\textsuperscript{60}

In response to the opposition against the counties, several senators spoke at the committee hearings on the ways in which the revenue from the inheritance tax provided great improvement opportunities for the counties.\textsuperscript{61} Senator Richard Peterson explained that without the inheritance tax, the counties would supplement the needed revenue for county projects through an increase in real estate taxes.\textsuperscript{62} In light of this realistic probability, frustration with the counties and their utilization of inheritance tax revenue diminished by the time the legislation reached the floor debates of the eighty-seventh Legislature.\textsuperscript{63}

III. BACKGROUND

A. CLASS BENEFICIARIES

Nebraska apportions inheritance tax rates between beneficiaries according to Nebraska Revised Statutes sections 77-2004 to 77-2006.\textsuperscript{64} These supporting statutes delineate three classes of beneficiaries and the rates at which individuals of each class are taxed.\textsuperscript{65} Section 77-2004 begins inheritance tax designations with class one beneficiaries.\textsuperscript{66} Section 77-2004 defines these beneficiaries as immediate relatives and includes transfers to: parents, grandparents, siblings, and children.\textsuperscript{67} The State taxes each beneficiary of this class at a rate of one percent of any amount inherited exceeding $40,000.\textsuperscript{68}

\begin{itemize}
\item \textsuperscript{59} Minutes, \textit{supra} note 11, at 3.
\item \textsuperscript{60} See \textit{Debates, supra} note 31, at 8923 (providing the statements of Senator Peter Hoagland, who voiced the concerns of Senators that the tax provides substantial revenue to the counties).
\item \textsuperscript{61} See Minutes, \textit{supra} note 11, at 4 (providing the statements of Senator Richard Peterson, who revealed how the inheritance tax proceeds allowed the construction of a jail that would not have otherwise been possible).
\item \textsuperscript{62} \textit{Id.}
\item \textsuperscript{63} See \textit{Debates, supra} note 31, at 8923 (providing the statements of Senator Peter Hoagland, who explained that it is not intention of the Legislature to deprive counties of much needed revenue).
\item \textsuperscript{64} See Neb. Rev. Stat. §§ 77-2004 to -2006 (2010) (identifying the tax rate for transfers to immediate relatives, remote relatives, and other transfers); see also Nielsen \textit{v. Sidner (In re Estate of Benton),} 215 N.W.2d 86, 87 (Neb. 1974) ("[I]nheritance taxes in Nebraska are imposed on each beneficiary's right to receive a portion of the property of a decedent, and the amount of the tax on each beneficiary is based upon the value of the property ‘received by each person.’")
\item \textsuperscript{65} See Neb. Rev. Stat. §§ 77-2004 to -2006 (creating the classes of "immediate relatives," "remote relatives," and "others").
\item \textsuperscript{66} See \textit{id.} § 77-2004 (creating the "immediate relatives" class).
\item \textsuperscript{67} \textit{Id.}
\item \textsuperscript{68} \textit{Id.}
\end{itemize}
Thus, class one beneficiaries receive a $40,000 inheritance tax exemption.\textsuperscript{69} Section 77-2005 defines class two beneficiaries as remote relatives and includes transfers to: uncles, aunts, nieces, and nephews.\textsuperscript{70} The State taxes each beneficiary of this class at a rate of thirteen percent of any amount of property received exceeding $15,000.\textsuperscript{71} Thus, class two beneficiaries receive a $15,000 inheritance tax exemption.\textsuperscript{72} Opposition to this delineation of beneficiaries has occurred within the Legislature.\textsuperscript{73} Senator Dave Newell, a member of the 1981 Nebraska Revenue Committee, articulated grievances with the tax rate imposed upon those who do not leave their possessions to immediate family members.\textsuperscript{74} The Nebraska Supreme Court, in \textit{In re Estate of Kittenbrink},\textsuperscript{75} displayed similar reluctance towards this issue, noting that exemptions, tax rates, and beneficiary classes were matters of the Legislature and not of the courts.\textsuperscript{76} \textit{Kittenbrink} also explained that the law could permissibly create distinctions of favoritism to certain types of family members and the rate at which they are taxed.\textsuperscript{77}

Section 77-2006 defines class three beneficiaries as other transfers and includes any and all transfers to individuals outside classes one and two.\textsuperscript{78} Beneficiaries of this class are taxed at a rate of eighteen percent in excess of $10,000.\textsuperscript{79} Thus, class three beneficiaries receive a $10,000 dollar inheritance tax exemption.\textsuperscript{80}

\textbf{B. IN LOCO PARENTIS}

While Nebraska's inheritance tax designates classes of beneficiaries, the doctrine of in loco parentis gives beneficiaries the opportunity to prove their relationship with the decedent qualifies as that of class one beneficiaries.\textsuperscript{81} Over time, the language of section 77-2004

\textsuperscript{69} Id.
\textsuperscript{70} Id. § 77-2005.
\textsuperscript{71} Id.
\textsuperscript{72} Id.
\textsuperscript{73} See Minutes, supra note 11, at 41 (providing the statements of Mrs. Royal, who described discontentment with the classification of family members in this class).
\textsuperscript{74} See id. (providing the statements of Senator Dave Newell, who claimed the law was unfair to single decedents who wish to grant their property to class two beneficiaries).
\textsuperscript{75} 264 N.W.2d 868 (Neb. 1978).
\textsuperscript{76} See Ralston v. Cnty. of Dawson (In re Estate of Kittenbrink), 264 N.W.2d 868, 870 (Neb. 1978) (noting the Legislature’s broad discretion in delineating classifications for the tax).
\textsuperscript{77} \textit{Kittenbrink}, 264 N.W.2d at 870.
\textsuperscript{78} NEB. REV. STAT. § 77-2006.
\textsuperscript{79} Id.
\textsuperscript{80} Id.
\textsuperscript{81} See McPeek v. Scotts Bluff Cnty. (In re Estate of Quinn), 510 N.W.2d 488, 492 (Neb. Ct. App. 1983) (stating that the doctrine of in loco parentis allows a beneficiary to
led Nebraska to recognize that parent-child relationships exist outside of the biological context and that the law should afford such relationships the benefits of a class one beneficiary tax rate. As a result, taxpayers may use the doctrine of in loco parentis, which allows a class two or three beneficiary to be considered a class one beneficiary if the decedent acted in the place of a parent.

One recent case, *In re Estate of Malloy*, provides an example of this doctrine. In *Malloy*, the Nebraska Court of Appeals found that a beneficiary did not qualify for preferential tax treatment as a class one beneficiary. In the case, Welsh, a nephew of the decedent filed a petition seeking to become a class one beneficiary, claiming that his uncle stood in loco parentis. The decedent bequeathed Welsh a considerable interest in his farmland, and estate. Welsh presented evidence that the decedent had taken him under his wing when Welsh's father died. Welsh also produced evidence of the close relationship between him and his uncle over the years, and that the decedent had placed Welsh in charge of many of his personal and financial affairs.

Despite this evidence, the court determined that Welsh did not meet the in loco parentis test developed in *In re Estate of Ackerman*, which has seven requirements. This test gauged whether the beneficiary's relationship with the decedent qualifies as that of in loco

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84. 736 N.W.2d 399 (Neb. Ct. App. 2007).

85. *See Nebraska v. Welsh (In re Estate of Malloy)*, 736 N.W.2d 399, 404 (Neb. Ct. App. 2007) (determining that the standard of in loco parentis was not satisfied by a nephew in relation to his uncle).

86. *Malloy*, 736 N.W.2d at 406.

87. *Id.* at 401.

88. *Id.*

89. *Id.* at 402.

90. *See id.* at 402 (providing evidence of Malloy's relationship to Welsh and Welsh's control of Malloy's financial affairs).

91. 550 N.W.2d 678 (Neb. 1996).

92. *Ackerman*, 550 N.W.2d at 683, 684 (“[W]e conclude that the following factors serve as appropriate guideposts to the trial court in making a determination of an acknowledged relation of a parent under § 77-2004: (1) reception of the child into the home and treatment of the child as a member of the family, (2) assumption of the responsibility for support beyond occasional gifts and financial aid, (3) exercise of parental authority and discipline, (4) relationship by blood or marriage, (5) advice and guidance to the child, (6) sharing of time and affection, and (7) existence of written documentation evincing the decedent's intent to act as parent.”).
parentis.\textsuperscript{93} The court reasoned that, while written intent is not necessary, the lack of an explicit manifestation from the decedent to stand in the place of a parent with Welsh was significant in determining that in loco parentis was not applicable.\textsuperscript{94} The court also noted the decedent’s financial aid and close relationship with Welsh was customary within their community, and thereby did not amount to the responsibility and support required to satisfy Ackerman’s in loco parentis test.\textsuperscript{95} Thus, while Welsh presented considerable evidence, he was unable to meet the standard set forth in this test, and thus did not qualify as a class one beneficiary.\textsuperscript{96}

Aside from the seven-part test, a decedent must stand in loco parentis for at least ten years before his or her death in order for in loco parentis to be applied.\textsuperscript{97} The decedent must also declare intent to be considered as standing in loco parentis with the beneficiary.\textsuperscript{98} Furthermore, even if statements of the decedent are present in the will, courts do not consider the statements as conclusive to a determination of the taxing authority of the state.\textsuperscript{99} Therefore, while the in loco parentis doctrine exists, it is not easily obtained within the inheritance tax system.\textsuperscript{100}

C. \textbf{Where Do We Stand?}

On January 12, 2012, Governor Dave Heineman gave the State of the State address, in which he proposed a complete repeal of Nebraska’s inheritance tax.\textsuperscript{101} Governor Heineman claimed that the economy could withstand the loss of the inheritance tax due to economic growth elsewhere.\textsuperscript{102} In doing so, the Governor anticipated opposition and noted that he would favor phasing out the tax gradually in order to give counties time to adjust.\textsuperscript{103} Yet, the Governor made it

\textsuperscript{93.} Achenncm, 550 N.W.2d at 684.
\textsuperscript{94.} Malloy, 736 N.W.2d at 406.
\textsuperscript{95.} Id.
\textsuperscript{96.} Id.
\textsuperscript{97.} See Neb. Rev. Stat. § 77-2004 (providing how long an individual must stand in place as a parent).
\textsuperscript{98.} Quinn, 510 N.W.2d at 493.
\textsuperscript{99.} In re Estate of Stanton, 516 N.W.2d 586, 590 (Neb. 1994).
\textsuperscript{100.} Compare Achenncm, 550 N.W.2d at 687 (illustrating a seven-part test to prove in loco parentis), with Malloy, 736 N.W.2d at 406 (failing to meet the Achenncm test despite considerable evidence of a relationship with the decedent).
\textsuperscript{102.} Overstreet, supra note 7.
clear that he aimed for complete repeal of all death taxes in Nebraska. 104

The Governor’s proposal was met with opposition that the Legislature has consistently faced over time regarding the tax’s revenue benefitting the counties. 105 For instance, many county officials noted the importance of the tax, and how its proceeds benefit schools and road maintenance. 106 However, the most debated concern is that without the tax, real property taxes would increase. 107 This concern carried over to the Revenue Committee, which preliminarily rejected the Governor’s proposal. 108 Senator Galen Hadley explained that the property tax threat was crucial because many Nebraskans pay property taxes while few pay large inheritance taxes. 109 Since the Revenue Committee’s preliminary answer, the Legislature has proposed alternative solutions, but the true fate of the law remains undetermined. 110

IV. ANALYSIS

Out of the eight states that maintain an inheritance tax, Nebraska’s tax is unlike any other state because Nebraska administers the tax at the county level. 111 This administration undoubtedly provides crucial revenue to the counties, which gross between forty and forty-eight million dollars in inheritance tax revenue per year. 112 Without such income, the counties would face negative consequences, including the prospect of higher property taxes. 113 Yet, despite its beneficial outcome to Nebraskan counties, the inheritance tax is re-

104. See Governor Dave Heineman, supra note 101, at 5 (proposing total elimination of all death taxes).
106. Duggan, supra note 103.
107. KEARNEYHUB.COM, supra note 105.
108. Id.
109. Id.
110. Id.
112. See Minutes, supra note 11, at 4 (stating the importance of the inheritance tax revenue to county officials); KEARNEYHUB.COM, supra note 105 (“Between $40 million and $48 million per year is paid to counties in inheritance taxes.”). Douglas County currently receives approximately seven to nine million dollars of inheritance tax revenue per year. Duggan, supra note 103.
113. Duggan, supra note 103.
plete with structural concerns. Such concerns ultimately lead to further problems such as avoidance, tensions with federal estate taxes, and unfair penalizations upon non-relatives and nontraditional families.

This Analysis will show that Nebraska's inheritance tax law, while necessary for the counties, is replete with structural issues. In doing so, this Analysis will also demonstrate that the inheritance tax is inconsistently administered between counties and, as a result, often causes Nebraskans to seek ways to avoid the tax. This Analysis will then argue that the inheritance tax fosters problematic tension with federal estate tax law and can impose double taxation upon large estates. Finally, this Analysis will demonstrate that the inheritance tax unfairly penalizes non-relatives and nontraditional families on the basis of archetypal familial relationships.

A. AVOIDANCE

Revenue from Nebraska's inheritance tax functions like a cash reserve, providing a crucial source of income to counties. Yet, while the counties govern the inheritance tax, each county administers it in different ways. This is due in part to the fact that the amount each county receives is based upon the amount inherited by beneficiaries each year and upon the various ways each county utilizes the

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114. See Hearings February 2012, supra note 2, at 71-72 (explaining how the inheritance tax beneficiary structure often penalizes those with close relationships to beneficiaries); Duggan, supra note 103, at 69 (stating that some beneficiaries unknowingly fail to pay the tax); see also Hearings on L.B. 970 Before the Revenue Comm., 2012 Leg., 102d Sess. 24 (Neb. 2012) (statement of Palmer Schoening) [hereinafter Hearings January 2012] (noting the burden the federal estate tax creates with Nebraska's inheritance tax).

115. See Hearings February 2012, supra note 2, at 71-72 (explaining how the inheritance tax beneficiary structure often penalizes those with close relationships to beneficiaries); Hearings January 2012, supra note 114, at 33 (examining the burden created by the federal estate tax and Nebraska's inheritance tax on individuals); Steger, supra note 2, at 176 (explaining how individuals avoid the inheritance tax).

116. See infra notes 111-216 and accompanying text.

117. See infra notes 120-62 and accompanying text.

118. See infra notes 163-88 and accompanying text.

119. See infra notes 189-216 and accompanying text.

120. See Neb. Rev. Stat. § 77-2014 (2010) (explaining how taxes are apportioned among counties, but remaining silent on the matter of specific county administration); see also Hearings January 2012, supra note 114, at 45 (explaining the inconsistencies of administration of the inheritance taxes among the counties).
funds. With such administrative differences, residents are able to circumvent Nebraska’s inheritance tax.

Outside real estate, there is no concrete way to track transfers made at death. Due to the ten-year lien that the tax places on property transfers to anyone other than spouses, beneficiaries of real property are incapable of selling or transferring it without the county becoming aware of inheritance tax delinquency. However, avoidance sometimes occurs when individuals fail to report intangible property transfers. Residents also avoid the tax by placing their assets in foreign limited liability companies. Finally, a small percentage of individuals avoid the tax by leaving the state entirely.

1. Failure to Report Transfers

Nebraska’s inheritance tax depends on the amount of property that a beneficiary inherits from a decedent at death. Such property interests can be separated into three categories: real property, tangible property, and intangible property. Real estate most obviously encompasses real property. Tangible property is that which is ma-

122. See Hearings February 2012, supra note 2, at 70 (providing the statements of Kenneth Ring, who explained some ways counties use inheritance tax funds); see also Hearings January 2012, supra note 114, at 45 (providing the statements of Senator Greg Adams, who explained that the amount received by each county per year often varies); Duggan, supra note 103 (stating that many counties use funds to clear winter roads).

123. See Hearings February 2012, supra note 2, at 68 (providing the statement of Senator Paul Schumacher, who explained that some beneficiaries unknowingly fail to pay the tax); Hearings January 2012, supra note 114, at 39 (noting that some Nebraska residents leave the state to avoid the tax).

124. See infra notes 125-28 and accompanying text.


126. See Hearings February 2012, supra note 2, at 68 (providing the statement of Senator Schumacher, who noted that some beneficiaries receiving intangible property may unknowingly fail to pay the tax).

127. See Steger, supra note 2, at 176-79 (explaining the use of limited liability companies outside the state to avoid paying the inheritance tax).

128. See id. at 179-80 (describing the way in which residents are able to avoid the inheritance tax by leaving the state entirely); see also Duggan, supra note 103 (providing the statements of Senator Abbie Cornett, who claimed that some Nebraskan residents with assets leave the state to avoid the inheritance tax).

129. See Neb. Rev. Stat. § 77-2001 (2010) (noting that the tax is computed based upon all of the decedent’s property and the amount transferred to a beneficiary at death).

130. Steger, supra note 2, at 173; see Neb. Rev. Stat. § 77-2002 (explaining the property that is taxable under the inheritance tax).

131. See BLACK’S LAW DICTIONARY, supra note 40, at 1337 (defining real property as “[l]and and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land”).
terial in nature and can be perceived by an individual. Intangible
property is immaterial and cannot be perceived because such property
lacks physical existence.

With regards to inheritance tax payments, tangible property and
intangible property are the most difficult assets to track. Other
than real estate liens, there is no dispositive way to determine
whether an individual inherits from a decedent, therefore, tangible
and intangible personal property transfers often go unreported.
Although the inheritance tax statute imposes penalties on residents
failing to file within the allotted time period, it imposes no effective
mechanisms to address residents who fail to report altogether.
Furthermore, the penalty imposed by the statute is based upon the
percentages of taxes due, which often times is not a substantial
amount.

2. Limited Liability Companies

Foreign limited liability companies also present an opportunity
for individuals to escape the inheritance tax. Limited liability com­
panies are businesses that combine the elements of a partnership and
a corporation into one entity. Thus, limited liability companies pro­
vide the liability safeguards of a corporation, while having the tax ad­
vantages of a partnership. The benefits of foreign limited liability
companies regarding the inheritance tax stem from the way an indi­
vidual’s interest is characterized in the company and its assets.

This fact is important because a limited liability company makes an

132. See id. at 1338 (defining tangible property as “property that has physical form and characteristics”).
133. See id. at 1336 (defining intangible property as “property that lacks a physical existence”).
134. See Hearings February 2012, supra note 2, at 68-70 (noting that some beneficiaries receiving intangible property may unknowingly fail to pay the tax without penalty and that most individuals who pay the tax are real property owners).
135. Id.
136. See Neb. Rev. Stat. § 77-2010 (remaining silent on penalties for unreported transfers of intangible property or unintentional failure to report).
137. See Neb. Rev. Stat. § 77-2010 (imposing a maximum penalty of 25% of the beneficiary's total inheritance); Minutes, supra note 11, at 3-4 (noting that often few or no taxes are due).
138. See Steger, supra note 2, at 176-78 (explaining the use of foreign limited liability companies as a means of escaping inheritance taxation); see also Black's Law Dictionary, supra note 40, at 719-20 (defining foreign as “[o]f or relating to another jurisdiction”).
140. Id.
141. Steger, supra note 2, at 177.
individual's interest in the company a personal property interest, more specifically an intangible interest.\textsuperscript{142} Due to the fact that an individual's interest lies within the limited liability company, his or her property interests are in the ownership of the company.\textsuperscript{143} While it is possible that such entities may own real property, outside of statutory authority, the owners of a limited liability company have no interest in the property because the company is a separate legal entity.\textsuperscript{144} Therefore, if an individual transfers their real property into a foreign limited liability company, the property interests no longer belong to the individual, but to the company.\textsuperscript{145} In terms of the inheritance tax, the only taxable property is an intangible property interest in the company.\textsuperscript{146} As such, individuals are able to use these companies to dodge inheritance taxation.\textsuperscript{147} The inheritance tax does not tax the intangible property of a non-resident, which includes interests in foreign limited liability companies. Therefore, the state cannot impose an inheritance tax upon an individual's transferred interest in a foreign limited liability company.\textsuperscript{148}

3. \textit{Snowbirds}

Nebraska's inheritance tax is also avoided by a small percentage of residents who leave the state entirely.\textsuperscript{149} Snowbirds refer to individuals who move to warmer climates during winter or cold weather.\textsuperscript{150} In most cases, snowbirds migrate to the southern United States in areas such as Arizona, Florida, and Texas.\textsuperscript{151} While the actual number of Americans who constitute this demographic category is elusive, Arizona and Florida are two states that have experienced consistent growth in population during the winter months.\textsuperscript{152}

Snowbirds correlate with foreign limited liability companies because snowbirds can utilize them upon establishing domicile outside

\textsuperscript{142} Id.
\textsuperscript{144} Steger, \textit{supra} note 2, at 178.
\textsuperscript{145} Bishop \& Kleinberger, \textit{supra} note 143, § 5.04(2)(c).
\textsuperscript{146} Steger, \textit{supra} note 2, at 178.
\textsuperscript{147} See id. at 176 (discussing the use of foreign limited liability companies to avoid inheritance taxes).
\textsuperscript{148} Id. at 179.
\textsuperscript{149} See \textit{Hearings January 2012}, \textit{supra} note 114, at 26 (discussing Nebraska residents leaving the state to avoid the inheritance tax).
\textsuperscript{150} Webster's Unabridged Dictionary 1808 (2d ed. 2001) (defining snowbird as "a person who vacations in or moves to a warmer climate during cold weather").
\textsuperscript{152} Happel \& Hogan, \textit{supra} note 151, at 227.
of a state with an active inheritance tax. Thus, snowbirds have the ability to avoid the inheritance tax by either leaving the state altogether or by benefiting from the aforementioned foreign limited liability company. However, an individual seeking to change his or her domicile to avoid taxation must meet the qualifications of domicile in the new state, which often requires the help of an attorney to ensure compliance with that state’s requirements.

Snowbirds are also relevant to Nebraska’s inheritance tax law because of recent proposals to repeal the tax. When Governor Dave Heineman proposed a repeal of the tax on January 12, 2012, part of his rationale was that Nebraska residents leave the state to avoid the inheritance tax altogether. A recent Forbes article that placed Nebraska on a list titled “Where Not to Die,” influenced the governor’s proposal. However, Governor Heineman’s proposal was challenged during Nebraska’s last legislative session. When the Revenue Committee met on January 26, 2012, an analyst for the Platte Institute for Economic Research stated that the threat of Nebraskans leaving the state should be seriously regarded. In doing so, the analyst noted that Nebraska’s population has grown three percent less than the national average. However, the committee reacted with skepticism to Cash’s observations regarding the inheritance tax’s effect on emigration.

B. TENSION WITH FEDERAL ESTATE TAX LAW: DOUBLE TAXATION

Outside of Nebraska’s inheritance tax, all Americans are subject to federal estate tax laws. The federal estate tax law is imposed

153. See Steger, supra note 2, at 179-80 (explaining the relationship between snowbirds and foreign limited liability companies to avoid the inheritance tax).
154. See id. (noting that foreign limited liability companies and changing domicile are two ways in which a resident can avoid the inheritance tax)
155. See id. at 180-81 (discussing the fact-specific qualifications of domicile and the caution required by an attorney to ensure compliance).
156. See Duggan, supra note 103 (discussing Nebraska residents becoming snowbirds to avoid the inheritance tax).
157. Governor Dave Heineman, supra note 101, at 5.
159. See Hearings January 2012, supra note 114, at 5 (explaining problematic budgetary consequences of repealing the tax).
160. See Hearings January 2012, supra note 114, at 34-35 (stating that the inheritance tax is a major reason for migration out of the state).
161. Id. at 35.
162. See id. at 36 (rejecting the analyst’s argument, claiming the argument lacked quantitative evidence of the correlation between emigration from Nebraska and the inheritance tax).
upon transfers of taxable estates, regardless of how the transfer was made.\footnote{See id. (imposing a tax on estates of a decedent notwithstanding the mode of transfer of property).} The counterpart to the federal estate tax is the gift tax, which taxes gifts made by individuals throughout their lives.\footnote{Id.; see also IRS, INSTRUCTIONS FOR FORM 706 (2012), available at http://www.irs.gov/pub/irs-pdf/i706.pdf (explaining inheritance tax deductions).} Unlike the inheritance tax, which taxes beneficiaries based on relationships to the decedent, the federal estate tax only taxes the transfer of the decedent’s estate.\footnote{Compare I.R.C. § 2001 (explaining that the federal estate tax is a tax upon the decedent’s estate), with NEB. Rev. Stat. §§ 77-2001 to -2006 (2010) (noting the tax is imposed upon beneficiaries based upon their relationship with the decedent).}

The amount of the federal estate tax varies based upon the value of the gross estate, which is computed using several factors.\footnote{See Gift Tax, IRS (Aug. 14, 2012), http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Gift-Tax (noting that gifts given during life may be subject to the federal gift tax); see also I.R.C. § 2501.} The amount paid is subject to deductions and exemptions such as charitable donations, inheritance taxation, and estate administration expenses.\footnote{Id.; see also IRS, INSTRUCTIONS FOR FORM 706 (2012), available at http://www.irs.gov/pub/irs-pdf/i706.pdf (explaining inheritance tax deductions).} In 2010, President Obama signed an amended federal estate tax law passed by Congress, which altered the exemption amounts for taxpayers for the 2011 and 2012 fiscal years.\footnote{Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, § 301, 124 Stat. 3296 (2010) (codified in scattered sections of I.R.C.).} The law gave taxpayers a two-year abatement by increasing the amount of the estate tax exemption from one million dollars to five million dollars.\footnote{See Federal Estate Tax: An Overview, Edward Jones 1 (Jan. 2011), https://www.edwardjones.com/groups/ejw_content/ejw/us/graphics/documents/web_content/web226043.pdf.} After the so-called “Fiscal Cliff Deal” at the start of 2013, the exemption amount was raised to $5.12 million for individuals ($10.24 million for married couples) in 2013, with a corresponding rise in the maximum tax to forty percent.\footnote{See Hani Sarji, More Estate Tax Changes Could Follow Fiscal Cliff Deal, Forbes (Jan. 6, 2013, 12:20 AM), http://www.forbes.com/sites/hanisarji/2013/01/06/more-estate-tax-changes-could-follow-fiscal-cliff-deal/ (explaining changes to estate tax laws as a result of the January 2013 fiscal cliff deal); see also Federal Estate Tax: An Overview, supra note 170, at 1 (noting that the five million dollar exemption and 35% tax rate were only for 2011 and 2012); Jill Schlesinger, What Is the Fiscal Cliff? A Q&A, CBS Money Watch (Sept. 10, 2012, 8:09 AM), http://www.cbsnews.com/8301-505123_162-57509298/what-is-the-fiscal-cliff-a-q-a/ (explaining the estate tax exemption was scheduled to drop to one million dollars, with a maximum tax rate of 55%).} This tax and its attached exemptions ultimately affect affluent Nebraskans who are also faced with the inheritance tax.\footnote{See Hearings January 2012, supra note 114, at 24 (explaining the pressures of the federal estate tax in conjunction with Nebraska’s inheritance tax).}
and exemptions, many affluent Nebraskans potentially face double taxation due to the burden of the federal estate and state inheritance taxes. 173 This concern was echoed during the Nebraska Revenue Committee’s hearing in January 2012. 174 During the hearing, one speaker conveyed the concerns of entrepreneurs and farmers facing double taxation upon transfer at death. 175

The burden of the federal estate tax and the threat of double taxation are not entirely unavoidable by those affected by it. 176 Through proper estate planning individuals avoid or mitigate the double taxation through credit shelter trusts, also known as A/B trusts. 177 Such trusts allow married couples to avoid estate taxation by leaving their assets in irrevocable trusts after death, instead of transferring them directly to one another. 178 Thus, a surviving spouse receives income from the trust property, and is not taxed because the assets belong to the trust. 179

Aside from these trusts, 2010 updates to the federal estate tax and amendments under the Department of Treasury’s regulations introduced a concept known as portability. 180 This concept allows a surviving spouse’s estate to utilize unused estate tax exemptions left over when the first spouse dies. 181 This amount is referred to as the deceased spousal unused exclusion (“DSUE”). 182 Credit shelter trusts enable avoidance of the inheritance tax by disbursing the exemption amount at the death of the first spouse, thereby allowing the unused amount to pass to the surviving spouse. 183 The DSUE allows an indi—

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173. See id. (explaining the pressures of the federal estate tax in conjunction with the Nebraska inheritance tax; see also Note, Problematic Definitions of Property in Multistate Death Taxation, 90 Harv. L. Rev. 1556, 1665 (1977) (noting that even state statutes have failed to rectify the problem of double taxation).

174. See Hearings January 2012, supra note 114, at 24 (discussing prospect of double taxation).

175. See id. (noting the pressures of the federal estate tax and inheritance tax on Nebraska farmers and entrepreneurs).


177. See id. (explaining the benefits of credit shelter trusts).

178. Id.

179. Id.


vidual to increase the exclusion of the surviving spouse’s estate by utilizing the transferability of the first spouse’s unused amount.\textsuperscript{184}

In conjunction with the inheritance tax, the federal estate tax presents Nebraskan residents with the potential for substantial taxation.\textsuperscript{185} This burden exists because Nebraska’s inheritance tax structure provides little to no protection from the imposition of federal estate taxes.\textsuperscript{186} This lack of protection significantly affects class two and three beneficiaries, who are taxed at higher rates and, in this case of class three beneficiaries, are not eligible for the benefits that federal estate taxes provide traditional families.\textsuperscript{187} Thus, Nebraska’s inheritance tax structure reveals that its burden reaches beyond the finances of residents by favoring transfers within traditional families.\textsuperscript{188}

C. PROBLEMATIC CLASSIFICATIONS

Class two and three beneficiary classifications have sparked controversy for decades due to the exemption and tax rates placed upon them.\textsuperscript{189} Grievances with the classifications have likely been ignored because class one beneficiaries, whose rates are significantly lower than those of the other classes, constitute ninety percent of inheritance tax payments by volume.\textsuperscript{190} Ultimately, the root of this problem lies not only with the rates and exemption amounts, but also with the archetypal classifications of beneficiaries.\textsuperscript{191}

\begin{itemize}
\item \textsuperscript{184} I.R.S. Notice 2012-21, 2012-10 I.R.B. 450.
\item \textsuperscript{185} See Neb. Rev. Stat. §§ 77-2004 to -2006 (taxing beneficiaries based upon their relationship to the decedent); see also Hearings January 2012, supra note 114, at 24 (explaining the pressures of the federal estate tax in conjunction with Nebraska’s inheritance tax, which combine to place high pressures on affluent residents).
\item \textsuperscript{186} See Hearings January 2012, supra note 114, at 24 (explaining the pressures of the federal estate tax in conjunction with Nebraska’s inheritance tax).
\item \textsuperscript{187} See Neb. Rev. Stat. §§ 77-2004 to -2006 (taxing class two and class three beneficiaries at higher rates than class one beneficiaries); WENDY S. GOFFE, PLANNING FOR NONTRADITIONAL FAMILIES 1 (2011), available at http://www.americanbar.org/content/dam/aba/events/taxation/taxiq-fall11-goffe-nontraditional-families-paper.authcheckdam.pdf (explaining how nontraditional families are not afforded the same protections as traditional families at the death of a spouse).
\item \textsuperscript{188} Compare Ralston v. Cnty. of Dawson (In re Estate of Kittenbrink), 264 N.W.2d 868, 870 (Neb. 1978) (noting that the inheritance tax can permissibly favor traditional familial relationships over others), with GOFFE, supra note 187, at 1 (explaining how nontraditional families are not afforded the same protections as traditional families at the death of a spouse).
\item \textsuperscript{189} See Hearings January 2012, supra note 114, at 55 (explaining how the inheritance tax beneficiary structure often penalizes those who are not class one beneficiaries).
\item \textsuperscript{190} See Hearings February 2012, supra note 2, at 71-72 (explaining the dominance of class one beneficiary inheritance tax payments).
\item \textsuperscript{191} See Hearings January 2012, supra note 114, at 55 (providing the statements of Senator Natalie Schnieder, who argued that the distribution of tax payment between
\end{itemize}
As noted above, class two beneficiaries include: uncles, aunts, nieces, and nephews. This group of beneficiaries is given a fifteen thousand dollar exemption, and taxed at a rate of thirteen percent. Qualms with class two beneficiary stem back to the 1981 Nebraska Legislature. When amendments to the inheritance tax law were proposed, several Nebraska Revenue Committee members and senators complained about the higher rate for class two beneficiaries. The Legislature has noted for decades that the relationships between decedents and class two beneficiaries are often similar to that of a class one beneficiary, and the Nebraska Supreme Court has also acknowledged that dynamics differ amongst families. Yet, in response to these concerns, the court has consistently responded by noting that the law is able to create such distinctions, even at the expense of favoritism.

Class three beneficiaries include transfers to all other individuals outside of classes one and two. Class three beneficiaries are given a ten thousand dollar exemption and are taxed at a rate of eighteen percent. This classification of beneficiaries imposes a fairly high tax rate on nontraditional families, friends, caretakers, and all non-relatives. As such, complaints regarding the delineation of class three beneficiaries have grown in recent years, illuminating the negative impacts of the inheritance tax and its system of classifications. While the statutes classify these transfers as transfers to others, this section of the Note will focus on the inheritance tax's impact upon individuals within nontraditional families.

beneficiaries is unfair); see also Minutes, supra note 11, at 41 (noting opposition against the tax's classifications of class two and class three beneficiaries).

193. Id.
194. See Minutes, supra note 11, at 41 (examining complaints regarding the tax's classifications).
195. See id. (debating problems with how class two beneficiaries are classified).
196. Compare Ralston v. Cnty. of Dawson (In re Estate of Kittenbrink), 264 N.W.2d 868, 870 (Neb. 1978) (explaining that the inheritance tax can permissibly make distinctions between familial relationships and favor that of one relationship over another), with Hearings January 2012, supra note 114, at 55 (explaining how the inheritance tax beneficiary structure often penalizes those with close relationships to beneficiaries).
197. See, e.g., Kittenbrink, 264 N.W.2d at 870.
198. See Neb. Rev. Stat. § 77-2006 (imposing a tax of 18% on all individuals who are not class one or class two beneficiaries).
199. Id.
200. See id. (encompassing all transfers outside of classes one and two).
201. See Hearings January 2012, supra note 114, at 55 (explaining how the inheritance tax beneficiary structure often penalizes those who are not class one beneficiaries).
202. See infra 203-12 and accompanying text.
Nontraditional families are unmarried couples, both heterosexual and homosexual, regardless of whether they have children.\textsuperscript{203} Such families also comprise stepfamilies, which consist of children from prior relationships of partners, as well as any of their mutual children.\textsuperscript{204} Both state and federal statutes default to enabling the surviving spouse, or an individual within the traditional family structure, to arrange and benefit from constructs of the division of property at death.\textsuperscript{205} Yet, nontraditional families are not afforded such protection at the death an individual in the relationship.\textsuperscript{206} Thus, when viewed in conjunction with the inheritance tax, proper estate planning is both crucial and necessary for nontraditional families.\textsuperscript{207}

Nontraditional families comprise a significant portion of the United States population.\textsuperscript{208} In fact, in 2010, forty-four percent of the unmarried population of the United States consisted of such couples.\textsuperscript{209} Yet, Nebraska’s inheritance tax has failed to recognize the emergence of these individuals, and in the case of same-sex couples, has refused to do so at all by adopting the Defense of Marriage Act,\textsuperscript{210} as part of the Nebraska Constitution.\textsuperscript{211} Thus, the inheritance tax’s lack of acknowledgment of nontraditional families not only fails to adequately reflect the population but creates an unfair preference for traditional family structures while placing nontraditional families at a disadvantage.\textsuperscript{212}

\begin{thebibliography}{99}
\bibitem{203} \textit{Goffe, supra} note 187, at 1.
\bibitem{204} \textit{Id}.
\bibitem{205} \textit{See Movement Advancement Project et al., LGBT Older Adults and Estate Tax and Inheritance 1-3 (2010), available at} http://www.lgbtmap.org/file/lgbt-older-adults-and-estate-tax-and-inheritance.pdf (explaining how benefits are only available to traditional, heterosexual couples under current federal laws and state laws on inheritance and estate tax).
\bibitem{206} \textit{Goffe, supra} note 187, at 1.
\bibitem{207} \textit{Compare} Neb. Rev. Stat. § 77-2006 (taxing class three beneficiaries at 18%), \textit{with Goffe, supra} note 187, at 1 (explaining the importance estate planning for nontraditional families).
\bibitem{209} \textit{Id}.
\bibitem{211} \textit{See Neb. Const.} art. I, § 29 (narrowing the definition of marriage to include only one man and one woman).
\bibitem{212} \textit{See Statistics, supra} note 208 (noting the prevalence of unmarried couples in the United States); \textit{see also} Neb. Rev. Stat. §§ 77-2004 to -2006 (taxing class two and class three beneficiaries at higher rates than class one beneficiaries).
\end{thebibliography}
V. CONCLUSION

Nebraska's inheritance tax has been an active piece of Nebraska law since 1901. At the law's inception the tax was vital in facilitating county revenue and deterring estate tax avoidance. Throughout the years the tax has continued to provide important revenue for the counties, while keeping higher real estate taxes at bay. While the inheritance tax provides these beneficial positives, it is not without flaws.

The inheritance tax law is ultimately replete with several structural concerns. First, the tax is inconsistently administered between counties and leads individuals to seek ways of avoidance. Avoidance can take place through estate planning and by individuals who leave the state entirely. Second, the inheritance tax creates tension and interference with federal estate tax law. This tension leads to the prospect of double taxation upon affluent citizens who will be subject to both the federal estate tax and the state inheritance tax. Finally, the tax unfairly penalizes nontraditional families by imposing archetypal family classifications.

Nebraska's inheritance tax has most certainly stood the test of time. Its purpose and function provides a critical amount of irreplaceable revenue for Nebraskan counties. As the Legislature has noted for decades, the consequences of repealing the tax would be damaging, and in many ways financially irresponsible. Yet, one simply cannot ignore the problems the tax's structure imposes upon traditional and nontraditional families. Many of the tax's flaws stem from inconsistent administration between Nebraskan counties. If there were a mechanism that could make all transfers traceable, the tax would be less transparent — thereby mitigating both purposeful and inadvertent avoidance. Secondly, as the Legislature has also noted, the tax rates

216. Compare Debates, supra note 31, at 8923 (providing the statements of Senator Peter Hoagland, who voiced the concerns of Senators that the tax provides critical revenue to the counties), with Hearings February 2012, supra note 2, at 71-72 (explaining how the inheritance tax beneficiary structure often penalizes those with close relationships to beneficiaries), and Steger, supra note 2, at 176-80 (describing that, while the tax may be beneficial, it often leads citizens seek avoidance).
217. See supra notes 111-216 and accompanying text.
218. See supra notes 120-62 and accompanying text.
219. See supra notes 120-62 and accompanying text.
220. See supra notes 163-88 and accompanying text.
221. See supra notes 163-88 and accompanying text.
222. See supra notes 189-216 and accompanying text.
imposed upon class two and three beneficiaries are simply outdated. Class two beneficiaries often have relationships that are just as close as class one beneficiaries, and nontraditional familial relationships should be recognized. If lowering the tax rate is not feasible, one consideration could be found in lowering the burden of proving in loco parentis. Furthermore, to account for the significant presence of nontraditional households, the inheritance tax should recognize these families by passing laws that acknowledge them, or perhaps make it easier to designate a partner for their inheritance. Nebraska’s inheritance tax is not a perfect system, no tax structure is. However, if the tax’s structure more adequately accounted for all Nebraskans, its administration and benefits to the counties would become more efficient.

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