

AN ACT concerning taxation.

Be it enacted by the People of the State of Illinois,
represented in the General Assembly:

Section 5. The Illinois Estate and Generation-Skipping
Transfer Tax Act is amended by changing Sections 2, 3, 5, 6,
7, 8, and 10 as follows:

(35 ILCS 405/2) (from Ch. 120, par. 405A-2)

Sec. 2. Definitions.

"Federal estate tax" means the tax due to the United
States with respect to a taxable transfer under Chapter 11 of
the Internal Revenue Code.

"Federal generation-skipping transfer tax" means the tax
due to the United States with respect to a taxable transfer
under Chapter 13 of the Internal Revenue Code.

"Federal return" means the federal estate tax return with
respect to the federal estate tax and means the federal
generation-skipping transfer tax return with respect to the
federal generation-skipping transfer tax.

"Federal transfer tax" means the federal estate tax or
the federal generation-skipping transfer tax.

"Illinois estate tax" means the tax due to this State
with respect to a taxable transfer ~~that--gives--rise--to--a~~
~~federal-estate-tax.~~

"Illinois generation-skipping transfer tax" means the tax
due to this State with respect to a taxable transfer that
gives rise to a federal generation-skipping transfer tax.

"Illinois transfer tax" means the Illinois estate tax or
the Illinois generation-skipping transfer tax.

"Internal Revenue Code" means, unless otherwise provided,
the Internal Revenue Code of 1986, as amended from time to
time.

"Non-resident trust" means a trust that is not a resident of this State for purposes of the Illinois Income Tax Act, as amended from time to time.

"Person" means and includes any individual, trust, estate, partnership, association, company or corporation.

"Qualified heir" means a qualified heir as defined in Section 2032A(e)(1) of the Internal Revenue Code.

"Resident trust" means a trust that is a resident of this State for purposes of the Illinois Income Tax Act, as amended from time to time.

"State" means any state, territory or possession of the United States and the District of Columbia.

"State tax credit" means:

(a) For persons dying on or after January 1, 2003 and through December 31, 2005, an amount equal to the full credit calculable under Section 2011 or Section 2604 of the Internal Revenue Code as the credit would have been computed and allowed under the Internal Revenue Code as in effect on December 31, 2001, without the reduction in the State Death Tax Credit as provided in Section 2011(b)(2) or the termination of the State Death Tax Credit as provided in Section 2011(f) as enacted by the Economic Growth and Tax Relief Reconciliation Act of 2001, but recognizing the increased applicable exclusion amount through December 31, 2005.

(b) For persons dying after December 31, 2005 and on or before December 31, 2009, an amount equal to the full credit calculable under Section 2011 or 2604 of the Internal Revenue Code as the credit would have been computed and allowed under the Internal Revenue Code as in effect on December 31, 2001, without the reduction in the State Death Tax Credit as provided in Section 2011(b)(2) or the termination of the State Death Tax Credit as provided in Section 2011(f) as enacted by the Economic Growth and Tax Relief Reconciliation

Act of 2001, but recognizing the exclusion amount of only \$2,000,000.

(c) For persons dying after December 31, 2009, the credit for state tax allowable under Section 2011 or Section 2604 of the Internal Revenue Code.

"Taxable transfer" means an event that gives rise to a state tax credit, including any credit allowable as a result of the imposition of an additional tax under Section 2032A(c) of the Internal Revenue Code.

"Transferee" means a transferee within the meaning of Section 2603(a)(1) and Section 6901(h) of the Internal Revenue Code.

"Transferred property" means:

(1) With respect to a taxable transfer occurring at the death of an individual ~~that results in the imposition of federal estate tax~~, the deceased individual's gross estate as defined in Section 2031 of the Internal Revenue Code.

(2) With respect to a taxable transfer occurring as a result of a taxable termination as defined in Section 2612(a) of the Internal Revenue Code, the taxable amount determined under Section 2622(a) of the Internal Revenue Code.

(3) With respect to a taxable transfer occurring as a result of a taxable distribution as defined in Section 2612(b) of the Internal Revenue Code, the taxable amount determined under Section 2621(a) of the Internal Revenue Code.

(4) With respect to an event which causes the imposition of an additional estate tax under Section 2032A(c) of the Internal Revenue Code, the qualified real property that was disposed of or which ceased to be used for the qualified use, within the meaning of Section 2032A(c)(1) of the Internal Revenue Code.

"Trust" includes a trust as defined in Section 2652(b)(1) of the Internal Revenue Code.

(Source: P.A. 86-737.)

(35 ILCS 405/3) (from Ch. 120, par. 405A-3)

Sec. 3. Illinois estate tax.

(a) Imposition of Tax. An Illinois estate tax is imposed on every taxable transfer involving transferred property having a tax situs within the State of Illinois.

(b) Amount of tax. The amount of the Illinois estate tax shall be the maximum state tax credit, as defined in Section 2 of this Act, allowable with respect to the taxable transfer reduced by the lesser of:

(1) the amount of the state tax credit paid to any other state or states; and

(2) the amount determined by multiplying the maximum state tax credit allowable with respect to the taxable transfer by the percentage which the gross value of the transferred property not having a tax situs in Illinois bears to the gross value of the total transferred property.

(Source: P.A. 86-737.)

(35 ILCS 405/5) (from Ch. 120, par. 405A-5)

Sec. 5. Determination of tax situs and valuation.

(a) Illinois estate tax.

(1) For purposes of the Illinois estate tax, in the case of a decedent who was a resident of this State at the time of death, all of the transferred property has a tax situs in this State, including any such property held in trust, except real or tangible personal property physically situated in another state.

(2) For purposes of the Illinois estate tax, in the case of a decedent who was not a resident of this State

at the time of death, the transferred property having a tax situs in this State, including any such property held in trust, is only the real estate and tangible personal property physically situated in this State.

(b) Illinois generation-skipping transfer tax.

(1) For purposes of the Illinois generation-skipping transfer tax, all transferred property from or in a resident trust has a tax situs in this State, including any such property held in trust, except real or tangible personal property physically situated in another state on the date that the taxable transfer occurs.

(2) For purposes of the Illinois generation-skipping transfer tax, none of the transferred property from or in a non-resident trust has a tax situs in this State, except that portion of the transferred property that is real or tangible personal property physically situated in this State, including any such property held in trust, on the date that the taxable transfer occurs.

(c) Valuation. Except as otherwise expressly provided, for purposes of this Act, the gross value of transferred property shall be its value as finally determined for purposes of the related federal transfer tax, undiminished by any mortgages, liens or other encumbrances upon such transferred property for which the decedent was personally liable.

(Source: P.A. 86-737.)

(35 ILCS 405/6) (from Ch. 120, par. 405A-6)

Sec. 6. Returns and payments.

(a) Due Dates. The Illinois transfer tax shall be paid and the Illinois transfer tax return shall be filed on the due date or dates, respectively, including extensions, for

paying the related federal transfer tax and filing the related federal return.

(b) Installment payments and deferral. In the event that any portion of the federal transfer tax is deferred or to be paid in installments under the provisions of the Internal Revenue Code, the portion of the Illinois transfer tax which is subject to deferral or payable in installments shall be determined by multiplying the Illinois transfer tax by a fraction, the numerator of which is the gross value of the assets included in the transferred property having a tax situs in this State and which give rise to the deferred or installment payment under the Internal Revenue Code, and the denominator of which is the gross value of all assets included in the transferred property having a tax situs in this State. Deferred payments and installment payments, with interest, shall be paid at the same time and in the same manner as payments of the federal transfer tax are required to be made under the applicable Sections of the Internal Revenue Code, provided that the rate of interest on unpaid amounts of Illinois transfer tax shall be determined under this Act. Acceleration of payment under this Section shall occur under the same circumstances and in the same manner as provided in the Internal Revenue Code.

(c) Who shall file and pay. The Illinois transfer tax return (including any supplemental or amended return) shall be filed, and the Illinois transfer tax (including any additional tax that may become due) shall be paid by the same person or persons, respectively, who are required to pay the related federal transfer tax and file the related federal return, or who would have been required to pay a federal transfer tax and file a federal return if a federal transfer tax were due.

(d) Where to file return. The executed Illinois transfer tax return shall be filed with the Attorney General.

In addition, a copy of the Illinois transfer tax return shall be filed with the county treasurer to whom the Illinois transfer tax is paid, determined under subsection (e) of this Section.

(e) Where to pay tax. The Illinois transfer tax shall be paid to the treasurer of the county determined under the following rules:

(1) Illinois Estate Tax. The Illinois estate tax shall be paid to the treasurer of the county in which the decedent was a resident on the date of the decedent's death or, if the decedent was not a resident of this State on the date of death, the county in which the greater part, by gross value, of the transferred property with a tax situs in this State is located.

(2) Illinois Generation-Skipping Transfer Tax. The Illinois generation-skipping transfer tax involving transferred property from or in a resident trust shall be paid to the county treasurer for the county in which the grantor resided at the time the trust became irrevocable (in the case of an inter vivos trust) or the county in which the decedent resided at death (in the case of a trust created by the will of a decedent). In the case of an Illinois generation-skipping transfer tax involving transferred property from or in a non-resident trust, the Illinois generation-skipping transfer tax shall be paid to the county treasurer for the county in which the greater part, by gross value, of the transferred property with a tax situs in this State is located.

(f) Forms; confidentiality. The Illinois transfer tax return shall be in all respects in the manner and form prescribed by the regulations of the Attorney General. At the same time the Illinois transfer tax return is filed, the person required to file shall also file with the Attorney General a copy of the related federal return. For individuals

dying after December 31, 2005, in cases where no federal return is required to be filed, the person required to file an Illinois return shall also file with the Attorney General schedules of assets in the manner and form prescribed by the Attorney General. The Illinois transfer tax return and the copy of the federal return filed with the Attorney General or any county treasurer shall be confidential, and the Attorney General, each county treasurer and all of their assistants or employees are prohibited from divulging in any manner any of the contents of those returns, except only in a proceeding instituted under the provisions of this Act.

(g) County Treasurer shall accept payment. No county treasurer shall refuse to accept payment of any amount due under this Act on the grounds that the county treasurer has not yet received a copy of the appropriate Illinois transfer tax return.

(Source: P.A. 86-737.)

(35 ILCS 405/7) (from Ch. 120, par. 405A-7)

Sec. 7. Supplemental returns; refunds.

(a) Supplemental returns. If the State tax credit is increased after the filing of the Illinois transfer tax return, the person or persons required to file the Illinois transfer tax return and pay the Illinois transfer tax shall file a supplemental Illinois transfer tax return. The supplemental return shall be filed and the additional tax shall be paid in the same place and manner as provided in Section 6 of this Act. The due date for the supplemental return and for the payment of the additional tax reported in the supplemental return shall be no later than 3 months after the earliest of:

(1) the date an amended~~-related~~ federal return is filed;

(2) the date an increase in the federal transfer

tax is paid or accepted in writing; or

(3) the date the Internal Revenue Service issues a request for evidence of payment of the State tax credit;

or

(4) the date that any increase to the taxable estate is discovered;

provided that if the related federal transfer tax may be deferred or paid in installments, then part or all of the additional Illinois transfer tax may be deferred or paid in installments under rules consistent with subsection (b) of Section 6 of this Act.

(b) Refunds. If the state tax credit is reduced after the filing of the Illinois transfer tax return, the person who paid the Illinois transfer tax (or the person upon whom the burden of payment fell) shall file an amended Illinois transfer tax return and shall be entitled to a refund of tax or interest paid on the Illinois transfer tax. No interest shall be paid on any amount refunded.

(Source: P.A. 86-737.)

(35 ILCS 405/8) (from Ch. 120, par. 405A-8)

Sec. 8. Penalties for failure to file tax return or to pay tax.

(a) Failure to file return. In case of failure to file any return required under this Act with the Attorney General by the due date, unless it is shown that the failure to file is due to a reasonable cause, there shall be added to the amount required to be shown as tax on the return 5% of the amount of that tax (or 5% of the additional tax due in the case of a supplemental return) if the failure is for not more than one month from the due date, with an additional 5% for each additional month or fraction of a month thereafter during which the failure to file continues, not exceeding in the aggregate 25% of the tax or, in the case of a

supplemental return, 25% of the additional tax.

(b) Failure to pay tax. In the case of failure to pay the amount of tax shown due on any return required under this Act on or before the due date for payment of that tax, unless it is shown that the failure to pay is due to reasonable cause, there shall be added to the unpaid amount of the tax 0.5% of that unpaid amount if the failure is for not more than one month from the due date, with an additional 0.5% for each additional month or fraction of a month thereafter during which the failure to pay continues, not exceeding in the aggregate 25% of the unpaid amount.

(c) Extensions of Time.

(1) Internal Revenue Service Extensions. If the date for filing the related federal return or the date for payment of the related federal transfer tax is extended by the Internal Revenue Service, the filing of the return and payment of the tax imposed by this Act shall be due on the respective date specified by the Internal Revenue Service in granting a request for extension. If the request for extension is granted by the Internal Revenue Service, the person required to file the Illinois transfer tax return shall furnish the Attorney General with a copy of the request for extension showing approval of the extension by the Internal Revenue Service. If a request for extension of time to file the federal return is denied by the Internal Revenue Service, no penalty shall be due under this Act if the return required by this Act is filed within the time specified by the Internal Revenue Service for filing the federal return. If a request for extension of time to pay the federal transfer tax is denied by the Internal Revenue Service, no penalty shall be due under this Act if the tax is paid within the time specified by the Internal Revenue Service for paying the federal transfer tax.

(2) Attorney General Extensions. The person or persons required to file the Illinois transfer tax return and to pay the Illinois transfer tax may apply to the Attorney General for an extension of time to file the Illinois transfer tax return or to pay the Illinois transfer tax. The application must establish reasonable cause why it is impossible or impractical to file a reasonably complete return or to pay the full amount of tax due by the due date. The Attorney General may for reasonable cause extend the time for filing the return or paying the tax for a reasonable period from the date fixed for filing the return or paying the tax.

(d) Waiver of Penalties.

(1) Internal Revenue Service Waiver. If the Internal Revenue Service waives the penalty provided in the Internal Revenue Code for failure to timely file the related federal return or the penalty for failure to timely pay the related federal transfer tax liability, such waiver or waivers shall be deemed to constitute reasonable cause for purposes of this Section.

(2) Attorney General Waiver. The Attorney General may waive the penalty or penalties for failure to file or pay for reasonable cause, notwithstanding the failure of the Internal Revenue Service to waive the penalty or penalties for failure to timely file the federal transfer tax return or to pay the federal transfer tax.

(Source: P.A. 86-737.)

(35 ILCS 405/10) (from Ch. 120, par. 405A-10)

Sec. 10. Liens and Personal Liability.

(a) Lien for Illinois transfer tax. Unless the Illinois transfer tax is sooner paid in full, the Illinois transfer tax shall be a lien in favor of this State upon the transferred property having a tax situs within this State for

10 years from the date of the taxable transfer, or, in the case of Illinois transfer tax subject to deferral or payable in installments, the later of 10 years from the date of the taxable transfer or one year after the last deferred or installment payment may become due. The lien imposed by this Section on the transferred property shall not be valid as against any purchaser, mortgagee, pledgee, or other holder of a security interest for a full and adequate consideration in money or money's worth; provided, however, that any property, consideration or proceeds received as a result of any sale, mortgage, pledge or granting of a security interest shall remain subject to the lien imposed by this Section. In addition, the lien imposed by this Section on the transferred property shall be subject to the exceptions set forth in Section 6324(c)(i) of the Internal Revenue Code as if the lien were a lien imposed by that Section. In no event shall the issuance by the Attorney General of a release of the lien imposed by this subsection be required with respect to the sale, mortgage, pledge, granting of a security interest in, transfer or distribution of transferred property.

(b) Special lien for property valued under Section 2032A of the Internal Revenue Code. In the event the Illinois estate tax is reduced as a result of an election under Section 2032A of the Internal Revenue Code, then an amount equal to the additional Illinois estate tax that would be due in the absence of such an election shall be a lien in favor of this State on the transferred property that has a tax situs in this State and is subject to such election. The lien imposed by this subsection shall arise at the time an election is filed under Section 2032A of the Internal Revenue Code and shall continue with respect to such transferred property:

- (1) until the liability for the Illinois estate tax with respect to such transferred property has been

satisfied or has become unenforceable by reason of lapse of time or otherwise; or

(2) until it is established to the satisfaction of the Attorney General that no further tax liability may arise under this Act with respect to such transferred property.

The lien imposed by this subsection shall not be valid as against any purchaser, mortgagee, pledgee, other holder of a security interest, mechanic's lien, or judgment lien creditor until notice of such lien has been filed as provided by the laws of this State. In regulations prescribed in accordance with Section 16 of this Act, the Attorney General may require that the qualified heir file such notice of lien. Even though notice of said lien has been filed as provided in the preceding sentence, such lien shall be subject to the rules set forth in paragraph (3) of Section 6324A(d) of the Internal Revenue Code as if the lien were a lien imposed by that Section.

(c) Personal liability. If the Illinois transfer tax is not paid when due, then the person required to file the related federal return and the transferee of any transferred property having a tax situs within this State shall be personally liable for the Illinois transfer tax, to the extent of such transferred property originally received, controlled or transferred to that person or transferee, less the amount of any expenses or charges against the transferred property, related to the taxable transfer, which have a higher priority of payment under applicable law than the Illinois transfer tax.

(d) Collection. The Attorney General shall have the right to sue for collection of the Illinois transfer tax for 3 years after the date of the actual filing of the related Illinois transfer tax return with the Attorney General, or, if later, the last date upon which application for refund of

the Illinois transfer tax could be filed with the State Treasurer.

(e) Waiver of lien and personal liability. If the Attorney General is satisfied that no liability for Illinois transfer tax exists or that the Illinois transfer tax has been fully discharged or provided for, the Attorney General shall issue a certificate releasing all of the transferred property having a tax situs within the State of Illinois from the lien imposed by this Section. Issuance of such certificate shall discharge the person required to file the Illinois related--~~federal~~ return and any transferee from personal liability for the Illinois transfer tax.

(Source: P.A. 86-737.)

Section 99. Effective date. This Act takes effect upon becoming law.