

1 AMENDMENT TO SENATE BILL 1725

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1725 by replacing  
3 everything after the enacting clause with the following:

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

7 (35 ILCS 405/2) (from Ch. 120, par. 405A-2)

8 Sec. 2. Definitions.

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

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

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

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

21 "Illinois estate tax" means the tax due to this State  
22 with respect to a taxable transfer that--gives--rise--to--a

1 federal-estate-tax.

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

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

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

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

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

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

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

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

22 "State tax credit" means:

23 (a) For persons dying on or after the effective date of  
24 this amendatory Act of the 93rd General Assembly through  
25 December 31, 2005, an amount equal to the full credit  
26 calculable under Section 2011 or Section 2604 of the Internal  
27 Revenue Code as the credit would have been computed and  
28 allowed under the Internal Revenue Code as in effect on  
29 December 31, 2001, without the reduction in the State Death  
30 Tax Credit as provided in Section 2011(b)(2) or the  
31 termination of the State Death Tax Credit as provided in  
32 Section 2011(f) as enacted by the Economic Growth and Tax  
33 Relief Reconciliation Act of 2001, but recognizing the  
34 increased applicable exclusion amount through December 31,

1 2005.

2 (b) For persons dying after December 31, 2005 and on or  
3 before December 31, 2009, an amount equal to the full credit  
4 calculable under Section 2011 or 2604 of the Internal Revenue  
5 Code as the credit would have been computed and allowed under  
6 the Internal Revenue Code as in effect on December 31, 2001,  
7 without the reduction in the State Death Tax Credit as  
8 provided in Section 2011(b)(2) or the termination of the  
9 State Death Tax Credit as provided in Section 2011(f) as  
10 enacted by the Economic Growth and Tax Relief Reconciliation  
11 Act of 2001, but recognizing the exclusion amount of only  
12 \$2,000,000.

13 (c) For persons dying after December 31, 2009, the  
14 credit for state tax allowable under Section 2011 or Section  
15 2604 of the Internal Revenue Code.

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

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

23 "Transferred property" means:

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

29 (2) With respect to a taxable transfer occurring as  
30 a result of a taxable termination as defined in Section  
31 2612(a) of the Internal Revenue Code, the taxable amount  
32 determined under Section 2622(a) of the Internal Revenue  
33 Code.

34 (3) With respect to a taxable transfer occurring as

1 a result of a taxable distribution as defined in Section  
2 2612(b) of the Internal Revenue Code, the taxable amount  
3 determined under Section 2621(a) of the Internal Revenue  
4 Code.

5 (4) With respect to an event which causes the  
6 imposition of an additional estate tax under Section  
7 2032A(c) of the Internal Revenue Code, the qualified real  
8 property that was disposed of or which ceased to be used  
9 for the qualified use, within the meaning of Section  
10 2032A(c)(1) of the Internal Revenue Code.

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

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

14 (35 ILCS 405/3) (from Ch. 120, par. 405A-3)

15 Sec. 3. Illinois estate tax.

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

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

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

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

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

32 (35 ILCS 405/5) (from Ch. 120, par. 405A-5)

1       Sec. 5. Determination of tax situs and valuation.

2       (a) Illinois estate tax.

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

9             (2) For purposes of the Illinois estate tax, in the  
10 case of a decedent who was not a resident of this State  
11 at the time of death, the transferred property having a  
12 tax situs in this State, including any such property held  
13 in trust, is only the real estate and tangible personal  
14 property physically situated in this State.

15       (b) Illinois generation-skipping transfer tax.

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

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

31       (c) Valuation. Except as otherwise expressly provided,  
32 for purposes of this Act, the gross value of transferred  
33 property shall be its value as finally determined for  
34 purposes of the related federal transfer tax, undiminished by

1 any mortgages, liens or other encumbrances upon such  
2 transferred property for which the decedent was personally  
3 liable.

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

5 (35 ILCS 405/6) (from Ch. 120, par. 405A-6)

6 Sec. 6. Returns and payments.

7 (a) Due Dates. The Illinois transfer tax shall be paid  
8 and the Illinois transfer tax return shall be filed on the  
9 due date or dates, respectively, including extensions, for  
10 paying the related federal transfer tax and filing the  
11 related federal return.

12 (b) Installment payments and deferral. In the event  
13 that any portion of the federal transfer tax is deferred or  
14 to be paid in installments under the provisions of the  
15 Internal Revenue Code, the portion of the Illinois transfer  
16 tax which is subject to deferral or payable in installments  
17 shall be determined by multiplying the Illinois transfer tax  
18 by a fraction, the numerator of which is the gross value of  
19 the assets included in the transferred property having a tax  
20 situs in this State and which give rise to the deferred or  
21 installment payment under the Internal Revenue Code, and the  
22 denominator of which is the gross value of all assets  
23 included in the transferred property having a tax situs in  
24 this State. Deferred payments and installment payments, with  
25 interest, shall be paid at the same time and in the same  
26 manner as payments of the federal transfer tax are required  
27 to be made under the applicable Sections of the Internal  
28 Revenue Code, provided that the rate of interest on unpaid  
29 amounts of Illinois transfer tax shall be determined under  
30 this Act. Acceleration of payment under this Section shall  
31 occur under the same circumstances and in the same manner as  
32 provided in the Internal Revenue Code.

33 (c) Who shall file and pay. The Illinois transfer tax

1 return (including any supplemental or amended return) shall  
2 be filed, and the Illinois transfer tax (including any  
3 additional tax that may become due) shall be paid by the same  
4 person or persons, respectively, who are required to pay the  
5 related federal transfer tax and file the related federal  
6 return, or who would have been required to pay a federal  
7 transfer tax and file a federal return if a federal transfer  
8 tax were due.

9 (d) Where to file return. The executed Illinois  
10 transfer tax return shall be filed with the Attorney General.  
11 In addition, a copy of the Illinois transfer tax return shall  
12 be filed with the county treasurer to whom the Illinois  
13 transfer tax is paid, determined under subsection (e) of this  
14 Section.

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

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

25 (2) Illinois Generation-Skipping Transfer Tax. The  
26 Illinois generation-skipping transfer tax involving  
27 transferred property from or in a resident trust shall be  
28 paid to the county treasurer for the county in which the  
29 grantor resided at the time the trust became irrevocable  
30 (in the case of an inter vivos trust) or the county in  
31 which the decedent resided at death (in the case of a  
32 trust created by the will of a decedent). In the case of  
33 an Illinois generation-skipping transfer tax involving  
34 transferred property from or in a non-resident trust, the

1 Illinois generation-skipping transfer tax shall be paid  
2 to the county treasurer for the county in which the  
3 greater part, by gross value, of the transferred property  
4 with a tax situs in this State is located.

5 (f) Forms; confidentiality. The Illinois transfer tax  
6 return shall be in all respects in the manner and form  
7 prescribed by the regulations of the Attorney General. At  
8 the same time the Illinois transfer tax return is filed, the  
9 person required to file shall also file with the Attorney  
10 General a copy of the related federal return. For individuals  
11 dying after December 31, 2005, in cases where no federal  
12 return is required to be filed, the person required to file  
13 an Illinois return shall also file with the Attorney General  
14 schedules of assets in the manner and form prescribed by the  
15 Attorney General. The Illinois transfer tax return and the  
16 copy of the federal return filed with the Attorney General or  
17 any county treasurer shall be confidential, and the Attorney  
18 General, each county treasurer and all of their assistants or  
19 employees are prohibited from divulging in any manner any of  
20 the contents of those returns, except only in a proceeding  
21 instituted under the provisions of this Act.

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

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

28 (35 ILCS 405/7) (from Ch. 120, par. 405A-7)

29 Sec. 7. Supplemental returns; refunds.

30 (a) Supplemental returns. If the State tax credit is  
31 increased after the filing of the Illinois transfer tax  
32 return, the person or persons required to file the Illinois  
33 transfer tax return and pay the Illinois transfer tax shall



1 file a supplemental Illinois transfer tax return. The  
 2 supplemental return shall be filed and the additional tax  
 3 shall be paid in the same place and manner as provided in  
 4 Section 6 of this Act. The due date for the supplemental  
 5 return and for the payment of the additional tax reported in  
 6 the supplemental return shall be no later than 3 months after  
 7 the earliest of:

8 (1) the date an amended~~7-related~~ federal return is  
 9 filed;

10 (2) the date an increase in the federal transfer  
 11 tax is paid or accepted in writing; or

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

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

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

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

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

30 (35 ILCS 405/8) (from Ch. 120, par. 405A-8)

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

33 (a) Failure to file return. In case of failure to file

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

12 (b) Failure to pay tax. In the case of failure to pay  
13 the amount of tax shown due on any return required under this  
14 Act on or before the due date for payment of that tax, unless  
15 it is shown that the failure to pay is due to reasonable  
16 cause, there shall be added to the unpaid amount of the tax  
17 0.5% of that unpaid amount if the failure is for not more  
18 than one month from the due date, with an additional 0.5% for  
19 each additional month or fraction of a month thereafter  
20 during which the failure to pay continues, not exceeding in  
21 the aggregate 25% of the unpaid amount.

22 (c) Extensions of Time.

23 (1) Internal Revenue Service Extensions. If the  
24 date for filing the related federal return or the date  
25 for payment of the related federal transfer tax is  
26 extended by the Internal Revenue Service, the filing of  
27 the return and payment of the tax imposed by this Act  
28 shall be due on the respective date specified by the  
29 Internal Revenue Service in granting a request for  
30 extension. If the request for extension is granted by  
31 the Internal Revenue Service, the person required to file  
32 the Illinois transfer tax return shall furnish the  
33 Attorney General with a copy of the request for extension  
34 showing approval of the extension by the Internal Revenue

1 Service. If a request for extension of time to file the  
2 federal return is denied by the Internal Revenue Service,  
3 no penalty shall be due under this Act if the return  
4 required by this Act is filed within the time specified  
5 by the Internal Revenue Service for filing the federal  
6 return. If a request for extension of time to pay the  
7 federal transfer tax is denied by the Internal Revenue  
8 Service, no penalty shall be due under this Act if the  
9 tax is paid within the time specified by the Internal  
10 Revenue Service for paying the federal transfer tax.

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

23 (d) Waiver of Penalties.

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

31 (2) Attorney General Waiver. The Attorney General  
32 may waive the penalty or penalties for failure to file or  
33 pay for reasonable cause, notwithstanding the failure of  
34 the Internal Revenue Service to waive the penalty or

1 penalties for failure to timely file the federal transfer  
2 tax return or to pay the federal transfer tax.

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

4 (35 ILCS 405/10) (from Ch. 120, par. 405A-10)

5 Sec. 10. Liens and Personal Liability.

6 (a) Lien for Illinois transfer tax. Unless the Illinois  
7 transfer tax is sooner paid in full, the Illinois transfer  
8 tax shall be a lien in favor of this State upon the  
9 transferred property having a tax situs within this State for  
10 10 years from the date of the taxable transfer, or, in the  
11 case of Illinois transfer tax subject to deferral or payable  
12 in installments, the later of 10 years from the date of the  
13 taxable transfer or one year after the last deferred or  
14 installment payment may become due. The lien imposed by this  
15 Section on the transferred property shall not be valid as  
16 against any purchaser, mortgagee, pledgee, or other holder of  
17 a security interest for a full and adequate consideration in  
18 money or money's worth; provided, however, that any property,  
19 consideration or proceeds received as a result of any sale,  
20 mortgage, pledge or granting of a security interest shall  
21 remain subject to the lien imposed by this Section. In  
22 addition, the lien imposed by this Section on the transferred  
23 property shall be subject to the exceptions set forth in  
24 Section 6324(c)(i) of the Internal Revenue Code as if the  
25 lien were a lien imposed by that Section. In no event shall  
26 the issuance by the Attorney General of a release of the lien  
27 imposed by this subsection be required with respect to the  
28 sale, mortgage, pledge, granting of a security interest in,  
29 transfer or distribution of transferred property.

30 (b) Special lien for property valued under Section 2032A  
31 of the Internal Revenue Code. In the event the Illinois  
32 estate tax is reduced as a result of an election under  
33 Section 2032A of the Internal Revenue Code, then an amount

1 equal to the additional Illinois estate tax that would be due  
2 in the absence of such an election shall be a lien in favor  
3 of this State on the transferred property that has a tax  
4 situs in this State and is subject to such election. The  
5 lien imposed by this subsection shall arise at the time an  
6 election is filed under Section 2032A of the Internal Revenue  
7 Code and shall continue with respect to such transferred  
8 property:

9 (1) until the liability for the Illinois estate tax  
10 with respect to such transferred property has been  
11 satisfied or has become unenforceable by reason of lapse  
12 of time or otherwise; or

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

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

29 (c) Personal liability. If the Illinois transfer tax is  
30 not paid when due, then the person required to file the  
31 related federal return and the transferee of any transferred  
32 property having a tax situs within this State shall be  
33 personally liable for the Illinois transfer tax, to the  
34 extent of such transferred property originally received,

1 controlled or transferred to that person or transferee, less  
2 the amount of any expenses or charges against the transferred  
3 property, related to the taxable transfer, which have a  
4 higher priority of payment under applicable law than the  
5 Illinois transfer tax.

6 (d) Collection. The Attorney General shall have the  
7 right to sue for collection of the Illinois transfer tax for  
8 3 years after the date of the actual filing of the related  
9 Illinois transfer tax return with the Attorney General, or,  
10 if later, the last date upon which application for refund of  
11 the Illinois transfer tax could be filed with the State  
12 Treasurer.

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

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

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