



**94TH GENERAL ASSEMBLY**  
**State of Illinois**  
**2005 and 2006**  
**HB4115**

Introduced 9/21/2005, by Rep. Harry R. Ramey, Jr.

**SYNOPSIS AS INTRODUCED:**

35 ILCS 405/2	from Ch. 120, par. 405A-2
35 ILCS 405/3	from Ch. 120, par. 405A-3
35 ILCS 405/5	from Ch. 120, par. 405A-5
35 ILCS 405/6	from Ch. 120, par. 405A-6
35 ILCS 405/7	from Ch. 120, par. 405A-7
35 ILCS 405/8	from Ch. 120, par. 405A-8
35 ILCS 405/10	from Ch. 120, par. 405A-10

Amends the Illinois Estate and Generation-Skipping Transfer Tax Act. Restores the imposition and collection of the tax to its status prior to June 20, 2003 (the effective date of Public Act 93-30). Effective immediately.

LRB094 13389 BDD 48248 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning taxes.

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

4 Section 5. The Illinois Estate and Generation-Skipping  
5 Transfer Tax Act is amended by changing Sections 2, 3, 5, 6, 7,  
6 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 States  
10 with respect to a taxable transfer under Chapter 11 of the  
11 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 the  
20 federal generation-skipping transfer tax.

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

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

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

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

32 "Non-resident trust" means a trust that is not a resident

1 of this State for purposes of the Illinois Income Tax Act, as  
2 amended from time to time.

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

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

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

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

12 "State tax credit" means:

13 (a) For persons dying on or after January 1, 2003 and  
14 through the effective date of this amendatory Act of the 94th  
15 General Assembly December 31, 2005, an amount equal to the full  
16 credit calculable under Section 2011 or Section 2604 of the  
17 Internal Revenue Code as the credit would have been computed  
18 and allowed under the Internal Revenue Code as in effect on  
19 December 31, 2001, without the reduction in the State Death Tax  
20 Credit as provided in Section 2011(b) (2) or the termination of  
21 the State Death Tax Credit as provided in Section 2011(f) as  
22 enacted by the Economic Growth and Tax Relief Reconciliation  
23 Act of 2001, but recognizing the increased applicable exclusion  
24 amount through December 31, 2005.

25 (b) (Blank). ~~For persons dying after December 31, 2005 and~~  
26 ~~on or before December 31, 2009, an amount equal to the full~~  
27 ~~credit calculable under Section 2011 or 2604 of the Internal~~  
28 ~~Revenue Code as the credit would have been computed and allowed~~  
29 ~~under the Internal Revenue Code as in effect on December 31,~~  
30 ~~2001, without the reduction in the State Death Tax Credit as~~  
31 ~~provided in Section 2011(b) (2) or the termination of the State~~  
32 ~~Death Tax Credit as provided in Section 2011(f) as enacted by~~  
33 ~~the Economic Growth and Tax Relief Reconciliation Act of 2001,~~  
34 ~~but recognizing the exclusion amount of only \$2,000,000.~~

35 (c) For persons dying on or after the effective date of  
36 this amendatory Act of the 94th General Assembly December 31,

1 ~~2009~~, the credit for state tax allowable under Section 2011 or  
2 Section 2604 of the Internal Revenue Code.

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

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

10 "Transferred property" means:

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

15 (2) With respect to a taxable transfer occurring as a  
16 result of a taxable termination as defined in Section  
17 2612(a) of the Internal Revenue Code, the taxable amount  
18 determined under Section 2622(a) of the Internal Revenue  
19 Code.

20 (3) With respect to a taxable transfer occurring as a  
21 result of a taxable distribution as defined in Section  
22 2612(b) of the Internal Revenue Code, the taxable amount  
23 determined under Section 2621(a) of the Internal Revenue  
24 Code.

25 (4) With respect to an event which causes the  
26 imposition of an additional estate tax under Section  
27 2032A(c) of the Internal Revenue Code, the qualified real  
28 property that was disposed of or which ceased to be used  
29 for the qualified use, within the meaning of Section  
30 2032A(c) (1) of the Internal Revenue Code.

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

33 (Source: P.A. 93-30, eff. 6-20-03.)

34 (35 ILCS 405/3) (from Ch. 120, par. 405A-3)

35 Sec. 3. Illinois estate tax.

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

4 (b) Amount of tax. On estates of persons dying before  
5 January 1, 2003, the amount of the Illinois estate tax shall be  
6 the state tax credit, as defined in Section 2 of this Act as  
7 amended by Public Act 93-30, with respect to the taxable  
8 transfer reduced by the lesser of:

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

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

16 (c) On estates of persons dying on or after January 1,  
17 2003, until the effective date of this amendatory Act of the  
18 94th General Assembly, the amount of the Illinois estate tax  
19 shall be the state tax credit, as defined in Section 2 of this  
20 Act as amended by Public Act 93-30, reduced by the amount  
21 determined by multiplying the state tax credit with respect to  
22 the taxable transfer by the percentage which the gross value of  
23 the transferred property not having a tax situs in Illinois  
24 bears to the gross value of the total transferred property.  
25 Such tax shall be determined and paid under the provisions of  
26 this Act prior to its amendment by this amendatory Act of the  
27 94th General Assembly.

28 (d) On estates of persons dying on or after the effective  
29 date of this amendatory Act of the 94th General Assembly, the  
30 amount of the Illinois estate tax shall be the maximum state  
31 tax credit allowable with respect to the taxable transfer  
32 reduced by the lesser of:

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

35 (2) the amount determined by multiplying the maximum  
36 state tax credit allowable with respect to the taxable

1       transfer by the percentage which the gross value of the  
2       transferred property not having a tax situs in Illinois  
3       bears to the gross value of the total transferred property.

4       (Source: P.A. 93-30, eff. 6-20-03; 94-419, eff. 8-2-05.)

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

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

7       (a) Illinois estate tax.

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

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

20      (b) Illinois generation-skipping transfer tax.

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

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

34      (c) Valuation. Except as otherwise expressly provided, for  
35      purposes of this Act, the gross value of transferred property

1 shall be its value as finally determined for purposes of the  
2 related federal transfer tax, undiminished by any mortgages,  
3 liens or other encumbrances upon such transferred property for  
4 which the decedent was personally liable.

5 (Source: P.A. 93-30, eff. 6-20-03.)

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

7 Sec. 6. Returns and payments.

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

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

34 (c) Who shall file and pay. The Illinois transfer tax  
35 return (including any supplemental or amended return) shall be

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

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

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

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

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

36 (f) Forms; confidentiality. The Illinois transfer tax



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

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

22 (Source: P.A. 93-30, eff. 6-20-03.)

23 (35 ILCS 405/7) (from Ch. 120, par. 405A-7)

24 Sec. 7. Supplemental returns; refunds.

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

35 (1) the date an amended, related federal return is

1 filed;

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

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

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

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

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

20 (Source: P.A. 93-30, eff. 6-20-03.)

21 (35 ILCS 405/8) (from Ch. 120, par. 405A-8)

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

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

35 (b) Failure to pay tax. In the case of failure to pay the

1 amount of tax shown due on any return required under this Act  
2 on or before the due date for payment of that tax, unless it is  
3 shown that the failure to pay is due to reasonable cause, there  
4 shall be added to the unpaid amount of the tax 0.5% of that  
5 unpaid amount if the failure is for not more than one month  
6 from the due date, with an additional 0.5% for each additional  
7 month or fraction of a month thereafter during which the  
8 failure to pay continues, not exceeding in the aggregate 25% of  
9 the unpaid amount.

10 (c) Extensions of Time.

11 (1) Internal Revenue Service Extensions. If the date  
12 for filing the related federal return or the date for  
13 payment of the related federal transfer tax is extended by  
14 the Internal Revenue Service, the filing of the return and  
15 payment of the tax imposed by this Act shall be due on the  
16 respective date specified by the Internal Revenue Service  
17 in granting a request for extension. If the request for  
18 extension is granted by the Internal Revenue Service, the  
19 person required to file the Illinois transfer tax return  
20 shall furnish the Attorney General with a copy of the  
21 request for extension showing approval of the extension by  
22 the Internal Revenue Service. If a request for extension of  
23 time to file the federal return is denied by the Internal  
24 Revenue Service, no penalty shall be due under this Act if  
25 the return required by this Act is filed within the time  
26 specified by the Internal Revenue Service for filing the  
27 federal return. If a request for extension of time to pay  
28 the federal transfer tax is denied by the Internal Revenue  
29 Service, no penalty shall be due under this Act if the tax  
30 is paid within the time specified by the Internal Revenue  
31 Service for paying the federal transfer tax.

32 (2) Attorney General Extensions. The person or persons  
33 required to file the Illinois transfer tax return and to  
34 pay the Illinois transfer tax may apply to the Attorney  
35 General for an extension of time to file the Illinois  
36 transfer tax return or to pay the Illinois transfer tax.

1 The application must establish reasonable cause why it is  
2 impossible or impractical to file a reasonably complete  
3 return or to pay the full amount of tax due by the due  
4 date. The Attorney General may for reasonable cause extend  
5 the time for filing the return or paying the tax for a  
6 reasonable period from the date fixed for filing the return  
7 or paying the tax.

8 (d) Waiver of Penalties.

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

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

22 (Source: P.A. 93-30, eff. 6-20-03.)

23 (35 ILCS 405/10) (from Ch. 120, par. 405A-10)

24 Sec. 10. Liens and Personal Liability.

25 (a) Lien for Illinois transfer tax. Unless the Illinois  
26 transfer tax is sooner paid in full, the Illinois transfer tax  
27 shall be a lien in favor of this State upon the transferred  
28 property having a tax situs within this State for 10 years from  
29 the date of the taxable transfer, or, in the case of Illinois  
30 transfer tax subject to deferral or payable in installments,  
31 the later of 10 years from the date of the taxable transfer or  
32 one year after the last deferred or installment payment may  
33 become due. The lien imposed by this Section on the transferred  
34 property shall not be valid as against any purchaser,  
35 mortgagee, pledgee, or other holder of a security interest for

1 a full and adequate consideration in money or money's worth;  
2 provided, however, that any property, consideration or  
3 proceeds received as a result of any sale, mortgage, pledge or  
4 granting of a security interest shall remain subject to the  
5 lien imposed by this Section. In addition, the lien imposed by  
6 this Section on the transferred property shall be subject to  
7 the exceptions set forth in Section 6324(c)(i) of the Internal  
8 Revenue Code as if the lien were a lien imposed by that  
9 Section. In no event shall the issuance by the Attorney General  
10 of a release of the lien imposed by this subsection be required  
11 with respect to the sale, mortgage, pledge, granting of a  
12 security interest in, transfer or distribution of transferred  
13 property.

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

25 (1) until the liability for the Illinois estate tax  
26 with respect to such transferred property has been  
27 satisfied or has become unenforceable by reason of lapse of  
28 time or otherwise; or

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

32 The lien imposed by this subsection shall not be valid as  
33 against any purchaser, mortgagee, pledgee, other holder of a  
34 security interest, mechanic's lien, or judgment lien creditor  
35 until notice of such lien has been filed as provided by the  
36 laws of this State. In regulations prescribed in accordance

1 with Section 16 of this Act, the Attorney General may require  
2 that the qualified heir file such notice of lien. Even though  
3 notice of said lien has been filed as provided in the preceding  
4 sentence, such lien shall be subject to the rules set forth in  
5 paragraph (3) of Section 6324A(d) of the Internal Revenue Code  
6 as if the lien were a lien imposed by that Section.

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

17 (d) Collection. The Attorney General shall have the right  
18 to sue for collection of the Illinois transfer tax for 3 years  
19 after the date of the actual filing of the related Illinois  
20 transfer tax return with the Attorney General, or, if later,  
21 the last date upon which application for refund of the Illinois  
22 transfer tax could be filed with the State Treasurer.

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

33 (Source: P.A. 93-30, eff. 6-20-03.)

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