



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0255

Introduced 1/20/2009, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

35 ILCS 405/2

from Ch. 120, par. 405A-2

Amends the Illinois Estate and Generation-Skipping Transfer Tax. Provides that the State tax credit for the estates of persons dying after December 31, 2005 and on or before December 31, 2009 includes a reduction for qualified terminal interest property. Provides that the trustee of a trust for which a QTIP election is made may not retain non-income producing assets for more than a reasonable amount of time without the consent of the surviving spouse. Effective immediately.

LRB096 03503 HLH 13528 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

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 Section 2 as follows:

6 (35 ILCS 405/2) (from Ch. 120, par. 405A-2)

7 Sec. 2. Definitions.

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

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

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

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

20 "Illinois estate tax" means the tax due to this State with
21 respect to a taxable transfer.

22 "Illinois generation-skipping transfer tax" means the tax
23 due to this State with respect to a taxable transfer that gives

1 rise to a federal generation-skipping transfer tax.

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

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

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

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

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

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

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

19 "State tax credit" means:

20 (a) For persons dying on or after January 1, 2003 and
21 through December 31, 2005, an amount equal to the full credit
22 calculable under Section 2011 or Section 2604 of the Internal
23 Revenue Code as the credit would have been computed and allowed
24 under the Internal Revenue Code as in effect on December 31,
25 2001, without the reduction in the State Death Tax Credit as
26 provided in Section 2011(b) (2) or the termination of the State

1 Death Tax Credit as provided in Section 2011(f) as enacted by
2 the Economic Growth and Tax Relief Reconciliation Act of 2001,
3 but recognizing the increased applicable exclusion amount
4 through December 31, 2005.

5 (b) For persons dying after December 31, 2005 and on or
6 before December 31, 2009, an amount equal to the full credit
7 calculable under Section 2011 or 2604 of the Internal Revenue
8 Code as the credit would have been computed and allowed under
9 the Internal Revenue Code as in effect on December 31, 2001,
10 without the reduction in the State Death Tax Credit as provided
11 in Section 2011(b) (2) or the termination of the State Death Tax
12 Credit as provided in Section 2011(f) as enacted by the
13 Economic Growth and Tax Relief Reconciliation Act of 2001, but
14 recognizing the exclusion amount of only \$2,000,000, and with
15 reduction to the adjusted taxable estate for any qualified
16 terminable interest property election as defined in subsection
17 (b-1) of this Section.

18 (b-1) The person required to file the Illinois return may
19 elect on a timely filed Illinois return a marital deduction for
20 qualified terminable interest property under Section
21 2056(b) (7) of the Internal Revenue Code for purposes of the
22 Illinois estate tax that is separate and independent of any
23 qualified terminable interest property election for federal
24 estate tax purposes. For purposes of the Illinois estate tax,
25 the inclusion of property in the gross estate of a surviving
26 spouse is the same as under Section 2044 of the Internal

1 Revenue Code.

2 In the case of any trust for which a State or federal
3 qualified terminable interest property election is made, the
4 trustee may not retain non-income producing assets for more
5 than a reasonable amount of time without the consent of the
6 surviving spouse.

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

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

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

17 "Transferred property" means:

18 (1) With respect to a taxable transfer occurring at the
19 death of an individual, the deceased individual's gross
20 estate as defined in Section 2031 of the Internal Revenue
21 Code.

22 (2) With respect to a taxable transfer occurring as a
23 result of a taxable termination as defined in Section
24 2612(a) of the Internal Revenue Code, the taxable amount
25 determined under Section 2622(a) of the Internal Revenue
26 Code.

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

6 (4) With respect to an event which causes the
7 imposition of an additional estate tax under Section
8 2032A(c) of the Internal Revenue Code, the qualified real
9 property that was disposed of or which ceased to be used
10 for the qualified use, within the meaning of Section
11 2032A(c) (1) of the Internal Revenue Code.

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

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

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