



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB6113

Introduced 2/11/2016, by Rep. Avery Bourne

SYNOPSIS AS INTRODUCED:

35 ILCS 405/2

from Ch. 120, par. 405A-2

Amends the Illinois Estate and Generation-Skipping Transfer Tax Act. Provides that, for persons dying on or after July 1, 2016, if the decedent was a farmer, then the exclusion amount for that decedent shall be the federal exclusion amount, including any deceased spousal unused exclusion amount. Provides that the term "farmer" means a decedent whose adjusted taxable estate consists of at least 75% farm property and who was engaged in active management of that farm property at any point during his or her lifetime. Effective immediately.

LRB099 20539 HLH 45084 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, and for persons dying after December
7 31, 2010, an amount equal to the full credit calculable under
8 Section 2011 or 2604 of the Internal Revenue Code as the credit
9 would have been computed and allowed under the Internal Revenue
10 Code as in effect on December 31, 2001, without the reduction
11 in the State Death Tax Credit as provided in Section 2011(b) (2)
12 or the termination of the State Death Tax Credit as provided in
13 Section 2011(f) as enacted by the Economic Growth and Tax
14 Relief Reconciliation Act of 2001, but recognizing the
15 exclusion amount of only (i) \$2,000,000 for persons dying prior
16 to January 1, 2012, (ii) \$3,500,000 for persons dying on or
17 after January 1, 2012 and prior to January 1, 2013, and (iii)
18 \$4,000,000 for persons dying on or after January 1, 2013, and
19 with reduction to the adjusted taxable estate for any qualified
20 terminable interest property election as defined in subsection
21 (b-1) of this Section. Notwithstanding any other provision of
22 law, for persons dying on or after July 1, 2016, if the
23 decedent was a farmer, then the exclusion amount for that
24 decedent shall be the applicable exclusion amount calculated
25 under Section 2010 of the Internal Revenue Code, including any
26 deceased spousal unused exclusion amount available after a

1 valid election is made under subparagraph (A) of paragraph (5)
2 of subsection (c) of that Section.

3 For the purposes of this subsection (b):

4 "Farmer" means a decedent whose adjusted taxable estate
5 consists of at least 75% farm property and who was engaged in
6 active management of that farm property at any point during his
7 or her lifetime.

8 "Active management" means material participation, as
9 defined in Section 469 of the Internal Revenue Code.

10 "Farm property" means any real property or tangible
11 personal property used for farming purposes.

12 "Farming purposes" means:

13 (1) cultivating the soil or raising or harvesting
14 any agricultural or horticultural commodity, including
15 the raising, shearing, feeding, caring for, training,
16 and management of animals on a farm;

17 (2) handling, drying, packing, grading, or storing
18 on a farm any agricultural or horticultural commodity
19 in its unmanufactured state, but only if the owner,
20 tenant, or operator of the farm regularly produces more
21 than one-half of the commodity so treated; and

22 (3) the planting, cultivating, caring for, or
23 cutting of trees, or the preparation, other than
24 milling, of trees for market.

25 (b-1) The person required to file the Illinois return may
26 elect on a timely filed Illinois return a marital deduction for

1 qualified terminable interest property under Section
2 2056(b)(7) of the Internal Revenue Code for purposes of the
3 Illinois estate tax that is separate and independent of any
4 qualified terminable interest property election for federal
5 estate tax purposes. For purposes of the Illinois estate tax,
6 the inclusion of property in the gross estate of a surviving
7 spouse is the same as under Section 2044 of the Internal
8 Revenue Code.

9 In the case of any trust for which a State or federal
10 qualified terminable interest property election is made, the
11 trustee may not retain non-income producing assets for more
12 than a reasonable amount of time without the consent of the
13 surviving spouse.

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

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

21 "Transferred property" means:

22 (1) With respect to a taxable transfer occurring at the
23 death of an individual, the deceased individual's gross
24 estate as defined in Section 2031 of the Internal Revenue
25 Code.

26 (2) With respect to a taxable transfer occurring as a

1 result of a taxable termination as defined in Section
2 2612(a) of the Internal Revenue Code, the taxable amount
3 determined under Section 2622(a) of the Internal Revenue
4 Code.

5 (3) With respect to a taxable transfer occurring as a
6 result of a taxable distribution as defined in Section
7 2612(b) of the Internal Revenue Code, the taxable amount
8 determined under Section 2621(a) of the Internal Revenue
9 Code.

10 (4) With respect to an event which causes the
11 imposition of an additional estate tax under Section
12 2032A(c) of the Internal Revenue Code, the qualified real
13 property that was disposed of or which ceased to be used
14 for the qualified use, within the meaning of Section
15 2032A(c) (1) of the Internal Revenue Code.

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

18 (Source: P.A. 96-789, eff. 9-8-09; 96-1496, eff. 1-13-11;
19 97-636, eff. 6-1-12.)

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