Sen. David Koehler

Filed: 3/29/2023

AMENDMENT TO SENATE BILL 1627

AMENDMENT NO. ______. Amend Senate Bill 1627 by replacing everything after the enacting clause with the following:

"Section 1. Short title. This Act may be referred to as the Illinois Farmers Who Fight Hunger Act.

Section 5. The Illinois Estate and Generation-Skipping Transfer Tax Act is amended by changing Section 2 and by adding Section 8.1 as follows:

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

Sec. 2. Definitions.

<u>"Farm property" means real property that is used primarily for raising or harvesting agricultural or horticultural commodities for commercial sale.</u>

"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.

"Food bank" means a food bank in Illinois that received funding from The Emergency Food Assistance Program (TEFAP) in the year in which it received the qualified donation.

"Historically underserved farmer or rancher" means an individual who: (i) is a beginning farmer or rancher, a socially disadvantaged farmer or rancher, a veteran farmer or rancher, or a limited resource farmer or rancher, as those terms are defined by the Natural Resources Conservation Service of the United States Department of Agriculture; and (ii) materially and substantially participates in the operation of farm property located in the State at least 50% of which is owned by a beginning farmer or rancher, a socially disadvantaged farmer or rancher, a veteran farmer or rancher, or some combination of those persons at the time the donation is made.

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

"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.

"Material and substantial participation" means day-to-day labor and management of farm property, consistent with the practices of the county in which the farm property is located.

"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.

"Qualified donation" means a donation to a food bank or to a historically underserved farmer or rancher of an agricultural or horticultural commodity that is suitable for human consumption and is produced on qualified farm property, a cash equivalent donation to a food bank or a historically underserved farmer or rancher, or some combination of those types of donations.

"Qualified farm property" means farm property in which the decedent had an ownership interest at the time of the decedent's death and for at least 5 years before the decedent's death and from which either:

(1) the decedent made qualified donations in at least 5 separate calendar years before the decedent's death totaling at least 1% of the gross revenue from crop yield associated with the property in the calendar year in which the donation was made, and the decedent's heirs pledge to make qualified donations in each of the 5 consecutive calendar years beginning with the year after the decedent's death totaling at least 1% of the gross revenue from crop yield associated with the property in the calendar year in which the donation is made; or

(2) the decedent made qualified donations in at least one calendar year but fewer than 5 calendar years before the decedent's death totaling at least 1% of the gross revenue from crop yield associated with the property in the calendar year in which the donation was made, and the decedent's heirs pledge to make qualified donations in each of the 10 consecutive calendar years beginning with the year after the decedent's death totaling at least 1% of the gross revenue from crop yield associated with the property in the calendar year in which the donation is made.

"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, and for persons dying after December 31, 2010, 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 (i) $2,000,000 for persons dying prior to January 1, 2012, (ii) $3,500,000 for persons dying on or after January 1, 2012 and prior to January 1, 2013, and (iii) $4,000,000 for persons dying on or after January 1, 2013, and with reduction to the adjusted taxable estate for any qualified terminable interest property election as defined in subsection (b-1) of this Section. For persons dying on or after January 1, 2024, for the purposes of computing the State tax credit, the person's adjusted taxable estate shall not include the value of the person's ownership interest in qualified farm property up to $4,400,000.

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

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

"Taxable transfer" means an event that gives rise to a state tax credit, including any credit 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, 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. 96-789, eff. 9-8-09; 96-1496, eff. 1-13-11; 97-636, eff. 6-1-12.)

(35 ILCS 405/8.1 new)

<u>Sec. 8.1. Qualified farm property; qualified donations. If the decedent's heirs pledge to make qualified donations to food banks or to historically underserved farmers or ranchers so that farm property is eligible to be deducted as qualified farm property, then the heirs shall file annual reports with the Attorney General documenting those donations. If the heirs fail to make those donations, then the Attorney General may take steps to recapture the amount of the deduction that should have been disallowed. The Attorney General shall adopt rules to implement this Section and to establish the form and manner of the heirs' pledge under Section 2.</u>

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