



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB2921

Introduced 1/26/2024, by Sen. David Koehler - Paul Faraci

SYNOPSIS AS INTRODUCED:

35 ILCS 405/2
35 ILCS 405/5

from Ch. 120, par. 405A-2
from Ch. 120, par. 405A-5

Amends the Illinois Estate and Generation-Skipping Transfer Tax Act. Makes certain changes concerning estates that contain qualified farm property. Provides that, for the purposes of calculating the State Death Tax Credit, those estates are subject to an exemption of \$6,000,000 (rather than an exclusion amount of \$4,000,000), which shall be deducted from the net estate value after the net estate value is computed in accordance with the Act. Provides that the exemption shall be adjusted each year according to the increase in the Consumer Price Index. Makes changes concerning the calculation of the deceased spousal unused exclusion amount for those estates. Provides for a special use valuation to provide that the value of the qualified farm property shall be calculated without regard to certain limitations under the Internal Revenue Code. Makes changes concerning the definition of "qualified heir" to provide that a decedent's brother, sister, uncle, aunt, niece, nephew, or first cousin is also included.

LRB103 38952 HLH 69089 b

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 Sections 2 and 5 as
6 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 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.

23 "Illinois generation-skipping transfer tax" means the tax

1 due to this State with respect to a taxable transfer that gives
2 rise to a federal generation-skipping transfer tax.

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

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

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

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

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

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

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

20 "State tax credit" means:

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

1 Tax Credit as provided in Section 2011(b)(2) or the
2 termination of the State Death Tax Credit as provided in
3 Section 2011(f) as enacted by the Economic Growth and Tax
4 Relief Reconciliation Act of 2001, but recognizing the
5 increased applicable exclusion amount through December 31,
6 2005.

7 (b) Except as provided in subsection (c), for ~~For~~ persons
8 dying after December 31, 2005 and on or before December 31,
9 2009, and for persons dying after December 31, 2010, an amount
10 equal to the full credit calculable under Section 2011 or 2604
11 of the Internal Revenue Code as the credit would have been
12 computed and allowed under the Internal Revenue Code as in
13 effect on December 31, 2001, without the reduction in the
14 State Death Tax Credit as provided in Section 2011(b)(2) or
15 the termination of the State Death Tax Credit as provided in
16 Section 2011(f) as enacted by the Economic Growth and Tax
17 Relief Reconciliation Act of 2001, but recognizing the
18 exclusion amount of only (i) \$2,000,000 for persons dying
19 prior to January 1, 2012, (ii) \$3,500,000 for persons dying on
20 or after January 1, 2012 and prior to January 1, 2013, and
21 (iii) \$4,000,000 for persons dying on or after January 1,
22 2013, and with reduction to the adjusted taxable estate for
23 any qualified terminable interest property election as defined
24 in subsection (b-1) of this Section.

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

1 for 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 (c) For persons dying on or after the effective date of
10 this amendatory Act of the 103rd General Assembly whose estate
11 contains property that qualifies for the special use valuation
12 under subsection (d) of Section 5 of this Act, whether the
13 person who is required to file an Illinois return makes a
14 special use valuation election or not, an amount equal to the
15 full credit calculable under Section 2011 or 2604 of the
16 Internal Revenue Code as the credit would have been computed
17 and allowed under the Internal Revenue Code on December 31,
18 2001, without the reduction in the State Death Tax Credit as
19 provided in Section 2011(b)(2) of the Internal Revenue Code or
20 the termination of the State Death Tax Credit as provided in
21 Section 2011(f) as enacted by the Economic Growth and Tax
22 Relief Reconciliation Act of 2001, plus any deceased spousal
23 unused exclusion amount, but recognizing the exemption amount
24 calculated under this subsection (c), which shall be deducted
25 from the net estate value after the net estate value is
26 computed in accordance with this Act, and with reduction to

1 the adjusted taxable estate for any qualified terminable
2 interest property election, as defined in subsection (b-1) of
3 this Section. In no event shall the exemption under this
4 Section reduce the estate's value to less than zero.

5 For persons dying on or after the effective date of this
6 amendatory Act of the 103rd General Assembly and before
7 January 1, 2025 whose estates qualify under this subsection
8 (c), the exemption amount under this subsection (c) is
9 \$6,000,000. On January 1, 2025, and on January 1 of each
10 subsequent year, the exemption amount under this subsection
11 (c) shall be the exemption amount for the previous calendar
12 year, multiplied by one plus the percentage increase, if any,
13 in the Consumer Price Index for the 12 months ending in
14 September of the calendar year immediately preceding the
15 calendar year in which the increase takes place, rounded to
16 the nearest whole dollar.

17 For the purposes of this subsection (c), with respect to a
18 surviving spouse who dies on or after the effective date of
19 this amendatory Act of the 103rd General Assembly and whose
20 deceased spouse died on or after the date that is 24 months
21 prior to the effective date of this amendatory Act of the 103rd
22 General Assembly, the term "deceased spousal unused exclusion
23 amount" means the excess of the applicable exclusion amount of
24 the last deceased spouse of the surviving spouse over the
25 amount with respect to which the tentative maximum State Death
26 Tax Credit would have been determined under Section 2011 or

1 2604 of the Internal Revenue Code on December 21, 2001. A
2 deceased spousal unused exclusion amount may not be taken into
3 account by the surviving spouse under this subsection unless
4 the person required to file the Illinois estate tax return for
5 the estate of the deceased spouse files an Illinois estate tax
6 return, including an amended return for a deceased spouse
7 dying prior to the effective date of this amendatory Act of the
8 103rd General Assembly, on which such amount is computed and
9 makes an election on such return that the amount may be so
10 taken into account. Such an election, once made, shall be
11 irrevocable. No election may be made under this subsection if
12 the return for the deceased spouse is filed after the time
13 prescribed by law, including extensions, for filing such
14 return.

15 As used in this subsection (c), "Consumer Price Index"
16 means the index published by the Bureau of Labor Statistics of
17 the United States Department of Labor that measures the
18 average change in prices of goods and services purchased by
19 all urban consumers, United States city average, all items,
20 1982-84 = 100.

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

26 (e) As used in this Act:

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

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

8 "Transferred property" means:

9 (1) With respect to a taxable transfer occurring at
10 the death of an individual, the deceased individual's
11 gross estate as defined in Section 2031 of the Internal
12 Revenue Code.

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

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

23 (4) With respect to an event which causes the
24 imposition of an additional estate tax under Section
25 2032A(c) of the Internal Revenue Code, the qualified real
26 property that was disposed of or which ceased to be used

1 for the qualified use, within the meaning of Section
2 2032A(c)(1) of the Internal Revenue Code.

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

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

7 (35 ILCS 405/5) (from Ch. 120, par. 405A-5)

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

9 (a) Illinois estate tax.

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

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

22 (b) Illinois generation-skipping transfer tax.

23 (1) For purposes of the Illinois generation-skipping
24 transfer tax, all transferred property from or in a
25 resident trust has a tax situs in this State, including

1 any such property held in trust, except real or tangible
2 personal property physically situated in another state on
3 the date that the taxable transfer occurs.

4 (2) For purposes of the Illinois generation-skipping
5 transfer tax, none of the transferred property from or in
6 a non-resident trust has a tax situs in this State, except
7 that portion of the transferred property that is real or
8 tangible personal property physically situated in this
9 State, including any such property held in trust, on the
10 date that the taxable transfer occurs.

11 (c) Valuation. Except as otherwise expressly provided, for
12 purposes of this Act, the gross value of transferred property
13 shall be its value as finally determined for purposes of the
14 federal transfer tax, undiminished by any mortgages, liens or
15 other encumbrances upon such transferred property for which
16 the decedent was personally liable.

17 (d) Special Use Valuation. For purposes of the Illinois
18 estate tax, the gross value of transferred property used for
19 farming purposes that constitutes "qualified real property"
20 allowed under Section 2032A of the Internal Revenue Code, as
21 in effect on January 1, 2024, for which an election has been
22 made by the person required to file the Illinois return shall
23 be its value as determined under Section 2032A without regard
24 to any limitation on the reduction in the fair market value. In
25 addition to a qualified heir or member of the family allowed
26 under Section 2032A of the Internal Revenue Code, a decedent's

1 brother, sister, uncle, aunt, niece, nephew, or first cousin
2 shall also be considered a qualified heir or member of the
3 family. The person required to file an Illinois return may
4 make a Section 2032A election for Illinois estate tax purposes
5 which is separate and independent of any election made under
6 Section 2032A for federal estate tax purposes.

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