SB3976

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103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3976

Introduced 10/16/2024, by Sen. Tom Bennett

SYNOPSIS AS INTRODUCED:

35 ILCS 405/2	from Ch. 120, par. 405A-2
35 ILCS 405/2.1 new	
35 ILCS 405/5	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 $13,610,000 (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.

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A BILL FOR

AN ACT concerning revenue.

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

Section 5. The Illinois Estate and Generation-Skipping Transfer Tax Act is amended by changing Sections 2 and 5 and by adding Section 2.1 as follows:

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

Sec. 2. Definitions.

"Consumer Price Index" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84 = 100.

"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.

"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.

"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.

"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:

(1) ~~(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.

(2) Except as provided in paragraph (3), for ~~(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 provided in Section 2.1 ~~defined in subsection (b-1) of this Section~~.

(3) For persons dying on or after the effective date of this amendatory Act of the 103rd General Assembly whose estate contains property that qualifies for the special use valuation under subsection (d) of Section 5 of this Act, whether the person who is required to file an Illinois return makes a special use valuation election or not, 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 on December 31, 2001, without the reduction in the State Death Tax Credit as provided in Section 2011(b)(2) of the Internal Revenue Code 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, plus any deceased spousal unused exclusion amount, but recognizing the exemption amount calculated under this paragraph (3), which shall be deducted from the net estate value after the net estate value is computed in accordance with this Act, and with reduction to the adjusted taxable estate for any qualified terminable interest property election, as

provided in Section 2.1. In no event shall the exemption under this Section reduce the estate's value to less than zero.

For persons dying on or after the effective date of this amendatory Act of the 103rd General Assembly and before January 1, 2026 whose estates qualify under this paragraph (3), the exemption amount under this paragraph (3) is $13,610,000. On January 1, 2026, and on January 1 of each subsequent year, the exemption amount under this paragraph (3) shall be the exemption amount for the previous calendar year, multiplied by one plus the percentage increase, if any, in the Consumer Price Index for the 12 months ending in September of the calendar year immediately preceding the calendar year in which the increase takes place, rounded to the nearest whole dollar.

For the purposes of this paragraph (3), with respect to a surviving spouse who dies on or after the effective date of this amendatory Act of the 103rd General Assembly and whose deceased spouse died on or after the date that is 24 months prior to the effective date of this amendatory Act of the 103rd General Assembly, the term "deceased spousal unused exclusion amount" means the excess of the applicable exclusion amount of the last deceased spouse of the surviving spouse over the amount with respect to which the tentative maximum State Death Tax Credit would have been determined under Section 2011 or 2604 of the Internal

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

~~(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 405/2.1 new)

Sec. 2.1. Qualified terminable interest property.

(a) The person required to file the Illinois return under this Act 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.

(b) 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.

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

Sec. 5. Determination of tax situs and valuation.

(a) Illinois estate tax.

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

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

(b) Illinois generation-skipping transfer tax.

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

(2) For purposes of the Illinois generation-skipping transfer tax, none of the transferred property from or in

a non-resident trust has a tax situs in this State, except that portion of the transferred property that is real or tangible personal property physically situated in this State, including any such property held in trust, on the date that the taxable transfer occurs.

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

(d) Special Use Valuation. For purposes of the Illinois estate tax, the gross value of transferred property used for farming purposes that constitutes "qualified real property" allowed under Section 2032A of the Internal Revenue Code, as in effect on January 1, 2024, for which an election has been made by the person required to file the Illinois return shall be its value as determined under Section 2032A without regard to any limitation on the reduction in the fair market value. In addition to a qualified heir or member of the family allowed under Section 2032A of the Internal Revenue Code, a decedent's brother, sister, uncle, aunt, niece, nephew, or first cousin shall also be considered a qualified heir or member of the family. The person required to file an Illinois return may make a Section 2032A election for Illinois estate tax purposes which is separate and independent of any election made under

Section 2032A for federal estate tax purposes.
(Source: P.A. 93-30, eff. 6-20-03.)