



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB3026

Introduced 1/20/2006, by Sen. Todd Sieben - Peter J. Roskam -
Larry K. Bomke - Gary G. Dahl - David Luechtefeld, et al.

SYNOPSIS AS INTRODUCED:

35 ILCS 405/2	from Ch. 120, par. 405A-2
35 ILCS 405/3	from Ch. 120, par. 405A-3
35 ILCS 405/5	from Ch. 120, par. 405A-5
35 ILCS 405/6	from Ch. 120, par. 405A-6
35 ILCS 405/7	from Ch. 120, par. 405A-7
35 ILCS 405/8	from Ch. 120, par. 405A-8
35 ILCS 405/10	from Ch. 120, par. 405A-10

Amends the Illinois Estate and Generation-Skipping Transfer Tax Act. Restores the imposition and collection of the tax to its status prior to June 20, 2003 (the effective date of Public Act 93-30). Effective immediately.

LRB094 18946 BDD 54400 b

FISCAL NOTE ACT
MAY APPLY

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, 3, 5, 6, 7,
6 8, and 10 as 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 States
10 with respect to a taxable transfer under Chapter 11 of the
11 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 that gives rise to a federal
23 estate tax.

24 "Illinois generation-skipping transfer tax" means the tax
25 due to this State with respect to a taxable transfer that gives
26 rise to a federal generation-skipping transfer tax.

27 "Illinois transfer tax" means the Illinois estate tax or
28 the Illinois generation-skipping transfer tax.

29 "Internal Revenue Code" means, ~~unless otherwise provided,~~
30 the Internal Revenue Code of 1986, as amended from time to
31 time.

32 "Non-resident trust" means a trust that is not a resident

1 of this State for purposes of the Illinois Income Tax Act, as
2 amended from time to time.

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

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

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

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

12 "State tax credit" means:

13 (a) For persons dying on or after January 1, 2003 and
14 through December 31, 2005, an amount equal to the full credit
15 calculable under Section 2011 or Section 2604 of the Internal
16 Revenue Code as the credit would have been computed and allowed
17 under the Internal Revenue Code as in effect on December 31,
18 2001, without the reduction in the State Death Tax Credit as
19 provided in Section 2011(b) (2) or the termination of the State
20 Death Tax Credit as provided in Section 2011(f) as enacted by
21 the Economic Growth and Tax Relief Reconciliation Act of 2001,
22 but recognizing the increased applicable exclusion amount
23 through December 31, 2005.

24 (b) (Blank). ~~For persons dying after December 31, 2005 and~~
25 ~~on or before December 31, 2009, an amount equal to the full~~
26 ~~credit calculable under Section 2011 or 2604 of the Internal~~
27 ~~Revenue Code as the credit would have been computed and allowed~~
28 ~~under the Internal Revenue Code as in effect on December 31,~~
29 ~~2001, without the reduction in the State Death Tax Credit as~~
30 ~~provided in Section 2011(b) (2) or the termination of the State~~
31 ~~Death Tax Credit as provided in Section 2011(f) as enacted by~~
32 ~~the Economic Growth and Tax Relief Reconciliation Act of 2001,~~
33 ~~but recognizing the exclusion amount of only \$2,000,000.~~

34 (c) For persons dying after December 31, 2005 ~~December 31,~~
35 ~~2009~~, the credit for state tax allowable under Section 2011 or
36 Section 2604 of the Internal Revenue Code.

1 "Taxable transfer" means an event that gives rise to a
2 state tax credit, including any credit allowable as a result of
3 the imposition of an additional tax under Section 2032A(c) of
4 the 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 the
10 death of an individual that results in the imposition of
11 any federal estate tax, the deceased individual's gross
12 estate as defined in Section 2031 of the Internal Revenue
13 Code.

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

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

24 (4) With respect to an event which causes the
25 imposition of an additional estate tax under Section
26 2032A(c) of the Internal Revenue Code, the qualified real
27 property that was disposed of or which ceased to be used
28 for the qualified use, within the meaning of Section
29 2032A(c)(1) of the Internal Revenue Code.

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

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

33 (35 ILCS 405/3) (from Ch. 120, par. 405A-3)

34 Sec. 3. Illinois estate tax.

35 (a) Imposition of Tax. An Illinois estate tax is imposed on

1 every taxable transfer involving transferred property having a
2 tax situs within the State of Illinois.

3 (b) Amount of tax. On estates of persons dying before
4 January 1, 2003, the amount of the Illinois estate tax shall be
5 the maximum state tax credit allowable, ~~as defined in Section 2~~
6 ~~of this Act~~, with respect to the taxable transfer reduced by
7 the lesser of:

8 (1) the amount of the state tax credit paid to any
9 other state or states; and

10 (2) the amount determined by multiplying the maximum
11 state tax credit allowable with respect to the taxable
12 transfer by the percentage which the gross value of the
13 transferred property not having a tax situs in Illinois
14 bears to the gross value of the total transferred property.

15 (c) On estates of persons dying on or after January 1,
16 2003, the amount of the Illinois estate tax shall be the state
17 tax credit, as defined in Section 2 of this Act, reduced by the
18 amount determined by multiplying the state tax credit with
19 respect to the taxable transfer by the percentage which the
20 gross value of the transferred property not having a tax situs
21 in Illinois bears to the gross value of the total transferred
22 property.

23 (Source: P.A. 93-30, eff. 6-20-03; 94-419, eff. 8-2-05.)

24 (35 ILCS 405/5) (from Ch. 120, par. 405A-5)

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

26 (a) Illinois estate tax.

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

33 (2) For purposes of the Illinois estate tax, in the
34 case of a decedent who was not a resident of this State at
35 the time of death, the transferred property having a tax

1 situs in this State, including any such property held in
2 trust, is only the real estate and tangible personal
3 property physically situated in this State.

4 (b) Illinois generation-skipping transfer tax.

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

11 (2) For purposes of the Illinois generation-skipping
12 transfer tax, none of the transferred property from or in a
13 non-resident trust has a tax situs in this State, except
14 that portion of the transferred property that is real or
15 tangible personal property physically situated in this
16 State, including any such property held in trust, on the
17 date that the taxable transfer occurs.

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

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

25 (35 ILCS 405/6) (from Ch. 120, par. 405A-6)

26 Sec. 6. Returns and payments.

27 (a) Due Dates. The Illinois transfer tax shall be paid and
28 the Illinois transfer tax return shall be filed on the due date
29 or dates, respectively, including extensions, for paying the
30 related federal transfer tax and filing the related federal
31 return.

32 (b) Installment payments and deferral. In the event that
33 any portion of the federal transfer tax is deferred or to be
34 paid in installments under the provisions of the Internal
35 Revenue Code, the portion of the Illinois transfer tax which is

1 subject to deferral or payable in installments shall be
2 determined by multiplying the Illinois transfer tax by a
3 fraction, the numerator of which is the gross value of the
4 assets included in the transferred property having a tax situs
5 in this State and which give rise to the deferred or
6 installment payment under the Internal Revenue Code, and the
7 denominator of which is the gross value of all assets included
8 in the transferred property having a tax situs in this State.
9 Deferred payments and installment payments, with interest,
10 shall be paid at the same time and in the same manner as
11 payments of the federal transfer tax are required to be made
12 under the applicable Sections of the Internal Revenue Code,
13 provided that the rate of interest on unpaid amounts of
14 Illinois transfer tax shall be determined under this Act.
15 Acceleration of payment under this Section shall occur under
16 the same circumstances and in the same manner as provided in
17 the Internal Revenue Code.

18 (c) Who shall file and pay. The Illinois transfer tax
19 return (including any supplemental or amended return) shall be
20 filed, and the Illinois transfer tax (including any additional
21 tax that may become due) shall be paid by the same person or
22 persons, respectively, who are required to pay the related
23 federal transfer tax and file the related federal return, ~~or~~
24 ~~who would have been required to pay a federal transfer tax and~~
25 ~~file a federal return if a federal transfer tax were due.~~

26 (d) Where to file return. The executed Illinois transfer
27 tax return shall be filed with the Attorney General. In
28 addition, a copy of the Illinois transfer tax return shall be
29 filed with the county treasurer to whom the Illinois transfer
30 tax is paid, determined under subsection (e) of this Section.

31 (e) Where to pay tax. The Illinois transfer tax shall be
32 paid to the treasurer of the county determined under the
33 following rules:

34 (1) Illinois Estate Tax. The Illinois estate tax shall
35 be paid to the treasurer of the county in which the
36 decedent was a resident on the date of the decedent's death

1 or, if the decedent was not a resident of this State on the
2 date of death, the county in which the greater part, by
3 gross value, of the transferred property with a tax situs
4 in this State is located.

5 (2) Illinois Generation-Skipping Transfer Tax. The
6 Illinois generation-skipping transfer tax involving
7 transferred property from or in a resident trust shall be
8 paid to the county treasurer for the county in which the
9 grantor resided at the time the trust became irrevocable
10 (in the case of an inter vivos trust) or the county in
11 which the decedent resided at death (in the case of a trust
12 created by the will of a decedent). In the case of an
13 Illinois generation-skipping transfer tax involving
14 transferred property from or in a non-resident trust, the
15 Illinois generation-skipping transfer tax shall be paid to
16 the county treasurer for the county in which the greater
17 part, by gross value, of the transferred property with a
18 tax situs in this State is located.

19 (f) Forms; confidentiality. The Illinois transfer tax
20 return shall be in all respects in the manner and form
21 prescribed by the regulations of the Attorney General. At the
22 same time the Illinois transfer tax return is filed, the person
23 required to file shall also file with the Attorney General a
24 copy of the related federal return. ~~For individuals dying after~~
25 ~~December 31, 2005, in cases where no federal return is required~~
26 ~~to be filed, the person required to file an Illinois return~~
27 ~~shall also file with the Attorney General schedules of assets~~
28 ~~in the manner and form prescribed by the Attorney General.~~ The
29 Illinois transfer tax return and the copy of the federal return
30 filed with the Attorney General or any county treasurer shall
31 be confidential, and the Attorney General, each county
32 treasurer and all of their assistants or employees are
33 prohibited from divulging in any manner any of the contents of
34 those returns, except only in a proceeding instituted under the
35 provisions of this Act.

36 (g) County Treasurer shall accept payment. No county

1 treasurer shall refuse to accept payment of any amount due
2 under this Act on the grounds that the county treasurer has not
3 yet received a copy of the appropriate Illinois transfer tax
4 return.

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

6 (35 ILCS 405/7) (from Ch. 120, par. 405A-7)

7 Sec. 7. Supplemental returns; refunds.

8 (a) Supplemental returns. If the State tax credit is
9 increased after the filing of the Illinois transfer tax return,
10 the person or persons required to file the Illinois transfer
11 tax return and pay the Illinois transfer tax shall file a
12 supplemental Illinois transfer tax return. The supplemental
13 return shall be filed and the additional tax shall be paid in
14 the same place and manner as provided in Section 6 of this Act.
15 The due date for the supplemental return and for the payment of
16 the additional tax reported in the supplemental return shall be
17 no later than 3 months after the earliest of:

18 (1) the date an amended, related federal return is
19 filed;

20 (2) the date an increase in the federal transfer tax is
21 paid or accepted in writing; or

22 (3) the date the Internal Revenue Service issues a
23 request for evidence of payment of the State tax credit; ~~or~~

24 ~~(4) the date that any increase to the taxable estate is~~
25 ~~discovered;~~

26 provided that if the related federal transfer tax may be
27 deferred or paid in installments, then part or all of the
28 additional Illinois transfer tax may be deferred or paid in
29 installments under rules consistent with subsection (b) of
30 Section 6 of this Act.

31 (b) Refunds. If the state tax credit is reduced after the
32 filing of the Illinois transfer tax return, the person who paid
33 the Illinois transfer tax (or the person upon whom the burden
34 of payment fell) shall file an amended Illinois transfer tax
35 return and shall be entitled to a refund of tax or interest

1 paid on the Illinois transfer tax. No interest shall be paid on
2 any amount refunded.

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

4 (35 ILCS 405/8) (from Ch. 120, par. 405A-8)

5 Sec. 8. Penalties for failure to file tax return or to pay
6 tax.

7 (a) Failure to file return. In case of failure to file any
8 return required under this Act with the Attorney General by the
9 due date, unless it is shown that the failure to file is due to
10 a reasonable cause, there shall be added to the amount required
11 to be shown as tax on the return 5% of the amount of that tax
12 (or 5% of the additional tax due in the case of a supplemental
13 return) if the failure is for not more than one month from the
14 due date, with an additional 5% for each additional month or
15 fraction of a month thereafter during which the failure to file
16 continues, not exceeding in the aggregate 25% of the tax or, in
17 the case of a supplemental return, 25% of the additional tax.

18 (b) Failure to pay tax. In the case of failure to pay the
19 amount of tax shown due on any return required under this Act
20 on or before the due date for payment of that tax, unless it is
21 shown that the failure to pay is due to reasonable cause, there
22 shall be added to the unpaid amount of the tax 0.5% of that
23 unpaid amount if the failure is for not more than one month
24 from the due date, with an additional 0.5% for each additional
25 month or fraction of a month thereafter during which the
26 failure to pay continues, not exceeding in the aggregate 25% of
27 the unpaid amount.

28 (c) Extensions of Time.

29 (1) Internal Revenue Service Extensions. If the date
30 for filing the related federal return or the date for
31 payment of the related federal transfer tax is extended by
32 the Internal Revenue Service, the filing of the return and
33 payment of the tax imposed by this Act shall be due on the
34 respective date specified by the Internal Revenue Service
35 in granting a request for extension. If the request for

1 extension is granted by the Internal Revenue Service, the
2 person required to file the Illinois transfer tax return
3 shall furnish the Attorney General with a copy of the
4 request for extension showing approval of the extension by
5 the Internal Revenue Service. If a request for extension of
6 time to file the federal return is denied by the Internal
7 Revenue Service, no penalty shall be due under this Act if
8 the return required by this Act is filed within the time
9 specified by the Internal Revenue Service for filing the
10 federal return. If a request for extension of time to pay
11 the federal transfer tax is denied by the Internal Revenue
12 Service, no penalty shall be due under this Act if the tax
13 is paid within the time specified by the Internal Revenue
14 Service for paying the federal transfer tax.

15 (2) Attorney General Extensions. The person or persons
16 required to file the Illinois transfer tax return and to
17 pay the Illinois transfer tax may apply to the Attorney
18 General for an extension of time to file the Illinois
19 transfer tax return or to pay the Illinois transfer tax.
20 The application must establish reasonable cause why it is
21 impossible or impractical to file a reasonably complete
22 return or to pay the full amount of tax due by the due
23 date. The Attorney General may for reasonable cause extend
24 the time for filing the return or paying the tax for a
25 reasonable period from the date fixed for filing the return
26 or paying the tax.

27 (d) Waiver of Penalties.

28 (1) Internal Revenue Service Waiver. If the Internal
29 Revenue Service waives the penalty provided in the Internal
30 Revenue Code for failure to timely file the related federal
31 return or the penalty for failure to timely pay the related
32 federal transfer tax liability, such waiver or waivers
33 shall be deemed to constitute reasonable cause for purposes
34 of this Section.

35 (2) Attorney General Waiver. The Attorney General may
36 waive the penalty or penalties for failure to file or pay

1 for reasonable cause, notwithstanding the failure of the
2 Internal Revenue Service to waive the penalty or penalties
3 for failure to timely file the federal transfer tax return
4 or to pay the federal transfer tax.

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

6 (35 ILCS 405/10) (from Ch. 120, par. 405A-10)

7 Sec. 10. Liens and Personal Liability.

8 (a) Lien for Illinois transfer tax. Unless the Illinois
9 transfer tax is sooner paid in full, the Illinois transfer tax
10 shall be a lien in favor of this State upon the transferred
11 property having a tax situs within this State for 10 years from
12 the date of the taxable transfer, or, in the case of Illinois
13 transfer tax subject to deferral or payable in installments,
14 the later of 10 years from the date of the taxable transfer or
15 one year after the last deferred or installment payment may
16 become due. The lien imposed by this Section on the transferred
17 property shall not be valid as against any purchaser,
18 mortgagee, pledgee, or other holder of a security interest for
19 a full and adequate consideration in money or money's worth;
20 provided, however, that any property, consideration or
21 proceeds received as a result of any sale, mortgage, pledge or
22 granting of a security interest shall remain subject to the
23 lien imposed by this Section. In addition, the lien imposed by
24 this Section on the transferred property shall be subject to
25 the exceptions set forth in Section 6324(c)(i) of the Internal
26 Revenue Code as if the lien were a lien imposed by that
27 Section. In no event shall the issuance by the Attorney General
28 of a release of the lien imposed by this subsection be required
29 with respect to the sale, mortgage, pledge, granting of a
30 security interest in, transfer or distribution of transferred
31 property.

32 (b) Special lien for property valued under Section 2032A of
33 the Internal Revenue Code. In the event the Illinois estate tax
34 is reduced as a result of an election under Section 2032A of
35 the Internal Revenue Code, then an amount equal to the

1 additional Illinois estate tax that would be due in the absence
2 of such an election shall be a lien in favor of this State on
3 the transferred property that has a tax situs in this State and
4 is subject to such election. The lien imposed by this
5 subsection shall arise at the time an election is filed under
6 Section 2032A of the Internal Revenue Code and shall continue
7 with respect to such transferred property:

8 (1) until the liability for the Illinois estate tax
9 with respect to such transferred property has been
10 satisfied or has become unenforceable by reason of lapse of
11 time or otherwise; or

12 (2) until it is established to the satisfaction of the
13 Attorney General that no further tax liability may arise
14 under this Act with respect to such transferred property.

15 The lien imposed by this subsection shall not be valid as
16 against any purchaser, mortgagee, pledgee, other holder of a
17 security interest, mechanic's lien, or judgment lien creditor
18 until notice of such lien has been filed as provided by the
19 laws of this State. In regulations prescribed in accordance
20 with Section 16 of this Act, the Attorney General may require
21 that the qualified heir file such notice of lien. Even though
22 notice of said lien has been filed as provided in the preceding
23 sentence, such lien shall be subject to the rules set forth in
24 paragraph (3) of Section 6324A(d) of the Internal Revenue Code
25 as if the lien were a lien imposed by that Section.

26 (c) Personal liability. If the Illinois transfer tax is not
27 paid when due, then the person required to file the related
28 federal return and the transferee of any transferred property
29 having a tax situs within this State shall be personally liable
30 for the Illinois transfer tax, to the extent of such
31 transferred property originally received, controlled or
32 transferred to that person or transferee, less the amount of
33 any expenses or charges against the transferred property,
34 related to the taxable transfer, which have a higher priority
35 of payment under applicable law than the Illinois transfer tax.

36 (d) Collection. The Attorney General shall have the right

1 to sue for collection of the Illinois transfer tax for 3 years
2 after the date of the actual filing of the related Illinois
3 transfer tax return with the Attorney General, or, if later,
4 the last date upon which application for refund of the Illinois
5 transfer tax could be filed with the State Treasurer.

6 (e) Waiver of lien and personal liability. If the Attorney
7 General is satisfied that no liability for Illinois transfer
8 tax exists or that the Illinois transfer tax has been fully
9 discharged or provided for, the Attorney General shall issue a
10 certificate releasing all of the transferred property having a
11 tax situs within the State of Illinois from the lien imposed by
12 this Section. Issuance of such certificate shall discharge the
13 person required to file the related federal ~~Illinois~~ return and
14 any transferee from personal liability for the Illinois
15 transfer tax.

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

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