



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5297

Introduced 2/8/2012, by Rep. Sidney H. Mathias

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, in the case of a surviving spouse of a decedent who died on or after January 1, 2012, the exclusion amount shall also include the unused exclusion amount of the predeceased spouse. Effective immediately.

LRB097 18662 HLH 63896 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 (Text of Section before amendment by P.A. 97-636)

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.

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 allowed
25 under the Internal Revenue Code as in effect on December 31,
26 2001, without the reduction in the State Death Tax Credit as

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

6 (b) For persons dying after December 31, 2005 and on or
7 before December 31, 2009, and for persons dying after December
8 31, 2010, an amount equal to the full credit calculable under
9 Section 2011 or 2604 of the Internal Revenue Code as the credit
10 would have been computed and allowed under the Internal Revenue
11 Code as in effect on December 31, 2001, without the reduction
12 in the State Death Tax Credit as provided in Section 2011(b) (2)
13 or the termination of the State Death Tax Credit as provided in
14 Section 2011(f) as enacted by the Economic Growth and Tax
15 Relief Reconciliation Act of 2001, but recognizing the
16 exclusion amount of only \$2,000,000, and with reduction to the
17 adjusted taxable estate for any qualified terminable interest
18 property election as defined in subsection (b-1) of this
19 Section. In the case of a surviving spouse of a decedent who
20 died on or after January 1, 2012, the exclusion amount shall
21 also include the unused exclusion amount of the predeceased
22 spouse.

23 (b-1) The person required to file the Illinois return may
24 elect on a timely filed Illinois return a marital deduction for
25 qualified terminable interest property under Section
26 2056(b) (7) of the Internal Revenue Code for purposes of the

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

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

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

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

19 "Transferred property" means:

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

24 (2) With respect to a taxable transfer occurring as a
25 result of a taxable termination as defined in Section
26 2612(a) of the Internal Revenue Code, the taxable amount

1 determined under Section 2622(a) of the Internal Revenue
2 Code.

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

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

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

16 (Source: P.A. 96-789, eff. 9-8-09; 96-1496, eff. 1-13-11.)

17 (Text of Section after amendment by P.A. 97-636)

18 Sec. 2. Definitions.

19 "Federal estate tax" means the tax due to the United States
20 with respect to a taxable transfer under Chapter 11 of the
21 Internal Revenue Code.

22 "Federal generation-skipping transfer tax" means the tax
23 due to the United States with respect to a taxable transfer
24 under Chapter 13 of the Internal Revenue Code.

25 "Federal return" means the federal estate tax return with

1 respect to the federal estate tax and means the federal
2 generation-skipping transfer tax return with respect to the
3 federal generation-skipping transfer tax.

4 "Federal transfer tax" means the federal estate tax or the
5 federal generation-skipping transfer tax.

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

8 "Illinois generation-skipping transfer tax" means the tax
9 due to this State with respect to a taxable transfer that gives
10 rise to a federal generation-skipping transfer tax.

11 "Illinois transfer tax" means the Illinois estate tax or
12 the Illinois generation-skipping transfer tax.

13 "Internal Revenue Code" means, unless otherwise provided,
14 the Internal Revenue Code of 1986, as amended from time to
15 time.

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

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

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

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

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1 United States and the District of Columbia.

2 "State tax credit" means:

3 (a) For persons dying on or after January 1, 2003 and
4 through December 31, 2005, an amount equal to the full credit
5 calculable under Section 2011 or Section 2604 of the Internal
6 Revenue Code as the credit would have been computed and allowed
7 under the Internal Revenue Code as in effect on December 31,
8 2001, without the reduction in the State Death Tax Credit as
9 provided in Section 2011(b) (2) or the termination of the State
10 Death Tax Credit as provided in Section 2011(f) as enacted by
11 the Economic Growth and Tax Relief Reconciliation Act of 2001,
12 but recognizing the increased applicable exclusion amount
13 through December 31, 2005.

14 (b) For persons dying after December 31, 2005 and on or
15 before December 31, 2009, and for persons dying after December
16 31, 2010, an amount equal to the full credit calculable under
17 Section 2011 or 2604 of the Internal Revenue Code as the credit
18 would have been computed and allowed under the Internal Revenue
19 Code as in effect on December 31, 2001, without the reduction
20 in the State Death Tax Credit as provided in Section 2011(b) (2)
21 or the termination of the State Death Tax Credit as provided in
22 Section 2011(f) as enacted by the Economic Growth and Tax
23 Relief Reconciliation Act of 2001, but recognizing the
24 exclusion amount of only (i) \$2,000,000 for persons dying prior
25 to January 1, 2012, (ii) \$3,500,000 for persons dying on or
26 after January 1, 2012 and prior to January 1, 2013, and (iii)

1 \$4,000,000 for persons dying on or after January 1, 2013, and
2 with reduction to the adjusted taxable estate for any qualified
3 terminable interest property election as defined in subsection
4 (b-1) of this Section. In the case of a surviving spouse of a
5 decedent who died on or after January 1, 2012, the exclusion
6 amount shall also include the unused exclusion amount of the
7 predeceased spouse.

8 (b-1) The person required to file the Illinois return may
9 elect on a timely filed Illinois return a marital deduction for
10 qualified terminable interest property under Section
11 2056(b)(7) of the Internal Revenue Code for purposes of the
12 Illinois estate tax that is separate and independent of any
13 qualified terminable interest property election for federal
14 estate tax purposes. For purposes of the Illinois estate tax,
15 the inclusion of property in the gross estate of a surviving
16 spouse is the same as under Section 2044 of the Internal
17 Revenue Code.

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

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

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

4 "Transferred property" means:

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6 death of an individual, the deceased individual's gross
7 estate as defined in Section 2031 of the Internal Revenue
8 Code.

9 (2) With respect to a taxable transfer occurring as a
10 result of a taxable termination as defined in Section
11 2612(a) of the Internal Revenue Code, the taxable amount
12 determined under Section 2622(a) of the Internal Revenue
13 Code.

14 (3) With respect to a taxable transfer occurring as a
15 result of a taxable distribution as defined in Section
16 2612(b) of the Internal Revenue Code, the taxable amount
17 determined under Section 2621(a) of the Internal Revenue
18 Code.

19 (4) With respect to an event which causes the
20 imposition of an additional estate tax under Section
21 2032A(c) of the Internal Revenue Code, the qualified real
22 property that was disposed of or which ceased to be used
23 for the qualified use, within the meaning of Section
24 2032A(c) (1) of the Internal Revenue Code.

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

1 (Source: P.A. 96-789, eff. 9-8-09; 96-1496, eff. 1-13-11;
2 97-636, eff. 6-1-12.)

3 Section 95. No acceleration or delay. Where this Act makes
4 changes in a statute that is represented in this Act by text
5 that is not yet or no longer in effect (for example, a Section
6 represented by multiple versions), the use of that text does
7 not accelerate or delay the taking effect of (i) the changes
8 made by this Act or (ii) provisions derived from any other
9 Public Act.

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