

**CHAPTER 1137****TRUSTS AND ESTATES — MISCELLANEOUS CHANGES***H.F. 2483*

**AN ACT** relating to trusts and estates including provisions relating to state inheritance tax, uniform transfers to minors, and medical assistance claims, and including an applicability provision.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 450.4, subsection 5, Code 2009, is amended by striking the subsection and inserting in lieu thereof the following:

5. a. On that portion of the decedent's interest in an employer-provided or employer-sponsored retirement plan or on that portion of the decedent's individual retirement account that will be subject to federal income tax when paid to the beneficiary. This exemption shall apply regardless of the identity of the beneficiary and regardless of the number of payments to be made after the decedent's death.

b. For purposes of this exemption:

(1) An individual retirement account includes an individual retirement annuity or any other arrangement as defined in section 408 of the Internal Revenue Code.

(2) An "employer-provided or employer-sponsored retirement plan" includes a qualified retirement plan as defined in section 401 of the Internal Revenue Code, a governmental or nonprofit employer's deferred compensation plan as defined in section 457 of the Internal Revenue Code, and an annuity as defined in section 403 of the Internal Revenue Code.

Sec. 2. Section 565B.6, subsection 3, paragraph c, Code 2009, is amended to read as follows:

c. The transfer is authorized by the court if all ~~transfers (including transfers, including the transfer to be made and prior transfers)~~ transfers, exceed ten twenty-five thousand dollars in value. Transfers by a personal representative, trustee, or conservator shall not be aggregated, but each personal representative, trustee, or conservator shall be treated separately.

Sec. 3. Section 633.63, subsection 1, Code 2009, is amended to read as follows:

1. Any natural person of full age, who is a resident of this state, is qualified to serve as a fiduciary, except any of the following:

a. ~~One who is under legal incompetency or is a chronic alcoholic or a spendthrift~~ A person who is incompetent.

b. Any other person whom the court determines to be unsuitable.

Sec. 4. Section 633.231, Code 2009, is amended to read as follows:

**633.231 Notice in intestate estates — medical assistance claims.**

1. Upon opening administration of an intestate estate, the administrator shall, in accordance with section 633.410, provide by ~~ordinary mail~~ electronic transmission on a form approved by the department of human services to the entity designated by the department of human services, a notice of opening administration of the estate and of the appointment of the administrator, which shall include a notice to file claims with the clerk or to provide electronic notification to the administrator that the department has no claim within the later to occur of four months from the second publication of the notice to creditors or six months from the date of mailing of sending this notice, or thereafter be forever barred.

2. The notice shall be in substantially the following form:

NOTICE OF OPENING ADMINISTRATION  
OF ESTATE, OF APPOINTMENT OF  
ADMINISTRATOR, AND NOTICE  
TO CREDITOR

In the District Court of Iowa

In and for ..... County.

In the Estate of ....., Deceased

Probate No. ....

To the Department of Human Services Who May Be Interested in the Estate of ....., Deceased, who died on or about ..... (date):

You are hereby notified that on the ..... day of ..... (month), ..... (year), an intestate estate was opened in the above-named court and that ..... was appointed administrator of the estate.

You are further notified that the birthdate of the deceased is ..... and the deceased's social security number is .....-.....-..... The name of the spouse is ..... The birthdate of the spouse is ..... and the spouse's social security number is .....-.....-....., and that the spouse of the deceased is alive as of the date of this notice, or deceased as of ..... (date).

You are further notified that the deceased was/was not a disabled or a blind child of the medical assistance recipient by the name of ....., who had a birthdate of ..... and a social security number of .....-.....-....., and the medical assistance debt of that medical assistance recipient was waived pursuant to section 249A.5, subsection 2, paragraph "a", subparagraph (1), and is now collectible from this estate pursuant to section 249A.5, subsection 2, paragraph "b".

Notice is hereby given that if the department of human services has a claim against the estate for the deceased person or persons named in this notice, the claim shall be filed with the clerk of the above-named district court, as provided by law, duly authenticated, for allowance, and unless so filed by the later to occur of four months from the second publication of the notice to creditors or six months from the date of the mailing of this notice within six months from the date of sending this notice and, unless otherwise allowed or paid, the claim is thereafter forever barred. If the department does not have a claim, the department shall return the notice to the executor with notification stating the department does not have a claim within six months from the date of sending this notice.

Dated this ..... day of ..... (month), ..... (year)

.....  
Administrator of estate  
.....  
Address

.....  
Attorney for administrator  
.....  
Address  
Date of second publication  
..... day of ..... (month), ..... (year)

Sec. 5. Section 633.304A, Code 2009, is amended to read as follows:

**633.304A Notice of probate of will — medical assistance claims.**

1. On admission of a will to probate, the executor shall, in accordance with section 633.410, provide by ~~ordinary mail~~ electronic transmission on a form approved by the department of human services to the entity designated by the department of human services, a notice of admission of the will to probate and of the appointment of the executor, which shall include a notice to file claims with the clerk or to provide electronic notification to the executor that the department has no claim within the later to occur of four six months from the second publication of the notice to creditors or six months from the date of mailing of sending this notice, or thereafter be forever barred.

2. The notice shall be in substantially the following form:

NOTICE OF PROBATE OF WILL,  
OF APPOINTMENT OF EXECUTOR,  
AND NOTICE TO CREDITORS

In the District Court of Iowa  
In and for ..... County.  
In the Estate of ....., Deceased  
Probate No. ....

To the Department of Human Services, Who May Be Interested in the Estate of

....., Deceased, who died on or about ..... (date):

You are hereby notified that on the ..... day of ..... (month), ..... (year), the last will and testament of ....., deceased, bearing date of the ..... day of ..... (month), ..... (year), was admitted to probate in the above-named court and that ..... was appointed executor of the estate.

You are further notified that the birthdate of the deceased is ..... and the deceased's social security number is .....-.....-..... The name of the spouse is ..... The birthdate of the spouse is ..... and the spouse's social security number is .....-.....-....., and that the spouse of the deceased is alive as of the date of this notice, or deceased as of ..... (date).

You are further notified that the deceased was/was not a disabled or a blind child of the medical assistance recipient by the name of ....., who had a birthdate of ..... and a social security number of .....-.....-....., and the medical assistance debt of that medical assistance recipient was waived pursuant to section 249A.5, subsection 2, paragraph "a", subparagraph (1), and is now collectible from this estate pursuant to section 249A.5, subsection 2, paragraph "b".

Notice is hereby given that if the department of human services has a claim against the estate for the deceased person or persons named in this notice, the claim shall be filed with the clerk of the above-named district court, as provided by law, duly authenticated, for allowance, ~~and unless so filed by the later to occur of four months from the second publication of the notice to creditors or six months from the date of mailing of this notice within six months from the date of sending this notice and~~, unless otherwise allowed or paid, the claim is thereafter forever barred. If the department does not have a claim, the department shall return the notice to the executor with notification that the department does not have a claim within six months from the date of sending this notice.

Dated this ..... day of ..... (month), ..... (year)

.....  
Executor of estate  
.....  
Address

.....  
Attorney for executor

.....  
Address

~~Date of second publication~~  
..... day of ..... (month), ..... (year)

Sec. 6. Section 633.356, subsection 1, Code 2009, is amended to read as follows:

1. When the gross value of the decedent's personal property that would otherwise be distributed by will or intestate succession does not exceed twenty-five thousand dollars and there is no real property or the real property passes to persons exempt from inheritance tax pursuant to section 450.9 as joint tenants with right of survivorship, and if forty days have elapsed since the death of the decedent, the successor of the decedent as defined in subsection 2 may, by filing an affidavit prepared pursuant to subsection 3 or 8, and without procuring letters of appointment, do any of the following with respect to one or more particular items of such personal property:

- a. Receive any particular item of tangible personal property that is tangible personal property of the decedent.
- b. Have any ~~particular item of property that is~~ evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred.
- c. Collect the proceeds from any life insurance policy or any other item of property for which a beneficiary has not been designated.

Sec. 7. Section 633.410, subsection 2, Code 2009, is amended to read as follows:

2. Notwithstanding subsection 1, claims for debts created under section 249A.5, subsection 2, relating to the recovery of medical assistance payments shall be barred under this section unless filed with the clerk within ~~the later to occur of four months after the date of the second~~

~~publication of the notice to creditors, or six months after service of sending notice by ordinary mail~~ electronic transmission, on the form prescribed in section 633.231 for intestate estates or on the form prescribed in section 633.304A for testate estates, to the entity designated by the department of human services to receive notice.

Sec. 8. Section 633A.4502, subsection 2, Code Supplement 2009, is amended to read as follows:

2. ~~This~~ The exception created in subsection 1 of this section does not apply to any trust created prior to July 1, 2002, and applies to trusts created on or after July 1, 2002, unless the settlor has specifically waived the requirements of this section in the trust instrument. Waiver of this section shall not bar any beneficiary's common law right to an accounting, and shall not provide any immunity to a trustee, acting under the terms of the trust, for liability to any beneficiary who discovers facts giving rise to a cause of action against the trustee.

Sec. 9. Section 633A.4604, Code 2009, is amended to read as follows:

**633A.4604 Certification of trust.**

1. A trustee may present a certification of trust to any person in lieu of providing a copy of the trust instrument to establish the ~~existence or terms of the trust~~ trust's existence or terms or the trustee's authority.

2. The certification must contain a statement that the trust has not been revoked, modified, or amended in any manner which would cause the representations contained in the certification of trust to be incorrect and must contain a statement that it is being signed by all of the currently acting trustees of the trust and is sworn and subscribed to under penalty of perjury before a notary public.

3. A certification of trust need not contain the dispositive provisions of the trust which set forth the distribution of the trust estate.

4. A person may require that the trustee offering the certification of trust provide proof of the trustee's identity and copies of those excerpts from the original trust instrument and amendments to the original trust instrument which designate the trustee and confer upon the trustee the power to act in the pending transaction.

5. A person who acts in reliance upon a certification of trust ~~without~~ after taking reasonable steps to verify the identity of the trustee and without knowledge that the representations contained in the certification are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. The period of time to verify the identity of the trustee shall not exceed ten business days from the date the person received the certification of trust. Knowledge shall not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the trust certification. A transaction, and a lien created by a transaction, entered into by the trustee and a person acting in reliance upon a certification of trust is enforceable against the trust assets.

6. A person making a demand for the trust instrument in addition to a certification of trust or excerpts shall be liable for damages, including attorney fees, incurred as a result of the refusal to accept the certification of trust or excerpts in lieu of the trust instrument if the court determines that the person acted unreasonably in requesting the trust instrument.

7. *a.* If a trustee has provided a certification of trust and a person refuses to pay, deliver, or transfer any property owed to or owned by the trust within a reasonable time thereafter, the trustee may bring an action under this subsection and the court may award any or all of the following to the trustee:

(1) Any damages sustained by the trust.

(2) The costs of the action.

(3) A penalty in an amount of not less than five hundred dollars and not more than ten thousand dollars.

(4) Reasonable attorney fees, based on the value of the time reasonably expended by the attorney and not on the amount of the recovery on behalf of the trustee.

*b.* An action shall not be brought under this subsection more than one year after the date of the occurrence of the alleged violation.

7. ~~8.~~ This section does not limit the rights of beneficiaries to obtain copies of the trust instrument or rights of others to obtain copies in a proceeding concerning the trust.

Sec. 10. Section 633A.6101, Code 2009, is amended to read as follows:

**633A.6101 Subject matter jurisdiction.**

1. The district court sitting in probate has exclusive jurisdiction of proceedings concerning the internal affairs of a trust and of actions and proceedings to determine the existence of a trust, actions and proceedings by or against creditors or debtors of a trust, and other actions and proceedings involving a trust and third persons. Such jurisdiction may be invoked by any interested party at any time.

2. Unless a trust is under continuous court supervision pursuant to section 633.10, subsection 4, the trust shall not be subject to the jurisdiction of the probate court and the court shall not issue letters of appointment.

Sec. 11. Section 633A.6301, subsection 4, Code 2009, is amended by striking the subsection and inserting in lieu thereof the following:

4. Section 633A.6301, subsection 4, Code 2009, applies to written consents executed prior to July 1, 2010.

Approved April 14, 2010

## CHAPTER 1138

### TAXATION — CREDITS, EXPENDITURES, AND INCENTIVES — ESTATE TAXES

S.F. 2380

**AN ACT** relating to taxation, including the administration and review of certain economic development programs and certain tax incentive programs and the reenactment of the estate tax and including effective date and retroactive and other applicability provisions.

*Be It Enacted by the General Assembly of the State of Iowa:*

#### DIVISION I REVIEW AND REAUTHORIZATION OF PROGRAMS

##### Section 1. INTENT AND PURPOSE.

1. It is the intent of the general assembly that each tax credit, withholding credit, and revenue division program should effectuate the purposes for which it was enacted and that the cost of such programs should be included more readily in the yearly budgeting process.

2. The purposes of this Act are to provide for the regular review of all tax credit, withholding credit, and revenue division programs in order to facilitate the reauthorization of successful programs and to do so at a cost that can be accommodated by the state's annual budget.

#### DIVISION II LEGISLATIVE TAX EXPENDITURE COMMITTEE

Sec. 2. Section 2.45, Code Supplement 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 5. *a.* The legislative tax expenditure committee which shall be composed of ten members of the general assembly, consisting of five members from each house, to be appointed by the legislative council. In appointing the five members of each house to the committee, the council shall appoint three members from the majority party and two members from the minority party.