

## CHAPTER 125

### TRUSTS, ESTATES, AND PROBATE — TAXATION, FIDUCIARIES, AND SPOUSAL SHARES

H.F. 661

**AN ACT** relating to probate and estate-related laws, including the deduction of administrative expenses on the Iowa fiduciary income tax return, the Iowa inheritance tax, fiduciaries' right to property and information, and the surviving spouse's elective share, and including retroactive and other applicability provisions.

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

#### DIVISION I FIDUCIARY INCOME TAX

Section 1. Section 422.7, Code 2015, is amended by adding the following new subsection: NEW SUBSECTION. 57. On the Iowa fiduciary income tax return, subtract the amount of administrative expenses that were not taken or allowed as a deduction in calculating net income for federal fiduciary income tax purposes.

#### DIVISION II INHERITANCE TAX

Sec. 2. Section 450.9, Code 2015, is amended to read as follows:

**450.9 Individual exemptions.**

In computing the tax on the net estate, the entire amount of property, interest in property, and income passing to the surviving spouse, ~~and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants, and stepchildren and their lineal descendants~~ are exempt from tax. "Lineal descendants" includes descendants by adoption.

#### DIVISION III FIDUCIARY WRITTEN REQUESTS

Sec. 3. Section 633.78, Code 2015, is amended by striking the section and inserting in lieu thereof the following:

**633.78 Fiduciary written request and third-party protection.**

1. A fiduciary under this chapter may present a written request to any person for the purpose of obtaining property owned by a decedent or by a ward of a conservatorship for which the fiduciary has been appointed, or property to which a decedent or ward is entitled, or for information about such property needed to perform the fiduciary's duties. The request must contain statements confirming all of the following:

a. The fiduciary's authority has not been revoked, modified, or amended in any manner which would cause the representations in the request to be incorrect.

b. The request has been signed by all fiduciaries acting on behalf of the decedent or ward.

c. The request has been sworn and subscribed to under penalty of perjury before a notary public as provided in chapter 9B.

d. A photocopy of the fiduciary's letters of appointment is being provided with the request.

2. A person to whom a request is presented under this section may require that the fiduciary presenting the request provide proof of the fiduciary's identity.

3. A person who in good faith provides the property or information a fiduciary requests under this section, after taking reasonable steps to verify the identity of the fiduciary and who has no knowledge that the representations contained in the request are incorrect, shall not be liable to any person for so acting and may assume without inquiry the existence of the facts contained in the request. The period of time to verify the fiduciary's authority shall not exceed ten business days from the date the person received the request. Any right or title acquired from the fiduciary in consideration of the provision of property or information under this

section is not invalid in consequence of a misapplication by the fiduciary. A transaction, and a lien created by a transaction, entered into by the fiduciary and a person acting in reliance upon a request under this section is enforceable against the assets for which the fiduciary has responsibility.

4. If a person refuses to provide the requested property or information within ten business days after receiving a request under this section, the fiduciary may bring an action to recover the property or information or compel its delivery against the person to whom the fiduciary presented the written request. An action brought under this section must be brought within one year after the date of the act or failure to act. If the court finds that the person acted unreasonably in failing to deliver the property or information as requested in the written request, the court may award any or all of the following to the fiduciary:

a. Damages sustained by the decedent's or ward's estate.

b. Costs of the action.

c. A penalty in an amount determined by the court, but not less than five hundred dollars or more than ten thousand dollars.

d. Reasonable attorney fees, as determined by the court, based on the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the fiduciary.

5. This section does not limit or change the right of beneficiaries, heirs, or creditors to estate property to which they are otherwise entitled.

#### DIVISION IV ELECTIVE SHARE OF SURVIVING SPOUSE

Sec. 4. Section 633.238, Code 2015, is amended to read as follows:

**633.238 Elective share of surviving spouse.**

1. The elective share of the surviving spouse shall be limited to all of the following:

a. One-third in value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage which have not been sold on execution or other judicial sale, and to which the surviving spouse has made no express written relinquishment of right, including but not limited to any relinquishments of rights described in paragraph "d".

b. All personal property that, at the time of death, was in the hands of the decedent as the head of a family, exempt from execution.

c. One-third of all personal property of the decedent that is not necessary for the payment of debts and charges.

d. (1) One-third in value of the property held in trust not necessary for the payment of debts and charges over which the decedent was a grantor settlor and retained at the time of death the power to alter, amend, or revoke the trust, or over which the decedent waived or rescinded any such power within one year of the date of death, and to which the surviving spouse has not made any express written relinquishment in compliance with subparagraph (2).

(2) The elective share of the surviving spouse shall not include the value of the property held in a trust described in subparagraph (1), if both of the following are true:

(a) The decedent created the trust after the date of decedent's marriage to the surviving spouse.

(b) Every transfer of property into the trust, except for tangible personal property, included a written statement which complied with this subparagraph division. The written statement shall be in boldface type of a minimum size of ten points, signed and dated by the surviving spouse with a valid notarial acknowledgment, and in substantially the following form:

By signing below, I acknowledge that I am giving up all rights to enjoyment of the property described above, regardless of whether or not I survive my spouse and regardless of any rights Iowa law otherwise gives to me with respect to such property. I am specifically waiving my elective share in the property described in this waiver.

This waiver shall apply regardless of any changes made to the trust in the future, including any change to the beneficiaries of the trust.

2. When a settlor of a revocable trust transfers real property to the trustee of the revocable trust and the settlor's spouse signs a conveyance of the real property to such trustee which includes a general waiver of rights of dower, homestead, and distributive share, the spouse is only relinquishing the right to that real property and its value under subsection 1, paragraph "a", for the purpose of conveying marketable title to a subsequent purchaser from the trustee and is not relinquishing the right to the value of the real estate under subsection 1, paragraph "d", unless the spouse specifically states in writing an intent to relinquish the right to the value of the real estate under subsection 1, paragraph "d". The relinquishment of right under subsection 1, paragraph "a" shall not prevent the surviving spouse from electing one-third in value of such real property under subsection 1, paragraph "d".

~~2.~~ 3. The elective share described in this section shall be in lieu of any property the spouse would otherwise receive under the last will and testament of the decedent, through intestacy, or under the terms of a revocable trust.

#### DIVISION V EFFECTIVE DATE AND APPLICABILITY PROVISIONS

Sec. 5. EFFECTIVE DATE. The section of this Act amending section 450.9 takes effect July 1, 2016.

Sec. 6. APPLICABILITY. The section of this Act amending section 450.9 applies to estates of decedents dying on or after July 1, 2016.

#### Sec. 7. RETROACTIVE APPLICABILITY.

1. The section of this Act amending section 422.7 applies to Iowa fiduciary income tax returns filed for tax years ending on or after July 1, 2015, and applies retroactively to July 1, 2015, if approved by the governor on or after July 1, 2015.

2. The section of this Act amending section 633.78 applies to written requests presented by a fiduciary on or after July 1, 2015, and applies retroactively to July 1, 2015, if approved by the governor on or after July 1, 2015.

3. The section of this Act amending section 633.238 applies to estates of decedents dying on or after July 1, 2015, and applies retroactively to July 1, 2015, if approved by the governor on or after July 1, 2015.

Approved June 26, 2015