

CHAPTER 88
GENERATION SKIPPING TRANSFER TAX
[Prior to 12/17/86, Revenue Department[730]]

701—88.1(450A) Administration.

88.1(1) Definitions. The following definitions cover and supplement the definitions contained in Iowa Code section 450A.1.

“*Administrator*” means the administrator of the compliance division of the department of revenue.

“*Compliance division*” is the administrative unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws of the state.

“*Department*” means the department of revenue.

“*Director*” means the director of revenue.

“*Direct skip*” means the same as the term is defined in Section 2612(c) of the Internal Revenue Code.

“*Tax*” means the generation skipping transfer tax imposed by Iowa Code chapter 450A.

“*Taxable distribution*” means the same as the term is defined in Section 2612(b) of the Internal Revenue Code.

“*Taxable termination*” means the same as the term is defined in Section 2612(a) of the Internal Revenue Code.

“*Taxpayer*” means the transferee of the property subject to the generation skipping transfer in case of a taxable distribution or the trustee and the transferee in case of a taxable termination.

“*Transferor,*” “*trust,*” “*trustee,*” and “*interest*” mean the same as those respective terms are defined in Section 2652 of the Internal Revenue Code.

88.1(2) Delegation of authority. The director delegates to the administrator of the compliance division, subject always to the supervision and review by the director, the authority to administer the generation skipping transfer tax. This delegated authority specifically includes, but is not limited to: the determination of the correct generation skipping transfer tax liability; making assessments against the taxpayer for additional tax due; authorizing refunds of excessive tax paid; executing releases of the tax lien; and granting extensions of time to file the return and pay the tax due. The administrator of the compliance division may delegate the examination and audit of the tax returns to such supervisors, examiners, agents and any employees or representatives of the department as the administrator may designate.

This rule is intended to implement Iowa Code sections 421.2 and 421.4 and chapter 450A.

701—88.2(450A) Confidential and nonconfidential information.

88.2(1) Confidential information. Federal tax returns, federal return information, Iowa generation skipping transfer tax returns, and the books, records, documents and accounts of any person, firm or corporation, including stock transfer books, requested to be submitted to the department for the enforcement of the generation skipping transfer tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. Section 6103 pertaining to the confidentiality and disclosure of federal tax returns and federal return information. See rule 701—6.3(17A).

88.2(2) Information not confidential. Copies of wills, release of real estate liens, probate inventories, trust instruments, deeds and other documents which are filed for public record are not deemed confidential by the department.

This rule is intended to implement Iowa Code chapters 22 and 450A.

701—88.3(450A) Tax imposed, tax due and tax returns.

88.3(1) Tax imposed—general rule. Iowa Code section 450A.2 imposes tax equal to the maximum federal credit allowable (5 percent) under 26 U.S.C. Section 2604 of the Internal Revenue Code for state generation skipping transfer taxes paid on property included in certain generation skipping transfers. The tax imposed by Iowa Code section 450A.2 qualifies as a generation skipping transfer tax specified

in the federal credit statute. The federal credit is not available for every generation skipping transfer taxable under 26 U.S.C. Section 2601 of the Internal Revenue Code. The credit is available only on those generation skipping transfers occurring at the same time as, and as the result of, the death of an individual.

Therefore, a federal generation skipping transfer occurring at the time of a gift of property which is unrelated to the death of an individual is not eligible for the federal credit allowed by Section 2604 of the Internal Revenue Code.

88.3(2) *Tax imposed—limitation.* Iowa Code section 450A.14 imposes a limitation on the amount of tax imposed under Iowa Code section 450A.2. The taxpayer's total federal and state generation skipping tax liability cannot be greater than the tax payable had chapter 450A not been enacted.

88.3(3) *Tax due—no credit for inheritance tax paid.* Any inheritance tax paid on property included in the estate of the individual whose death is the event imposing the federal tax is not a credit against the generation skipping transfer tax imposed by Iowa Code section 450A.2, although the inheritance tax is a credit against the Iowa estate tax imposed by Iowa Code chapter 451 on this property.

Nor is the inheritance tax paid on the property in a prior estate which is now included in a taxable generation skipping transfer a credit against the tax imposed by Iowa Code section 450A.2. Therefore, the tax due is the maximum credit allowable under 26 U.S.C. Section 2604 of the Internal Revenue Code, subject to the limitation in subrule 88.3(2).

88.3(4) *Duty of the taxpayer.* It is the duty of the taxpayer to file the return prescribed by subrule 88.3(5) and pay the tax due within the time prescribed by law (taking into consideration any extension of time to file and pay). A copy of the federal generation skipping transfer tax return must be submitted to the department at the time the Iowa return is filed. The taxpayer shall keep books, records and accounts as are reasonably necessary to substantiate the amount of the federal tax and value of the property included in a generation skipping transfer subject to tax, and upon request the taxpayer shall furnish information to the department as may be reasonably necessary to enable the department to determine the correct tax due. It is the duty of the taxpayer to claim the maximum amount of the federal credit allowable on the federal generation skipping transfer tax return, subject to the limitation in subrule 88.3(2).

If there is a change in the amount of the maximum federal credit allowable, or the amount allowable under subrule 88.3(2), against the federal tax on a generation skipping transfer (such as a result of a federal audit or in the amount and value of the property included in a generation skipping transfer), the taxpayer has the duty to promptly report the change to the department on an amended return, and pay the tax, or additional tax due, together with any penalty and interest. See Iowa Code section 450A.11.

Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner or beneficiary.

88.3(5) *Form and due date of the return.* The form of the return for reporting the generation skipping tax to the department shall be in such form as may be prescribed by the director. It shall provide for such schedules of property subject to tax, deductible expenses, losses, and tax computation tables to conform as nearly as possible to the form of the federal generation skipping transfer tax return. The return must be filed with the department and the tax due paid on or before the last day of the ninth month following the death of the individual whose death is the event causing the imposition of the federal generation skipping transfer tax. If an extension of time has been granted, the return must be filed and any tax, penalty, and interest due must be paid on or before the expiration of the extension of time.

88.3(6) *Liability for the tax.* The transferee of property in a generation skipping transfer subject to tax is personally liable for the tax to the extent of the value of the property received determined under 26 U.S.C. Section 2624. In addition, the trustee and transferee of property in a taxable termination are personally liable for the tax attributable to such termination to the extent of the value of the property under their control. Value for the purpose of determining the extent of the liability of a transferee or trustee is determined at the time of the distribution or termination. Neither the individual's estate whose death is the event imposing the tax, nor its personal representative, is liable for the tax imposed (unless the personal representative is also the transferee or trustee of the property subject to tax).

88.3(7) *Situs of property.* For the purpose of the tax imposed by Iowa Code chapter 450A, the situs of intangible personal property included in a generation skipping transfer subject to tax is the state in which the transferor was a resident at the time of death or in the case the transferor is a trustee, the residence of the trustee at the time of the imposition of the federal generation skipping transfer tax. The situs of real and tangible personal property included in a transfer subject to tax is the state in which the property is located, regardless of the transferor's or trustee's place of residence.

88.3(8) *No reciprocity.* Iowa Code chapter 450A makes no provision for reciprocity to prevent taxation by more than one state of intangible personal property included in a taxable generation skipping transfer. Therefore, intangible personal property attributable to an Iowa transferor or trustee which may have acquired a business situs and may be subject to tax in another state (due to the location of bank accounts, stock certificates and like instruments) is not exempt from the Iowa tax simply for the reason it is subject to tax in another jurisdiction. See *Curry v. McCanless*, 307 U.S. 357, 83 L.Ed. 1339, 59 S.Ct. 900 (1939); *State Tax Commission of Utah v. Aldrich*, 316 U.S. 174, 86 L.Ed. 1358, 62 S.Ct. 1008 (1942).

88.3(9) *Tangible and intangible property—time of classification.* The classification of property as tangible or intangible is determined by the law of the state of the transferor's or trustee's residence. For the purpose of determining whether an Iowa generation skipping transfer tax is due, the classification of the property as tangible or intangible shall be made at the time of the death of the individual causing the generation skipping transfer. The classification of the property in a taxable transfer at the time of the original grantor's death is not determinative of whether the transferred property will be subject to tax upon the individual's death which caused the imposition of the tax. This rule is illustrated by the following two examples:

EXAMPLE 1. A executed a will in 1996 devising an Iowa farm in trust to pay the income to his son, B, for life, and upon B's death the trust is to terminate and the corpus paid to B's children, C and D, in equal shares. If upon B's death the Iowa farm is still part of the trust assets, the value of the farm is subject to the Iowa generation skipping transfer tax regardless of the state of residence of the transferor. However, if during B's lifetime the farm is sold and the proceeds placed in the trust, the trust assets are subject to the Iowa generation skipping transfer tax only if the property had a situs in Iowa at the time of death, because at B's death the trust assets are classified as intangible personal property.

EXAMPLE 2. A, a resident of Chicago, Illinois, by will devised \$500,000 in trust to pay the income to his son B, a resident of New York, for life and upon B's death the trust is to terminate and the corpus paid to B's children, C and D, in equal shares. If during B's lifetime the trust purchases an Iowa farm and it is part of the trust assets when B dies, the value of the farm is subject to the Iowa generation skipping transfer tax. Also, if at the time of B's death the trust assets are still classified as intangible, the trust assets would be subject to the Iowa tax if the trustee was an Iowa resident at the time of death.

NOTE: In the two examples it is assumed the generation skipping transfers are in excess of the \$1 million exemption.

88.3(10) *Computation of the tax.*

a. In general. The Iowa generation skipping tax is the maximum credit allowed by 26 U.S.C. Section 2604 against the amount of the federal generation skipping transfer tax. The maximum federal credit is 5 percent of the federal tax imposed on the transfer. In this respect, it differs from the federal credit for state death taxes paid under 26 U.S.C. Section 2011 which is a graduated percentage of the value of the property included in the federal adjusted taxable estate. As a result, the valuation of the property included in a generation skipping transfer is only relevant for computing the Iowa generation skipping transfer tax when it is used as the basis for prorating the federal generation skipping transfer tax, when the property subject to the generation skipping transfer tax has a situs in more than one state.

b. Computation of the tax—situs in more than one state. When part of the property included in a generation skipping transfer which is eligible for the credit for state generation skipping transfer tax has situs in Iowa and part in another state or states, the maximum federal credit which is allowed under 26 U.S.C. Section 2604 must be prorated among the states where the property has a situs. In this event, the Iowa generation skipping transfer tax is computed by multiplying the federal tax on the entire transfer by the 5 percent maximum federal credit allowable. This amount is then multiplied by a fraction of which

the value of the Iowa property is the numerator and the value of the total generation skipping transfer is the denominator. The resulting amount is the Iowa generation skipping transfer tax. The fact that other states where part of the property has a situs do not have a generation skipping transfer tax, or the state tax is a lesser percentage than the maximum federal credit allowable (5 percent), is not relevant to the computation of the Iowa tax.

This subrule can be illustrated by the following:

EXAMPLE. A generation skipping transfer occurs in an Illinois trust in 1996 by reason of the death of A. The property in the generation skipping transfer consists of \$650,000 in stocks and bonds and an Iowa farm worth \$240,000, for a total generation skipping transfer of \$890,000. Assuming the lifetime exemption does not apply, the federal generation skipping transfer tax is 55 percent of \$890,000, or \$489,500. The maximum federal credit allowable is 5 percent of \$489,500, or \$24,475. The Iowa portion of the maximum federal credit is:

$$\frac{\text{Iowa prop. } \$240,000}{\text{Total prop. } \$890,000} \times \$24,475 = \$6,600 \text{ which is the Iowa tax.}$$

In this example, the result would not change if Illinois did not have a generation skipping transfer tax or if its tax were a smaller percentage than the maximum 5 percent credit allowed by the federal statute.

88.3(11) Value to use. For the purpose of computing the amount of the tax imposed on generation skipping transfers when the property has a situs in Iowa and another state or states, the value of the transferred property as determined for federal generation skipping transfer tax purposes shall be the value on which the tax is prorated.

88.3(12) Extension of time. In the case of hardship, which is a factual determination made on a case-by-case basis, the director may grant an extension of time to file the return and pay the tax due for a period not to exceed ten years after the death of the individual whose death is the event causing the imposition of the federal generation skipping transfer tax. Provided, however, in no event shall the extension be for a period of time greater than the period of time allowed for claiming the credit allowed for state generation skipping transfer tax paid, allowable under 26 U.S.C. Section 2662. If the federal generation skipping transfer tax liability is paid prior to the expiration of an extension of time to pay the Iowa generation skipping transfer tax, the tax shall be due and payable at the time the federal generation skipping transfer tax is paid regardless of the extension of time period. The application for an extension of time to file the return and pay the tax due shall be in a form as the director may prescribe and must be filed with the department prior to the time the return is required to be filed and the tax due paid.

88.3(13) Discount. No discount is allowed for early payment of the tax due.

88.3(14) Penalties. See rule 701—10.6(421) for the calculation of penalty for deaths occurring on or after January 1, 1991.

88.3(15) Interest on tax due. All tax which has not been paid on or before the last day of the ninth month following the death of the individual whose death is the event imposing the federal generation skipping transfer tax draws interest at the rate prescribed by Iowa Code section 421.7, to be computed on a monthly basis with each fraction of a month counted as a full month. See rule 701—10.2(421) for the interest rate to use for a specific calendar year. Interest applies equally to tax that is delinquent and tax that is due under an extension of time to pay.

This rule is intended to implement Iowa Code sections 450A.2 to 450A.5 and 450A.8 to 450A.14. [ARC 7761B, IAB 5/6/09, effective 6/10/09]

701—88.4(450A) Audits, assessments and refunds. 701—subrules 86.3(1) to 86.3(3) providing for the audit, assessment and refund of the Iowa inheritance tax shall also be the rules for the audit, assessment and refund of the Iowa generation skipping transfer tax.

This rule is intended to implement Iowa Code sections 450A.2, 450A.4, 450A.5, 450A.8 to 450A.12 and 450A.14.

701—88.5(450A) Appeals. Rule 701—86.4(450A) providing for an appeal to the director and a subsequent appeal to district court under the Iowa Administrative Procedure Act in inheritance tax

disputes shall also be the rule for appeals in Iowa generation skipping transfer tax disputes. See 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 17A and sections 450.94 and 450A.12.

701—88.6(450A) Generation skipping transfers prior to Public Law 99-514. Public Law 99-514 repealed the federal generation skipping transfer tax retroactive to June 11, 1976, and provided for a refund of any federal generation skipping transfer tax that had been paid. As a result of this federal statute there is no Iowa generation skipping transfer tax on those transfers which are exempted from the federal tax under Public Law 99-514.

This rule is intended to implement Iowa Code chapter 450A and 1988 Iowa Acts, chapter 1028.

[Filed 5/8/81, Notice 4/1/81—published 5/27/81, effective 7/1/81]

[Filed 12/31/81, Notice 11/25/81—published 1/20/82, effective 2/24/82]

[Filed 7/16/82, Notice 6/9/82—published 8/4/82, effective 9/8/82]

[Filed 9/23/82, Notice 8/18/82—published 10/13/82, effective 11/17/82]

[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]

[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]

[Filed 10/14/88, Notice 9/7/88—published 11/2/88, effective 12/7/88]

[Filed 1/4/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]

[Filed 10/9/92, Notice 9/2/92—published 10/28/92, effective 12/2/92]

[Filed 6/22/99, Notice 5/5/99—published 7/14/99, effective 8/18/99]

[Filed ARC 7761B (Notice ARC 7632B, IAB 3/11/09), IAB 5/6/09, effective 6/10/09]