

See Ways and Means 2/1, Do you 3/23 (p. 1255)

Senate File 2137

Ways and Means: Miller of Buchanan. Chair: Pavich, Wells, Branstad and Conlon.

FILED FEB 21 1978

SENATE FILE 2137

BY COMMITTEE ON WAYS AND MEANS

Passed Senate, Date 2-23-78 (p. 286) Passed House, Date 4-6-78 (p. 1409)

Vote: Ayes 47 Nays 0 Vote: Ayes 85 Nays 0

Approved April 21 1978

A BILL FOR

1 An Act relating to the imposition of a tax on generation
2 skipping transfers and making the Act retroactive.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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Certification of publication 5/3 (p. 1239)

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1 Section 1. NEW SECTION. DEFINITIONS. As used in this
2 Act, unless the context otherwise requires:

3 1. "Generation skipping transfer" means the generation
4 skipping transfer as defined in section two thousand six
5 hundred eleven (2611) of the Internal Revenue Code of 1954.

6 2. "Internal Revenue Code of 1954" means the Internal
7 Revenue Code of 1954 as defined in section four hundred twenty-
8 two point four (422.4) of the Code.

9 3. "Deemed transferor" means the deemed transferor as
10 defined in section two thousand six hundred twelve (2612)
11 of the Internal Revenue Code of 1954.

12 4. "Director" means the director of the department of
13 revenue.

14 5. "Generation skipping trust" means a generation skipping
15 trust as defined in section two thousand six hundred eleven
16 (2611) of the Internal Revenue Code of 1954.

17 6. "Generation skipping trust equivalent" means a
18 generation skipping trust equivalent as defined in section
19 two thousand six hundred eleven (2611) of the Internal Revenue
20 Code of 1954.

21 7. "Distributee" means a person receiving property in
22 a generation skipping transfer.

23 8. "Department" means the department of revenue.

24 Sec. 2. NEW SECTION. IMPOSITION OF TAX. A tax is hereby
25 imposed on the transfer of any property, included in a
26 generation skipping transfer occurring at the same time as,
27 or after, the death of the deemed transferor, equal to the
28 amount of the maximum federal credit allowable under section
29 two thousand six hundred two (2602)(c) five (5) (C) of the
30 Internal Revenue Code of 1954, for that portion of state
31 estate, inheritance, legacy or succession tax paid in respect
32 of any property included in the generation skipping transfer.

33 Where the deemed transferor is a resident of Iowa and all
34 property included in a generation skipping transfer has a
35 situs in Iowa, or is subject to the jurisdiction of the courts

1 of Iowa, an amount equal to the total credit as allowed under
2 the Internal Revenue Code of 1954 shall be paid to the state
3 of Iowa. Where the deemed transferor is a nonresident or
4 where property included in a generation skipping transfer
5 has a situs outside the state of Iowa and not subject to the
6 jurisdiction of Iowa courts, the tax shall be pro-rated on
7 the basis that the value of Iowa property included in the
8 generation skipping transfer bears to the total value of
9 property included in the generation skipping transfer.

10 Sec. 3. NEW SECTION. VALUE OF PROPERTY. The value of
11 property, included in a generation skipping transfer, shall
12 be the same as determined for federal generation skipping
13 transfer tax purposes under the Internal Revenue Code of 1954.

14 Sec. 4. NEW SECTION. PAYMENT OF THE TAX. The tax imposed
15 by this chapter shall be paid within twelve months after the
16 death of the deemed transferor if the transfer occurs at that
17 time, or if later, the day which is twelve months after the
18 day on which such generation skipping transfer occurred.

19 For purposes of this Act, any property transferred during
20 the three year period ending on the date of the deemed
21 transferor's death and which is included in a generation
22 skipping transfer under the Internal Revenue Code of 1954
23 shall be considered as transferred on the deemed transferor's
24 death.

25 Sec. 5. NEW SECTION. LIABILITY FOR THE TAX. The
26 distributee of the property shall be personally liable for
27 the tax to the extent of the fair market value, determined
28 as of the time of the distribution, of the property received
29 in the distribution. If the tax is attributable to a taxable
30 termination, as defined in section two thousand six hundred
31 thirteen (2613) of the Internal Revenue Code of 1954, the
32 trustee shall be personally liable for the tax to the extent
33 of the property subject to tax under the trustee's control.

34 Sec. 6. NEW SECTION. LIEN OF THE TAX. The tax imposed
35 by this chapter shall be a lien on the property subject to

1 the tax for a period of ten years from the time the generation
2 skipping transfer occurs. Full payment of the tax due and
3 interest, if any, shall release the lien and discharge the
4 distributee and trustee of personal liability. Unless the
5 lien has been perfected by recording, a transfer by the
6 distributee or the trustee to a bona fide purchaser for value
7 shall divest the property of the lien. If the lien is
8 perfected by recording, the rights of the state under the
9 lien have priority over all subsequent mortgages, purchases
10 or judgment creditors. The department may release the lien
11 prior to payment of the tax due if adequate security for
12 payment of the tax is given.

13 Sec. 7. NEW SECTION. DISPOSAL OF TAX. The proceeds of
14 the tax shall be credited to the general fund of the state.

15 Sec. 8. NEW SECTION. RETURNS. It shall be the duty of
16 the persons liable for the payment of the tax to file a return
17 with the department, in such form as the director may
18 prescribe, containing sufficient information to enable the
19 department to determine the maximum federal credit allowable
20 for the payment of the tax imposed by this chapter. A copy
21 of the federal return filed for the purpose of paying the
22 generation skipping transfer tax shall be submitted to the
23 department at the time the Iowa return is filed. Copies of
24 all amended or supplemental returns shall be submitted to
25 the department at the time such returns are filed with the
26 internal revenue service.

27 Sec. 9. NEW SECTION. DELINQUENT RETURNS. If the tax
28 imposed by this chapter is not paid within the time prescribed
29 by law, the tax shall be deemed delinquent and shall draw
30 interest at the rate of eight percent per annum thereafter
31 until paid.

32 Sec. 10. NEW SECTION. DIRECTOR TO ENFORCE COLLECTION.
33 It shall be the duty of the director to enforce collection
34 of the tax imposed by this chapter and shall with all the
35 rights of a party in interest, represent the state in any

1 proceedings to collect the tax. The director shall have the
2 power to bring suit against any person liable for the payment
3 of the tax, interest and costs and may foreclose the lien
4 of the tax in the same manner as is now prescribed for the
5 foreclosure of real estate mortgages and upon judgment may
6 cause execution to be issued to sell so much of the property
7 necessary to satisfy the tax, interest and costs due.

8 Sec. 11. NEW SECTION. DUTY TO CLAIM MAXIMUM CREDIT.

9 It shall be the duty of any person liable for the payment
10 of the tax to claim the maximum federal credit allowable for
11 that portion of state estate, inheritance, legacy or succession
12 tax paid in respect of any property included in a generation
13 skipping transfer. Claiming on a federal return a sum less
14 than the maximum federal credit allowable shall not relieve
15 any person liable for the tax of the duty to pay the tax
16 imposed under this chapter.

17 If an amended or supplemental return is filed with the
18 internal revenue service which results in a change in the
19 amount of tax owing under this chapter, the persons liable
20 for the payment of the tax shall submit an amended return,
21 on forms prescribed by the director, indicating the amount
22 of the tax then owing as a result of such change.

23 If any federal generation skipping transfer tax has been
24 paid before the enactment of this Act, the persons liable
25 for the payment of the tax under this Act shall file an amended
26 federal return claiming the maximum federal credit allowable
27 and file the Iowa returns specified in section eight (8) of
28 this Act within six months after the enactment of this Act
29 or within the time limit provided in section four (4) of this
30 Act whichever is the later.

31 Sec. 12. NEW SECTION. APPLICABLE STATUTES. All of the
32 provisions of chapter four hundred fifty (450) of the Code
33 with respect to the payment and collection of the tax imposed
34 under that chapter are hereby made applicable to the provisions
35 of this chapter, except as the same may be in conflict hereof.

1 The director shall adopt and promulgate all rules necessary
2 for the enforcement of this chapter.

3 Sec. 13. The provisions of this Act are retroactive to
4 April 30, 1976, for any generation skipping transfer made
5 after April 30, 1976, except for those generation skipping
6 transfers excepted under section two thousand six (2006) (c)
7 of the Federal Tax Reform Act of 1976 and to this extent the
8 provisions of this Act are retroactive.

9 Sec. 14. NEW SECTION. LIMITATION. The tax imposed under
10 section two (2) of this Act shall not be construed to impose
11 a federal and state generation skipping tax obligation greater
12 than the tax payable had this Act not been enacted.

13 Sec. 15. This Act, being deemed of immediate importance,
14 shall take effect and be in force from and after its
15 publication in The Winterset ^{4/26/78}Madisonian, a newspaper published
16 in Winterset, Iowa, and in the Cherokee ^{4/27/78}Daily Times, a
17 newspaper published in Cherokee, Iowa.

18 EXPLANATION

19 The Federal Tax Reform Act of 1976 created a new federal
20 tax on generation skipping transfers. The reform act also
21 provided for a credit against this new tax for a state tax
22 paid on this same transfer. If a state does not impose a
23 tax on this type of transfer, no credit is available. Iowa
24 at the present time does not impose a tax of any kind on
25 generation skipping transfers. The new tax imposed by this
26 Act is strictly limited to the amount of the federal tax
27 credit allowable.

28 Since the federal tax on generation skipping transfers
29 is applied to those transfers, with some exceptions, made
30 after April 30, 1976, this Act is made retroactive to April
31 30, 1976.

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SENATE FILE 2137

AN ACT
RELATING TO THE IMPOSITION OF A TAX ON GENERATION
SKIPPING TRANSFERS AND MAKING THE ACT RETROACTIVE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. DEFINITIONS. As used in this Act, unless the context otherwise requires:

1. "Generation skipping transfer" means the generation skipping transfer as defined in section two thousand six hundred eleven (2611) of the Internal Revenue Code of 1954.
2. "Internal Revenue Code of 1954" means the Internal Revenue Code of 1954 as defined in section four hundred twenty-two point four (422.4) of the Code.
3. "Deemed transferor" means the deemed transferor as defined in section two thousand six hundred twelve (2612) of the Internal Revenue Code of 1954.
4. "Director" means the director of the department of revenue.
5. "Generation skipping trust" means a generation skipping trust as defined in section two thousand six hundred eleven (2611) of the Internal Revenue Code of 1954.
6. "Generation skipping trust equivalent" means a generation skipping trust equivalent as defined in section two thousand six hundred eleven (2611) of the Internal Revenue Code of 1954.
7. "Distributee" means a person receiving property in a generation skipping transfer.
8. "Department" means the department of revenue.

Sec. 2. NEW SECTION. IMPOSITION OF TAX. A tax is hereby imposed on the transfer of any property, included in a generation skipping transfer occurring at the same time as, or after, the death of the deemed transferor, equal to the

amount of the maximum federal credit allowable under section two thousand six hundred two (2602)(c) five (5) (C) of the Internal Revenue Code of 1954, for that portion of state estate, inheritance, legacy or succession tax paid in respect of any property included in the generation skipping transfer.

Where the deemed transferor is a resident of Iowa and all property included in a generation skipping transfer has a situs in Iowa, or is subject to the jurisdiction of the courts of Iowa, an amount equal to the total credit as allowed under the Internal Revenue Code of 1954 shall be paid to the state of Iowa. Where the deemed transferor is a nonresident or where property included in a generation skipping transfer has a situs outside the state of Iowa and not subject to the jurisdiction of Iowa courts, the tax shall be pro-rated on the basis that the value of Iowa property included in the generation skipping transfer bears to the total value of property included in the generation skipping transfer.

Sec. 3. NEW SECTION. VALUE OF PROPERTY. The value of property, included in a generation skipping transfer, shall be the same as determined for federal generation skipping transfer tax purposes under the Internal Revenue Code of 1954.

Sec. 4. NEW SECTION. PAYMENT OF THE TAX. The tax imposed by this chapter shall be paid within twelve months after the death of the deemed transferor if the transfer occurs at that time, or if later, the day which is twelve months after the day on which such generation skipping transfer occurred. For purposes of this Act, any property transferred during the three year period ending on the date of the deemed transferor's death and which is included in a generation skipping transfer under the Internal Revenue Code of 1954 shall be considered as transferred on the deemed transferor's death.

Sec. 5. NEW SECTION. LIABILITY FOR THE TAX. The distributee of the property shall be personally liable for the tax to the extent of the fair market value, determined

as of the time of the distribution, of the property received in the distribution. If the tax is attributable to a taxable termination, as defined in section two thousand six hundred thirteen (2613) of the Internal Revenue Code of 1954, the trustee shall be personally liable for the tax to the extent of the property subject to tax under the trustee's control.

Sec. 6. NEW SECTION. LIEN OF THE TAX. The tax imposed by this chapter shall be a lien on the property subject to the tax for a period of ten years from the time the generation skipping transfer occurs. Full payment of the tax due and interest, if any, shall release the lien and discharge the distributee and trustee of personal liability. Unless the lien has been perfected by recording, a transfer by the distributee or the trustee to a bona fide purchaser for value shall divest the property of the lien. If the lien is perfected by recording, the rights of the state under the lien have priority over all subsequent mortgages, purchases or judgment creditors. The department may release the lien prior to payment of the tax due if adequate security for payment of the tax is given.

Sec. 7. NEW SECTION. DISPOSAL OF TAX. The proceeds of the tax shall be credited to the general fund of the state.

Sec. 8. NEW SECTION. RETURNS. It shall be the duty of the persons liable for the payment of the tax to file a return with the department, in such form as the director may prescribe, containing sufficient information to enable the department to determine the maximum federal credit allowable for the payment of the tax imposed by this chapter. A copy of the federal return filed for the purpose of paying the generation skipping transfer tax shall be submitted to the department at the time the Iowa return is filed. Copies of all amended or supplemental returns shall be submitted to the department at the time such returns are filed with the internal revenue service.

Sec. 9. NEW SECTION. DELINQUENT RETURNS. If the tax

imposed by this chapter is not paid within the time prescribed by law, the tax shall be deemed delinquent and shall draw interest at the rate of eight percent per annum thereafter until paid.

Sec. 10. NEW SECTION. DIRECTOR TO ENFORCE COLLECTION. It shall be the duty of the director to enforce collection of the tax imposed by this chapter and shall with all the rights of a party in interest, represent the state in any proceedings to collect the tax. The director shall have the power to bring suit against any person liable for the payment of the tax, interest and costs and may foreclose the lien of the tax in the same manner as is now prescribed for the foreclosure of real estate mortgages and upon judgment may cause execution to be issued to sell so much of the property necessary to satisfy the tax, interest and costs due.

Sec. 11. NEW SECTION. DUTY TO CLAIM MAXIMUM CREDIT. It shall be the duty of any person liable for the payment of the tax to claim the maximum federal credit allowable for that portion of state estate, inheritance, legacy or succession tax paid in respect of any property included in a generation skipping transfer. Claiming on a federal return a sum less than the maximum federal credit allowable shall not relieve any person liable for the tax of the duty to pay the tax imposed under this chapter.

If an amended or supplemental return is filed with the internal revenue service which results in a change in the amount of tax owing under this chapter, the persons liable for the payment of the tax shall submit an amended return, on forms prescribed by the director, indicating the amount of the tax then owing as a result of such change.

If any federal generation skipping transfer tax has been paid before the enactment of this Act, the persons liable for the payment of the tax under this Act shall file an amended federal return claiming the maximum federal credit allowable and file the Iowa returns specified in section eight (8) of

this Act within six months after the enactment of this Act or within the time limit provided in section four (4) of this Act whichever is the later.

Sec. 12. NEW SECTION. APPLICABLE STATUTES. All of the provisions of chapter four hundred fifty (450) of the Code with respect to the payment and collection of the tax imposed under that chapter are hereby made applicable to the provisions of this chapter, except as the same may be in conflict hereof. The director shall adopt and promulgate all rules necessary for the enforcement of this chapter.

Sec. 13. The provisions of this Act are retroactive to April 30, 1976, for any generation skipping transfer made after April 30, 1976, except for those generation skipping transfers excepted under section two thousand six (2006) (c) of the Federal Tax Reform Act of 1976 and to this extent the provisions of this Act are retroactive.

Sec. 14. NEW SECTION. LIMITATION. The tax imposed under section two (2) of this Act shall not be construed to impose a federal and state generation skipping tax obligation greater than the tax payable had this Act not been enacted.

Sec. 15. This Act, being deemed of immediate importance, shall take effect and be in force from and after its publication in The Winterset Madisionian, a newspaper published in Winterset, Iowa, and in the Cherokee Daily Times, a newspaper published in Cherokee, Iowa.

ARTHUR A. NEU
President of the Senate

DALE M. COCHRAN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2137, Sixty-seventh General Assembly.

KEVIN P. LIGHT
Acting Secretary of the Senate

Approved _____, 1978

ROBERT D. RAY
Governor