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SENATE FILE 2323

BY COMMITTEE ON WAYS AND MEANS

(FORMERLY SSB 2124)

*Approved 3/13 (p 807)*

Passed Senate, Date 4-4-84 (p. 1310) Passed House, Date 4-6-84 (p. 1727)

Vote: Ayes 44 Nays 1 Vote: Ayes 93 Nays 4

Approved May 9, 1984

*Repassed Senate 4-11-84 (1446)*  
44-1

## A BILL FOR

1 An Act relating to the state inheritance tax by changing the  
2 due date of the tax, providing for monthly interest, pro-  
3 viding for a period of limitations for assessments and  
4 refunds, requiring recording to give a lien preference  
5 after a release of the lien is issued, taxing gifts made  
6 within three years of death, and making technical cor-  
7 rections.

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

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S. 2323

1 Section 1. Section 450.3, subsection 2, Code 1983, is  
2 amended to read as follows:

3 2. By deed, grant, sale, gift or transfer made ~~in~~  
4 ~~contemplation~~ within three years of the death of the grantor  
5 or donor, ~~and any such transfer of property made by any person~~  
6 ~~within three years prior to the death of the grantor or donor~~  
7 ~~shall, unless shown to the contrary, be deemed to have been~~  
8 ~~made in contemplation of death~~ which is not a bona fide sale  
9 for an adequate and full consideration in money or money's  
10 worth and which is in excess of the annual gift tax exclusion  
11 allowable for each donee under section 2503, subsections a  
12 and e of the Internal Revenue Code of 1954 as defined in  
13 section 422.4.

14 Sec. 2. Section 450.6, unnumbered paragraph 1, Code 1983,  
15 is amended to read as follows:

16 The tax imposed ~~(is)~~ by this chapter accrues at the death  
17 of the decedent owner, and shall be paid to the department  
18 of revenue ~~within nine months~~ on or before the last day of  
19 the ninth month after the death of the decedent owner except  
20 ~~when~~ if otherwise provided in this chapter. ~~When~~ If in the  
21 opinion of the director of revenue additional time should  
22 be granted for payment to avoid hardship, the director may  
23 extend the period to a date not exceeding ten years from the  
24 ~~date of~~ last day of the month in which the death of the  
25 decedent occurred. In the case of ~~any~~ an extension the tax  
26 ~~shall bear~~ bears interest at the rate in effect under section  
27 421.7 from the expiration of ~~nine months from the date of~~  
28 the last day of the ninth month after the decedent's death.  
29 Interest shall be computed on a monthly basis with a fraction  
30 of a month counted as a full month.

31 Sec. 3. Section 450.7, subsection 2, unnumbered para-  
32 graph 1, Code Supplement 1983, is amended to read as follows:

33 Notice of the lien is not required to be recorded. The  
34 rights of the state under the lien have priority over all  
35 subsequent mortgages, purchases, or judgment creditors; and

1 a conveyance after the decedent's death of the property subject  
2 to a lien does not discharge the property except as otherwise  
3 provided in this chapter. However, if additional tax is  
4 determined to be owing under this chapter or chapter 451 after  
5 the lien has been released under paragraph "a" or "b", the  
6 lien does not have priority over subsequent mortgages,  
7 purchases, or judgment creditors unless notice of the lien  
8 is recorded in the office of the recorder of the county where  
9 the estate is probated, or where the property is located if  
10 the estate has not been administered. The department of  
11 revenue may release the lien by filing in the office of the  
12 clerk of the court in the county where the property is located,  
13 the decedent owner died, or the estate is pending or was  
14 administered, one of the following:

15 Sec. 4. Section 450.8, Code 1983, is amended to read as  
16 follows:

17 450.8 TRANSFERS IN CONTEMPLATION-OF-DEATH TRUST. If the  
18 decedent makes transfer of, or creates a trust with respect  
19 to, any property in-contemplation-of-his-death passing under  
20 section 450.3, subsection 2, or intended to take effect after  
21 his death, (except in the case of a bona fide sale for a fair  
22 consideration in money or money's worth), and if the tax in  
23 respect thereto to the transfer is not paid when due, the  
24 transferee or trustee shall-be is personally liable for such  
25 the tax, and such the property, to the extent of the decedent's  
26 interest therein in the property at the time of his death,  
27 shall-be is subject to a lien for the payment of such the  
28 tax.

29 Sec. 5. Section 450.45, Code Supplement 1983, is amended  
30 to read as follows:

31 450.45 LIFE AND TERM ESTATES--VALUATION. When If an  
32 estate or interest for life or term of years in real property  
33 is given to a party other than those especially exempt by  
34 this chapter, the property shall be valued as provided in  
35 section 450.37 as is provided in ordinary cases, and the party

1 entitled to the estate or interest shall, ~~within-nine-months~~  
2 on or before the last day of the ninth month from the death  
3 of the decedent owner, pay the tax, and in default the court  
4 shall order the estate or interest, or as much as necessary  
5 to pay the tax, penalty, and interest, to be sold.

6 Sec. 6. Section 450.46, Code Supplement 1983, is amended  
7 to read as follows:

8 450.46 DEFERRED ESTATE--VALUATION. Upon the determination  
9 of any a prior estate or interest, when the remainder or  
10 deferred estate or interest or any a part of it is subject  
11 to tax and the tax upon the remainder or deferred interest  
12 has not been paid, the persons entitled to the remainder or  
13 deferred interest shall immediately report to the department  
14 of revenue the fact of the determination of the prior estate,  
15 and upon receipt of the report, or upon information from any  
16 source, of the determination of any a prior estate when the  
17 remainder interest has not been valued for the purpose of  
18 assessing tax, the property shall be valued as provided in  
19 like cases in section 450.44 and the tax upon the remainder  
20 interest shall be paid by the person who owns the remainder  
21 interest ~~within-nine-months~~ on or before the last day of the  
22 ninth month after the determination of the prior estate.

23 If the tax is not paid within this time the court shall then  
24 order the property, or as much as necessary to pay the tax,  
25 penalty, and interest, to be sold.

26 Sec. 7. Section 450.47, Code Supplement 1983, is amended  
27 to read as follows:

28 450.47 LIFE AND TERM ESTATES IN PERSONAL PROPERTY. When  
29 If an estate or interest for life or term of years in personal  
30 property is given to one or more persons other than those  
31 ~~especially~~ exempt by this chapter and the remainder or deferred  
32 estate to others, the property devised or conveyed shall be  
33 valued under section 450.37 as provided in ordinary estates  
34 and the value of the estates or interests devised or conveyed  
35 shall be determined as provided in section 450.51, and the

1 tax upon the estates or interests liable for the tax shall  
 2 be paid to the department of revenue from the property valued  
 3 or by the persons entitled to the estate or interest within  
 4 ~~nine-months-from~~ on or before the last day of the ninth month  
 5 after the death of the testator, grantor, or donor. However,  
 6 payment of the tax upon any a deferred estate or remainder  
 7 interest may be deferred until the determination of the prior  
 8 estate by the giving of a good and sufficient bond as provided  
 9 in section 450.48.

10 Sec. 8. Section 450.55, Code Supplement 1983, is amended  
 11 to read as follows:

12 450.55 MEANS TO COLLECT TAX. ~~Sections~~ The provisions  
 13 of sections 422.26 and 422.30, pertaining to ~~the-lien-except~~  
 14 ~~the-requirements-of-recording,-collection-of-tax,~~ jeopardy  
 15 assessments, and distress warrants, apply to the unpaid tax,  
 16 penalty, and interest imposed under this chapter. In addition  
 17 the director of revenue may bring, or cause to be brought  
 18 in the director's name of office, suit for the collection  
 19 of the tax, penalty, interest, and costs, against the personal  
 20 representative or against the person entitled to property  
 21 subject to the tax, or upon any bond given to secure payment  
 22 of the tax, either jointly or severally, and upon obtaining  
 23 judgment may cause execution to be issued as is provided by  
 24 statute in other cases. The proceedings shall conform as  
 25 nearly as may be to those for the collection of ordinary debt  
 26 by suit.

27 Sec. 9. Section 450.94, subsection 3, Code Supplement  
 28 1983, is amended to read as follows:

29 3. If the amount paid is greater than the correct tax,  
 30 penalty and interest due, the department shall refund the  
 31 excess, with interest after sixty days from the date of payment  
 32 at the rate in effect under section 421.7, under the ~~previ-~~  
 33 ~~sions-of~~ rules prescribed by the director. However, the  
 34 director shall not allow a claim for refund or credit that  
 35 has not been filed with the department within ~~five~~ three years

1 after the tax payment upon which a refund or credit is claimed  
2 became due, or one year after the tax payment was made,  
3 whichever time is the later. A determination by the department  
4 of the amount of tax, penalty and interest due, or the amount  
5 of refund for excess tax paid, is final unless the person  
6 aggrieved by the determination appeals to the director for  
7 a revision of the determination within ninety days from the  
8 postmark date of the notice of determination of tax, penalty  
9 and interest due or refund owing. The director shall grant  
10 a hearing, and upon the hearing the director shall determine  
11 the correct tax, penalty and interest or refund due, and  
12 notify the appellant of the decision by certified mail. The  
13 decision of the director is final unless the appellant seeks  
14 judicial review of the director's decision under section  
15 450.59 within sixty days after the postmark date of the notice  
16 of the director's decision.

17 Sec. 10. Section 450.94, Code Supplement 1983, is amended  
18 by adding the following new subsection:

19 NEW SUBSECTION. The amount of tax imposed under this  
20 chapter shall be assessed according to one of the following:

21 a. Within three years after the return is filed with  
22 respect to property reported on the final inheritance tax  
23 return.

24 b. At any time after the tax became due with respect to  
25 property not reported on the final inheritance tax return,  
26 but not later than three years after the omitted property  
27 is reported to the department on an amended return or on the  
28 final inheritance tax return if one was not previously filed.

29 Sec. 11. Section 451.12, Code 1983, is amended to read  
30 as follows:

31 451.12 APPLICABLE STATUTES. All the provisions of chapter  
32 450 with respect to the lien provisions of section 450.7,  
33 and the determination, imposition, payment and collection  
34 of the tax imposed, under that chapter, including penalty  
35 and interest upon delinquent taxes, are applicable to the

1 ~~provisions-of~~ this chapter, except as they are in conflict  
2 with this chapter. The director of revenue shall adopt and  
3 promulgate rules necessary for the enforcement of this chapter.

4 Sec. 12. This Act, except for section 8, applies to the  
5 estates of persons dying on or after its effective date.

6 Sec. 13. Section 8 of this Act applies to taxes, penalties,  
7 and interest still owing on the effective date of this Act  
8 and to taxes, penalties, and interest becoming due on or after  
9 that effective date.

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#### EXPLANATION

11 The bill makes a number of changes in the state death  
12 taxes. One change intends to remove an uncertainty that  
13 exists concerning a gift made within three years of death.  
14 Present law provides that such gifts are presumed to be taxable  
15 unless the estate shows otherwise. The bill would make these  
16 gifts conform to the federal treatment of such gifts and would  
17 provide that the federal exclusion of \$10,000 per year for  
18 each recipient of a gift and the exclusion of all gifts made  
19 for educational tuition or medical expenses would apply to  
20 these gifts. The bill also changes the due date for the  
21 filing of returns and the payment of tax from the present  
22 date of nine months following decedent's death to the last  
23 day of the ninth month following decedent's death. The  
24 interest computed on delinquent taxes would be calculated  
25 on a monthly basis with a fraction of a month counted as a  
26 full month.

27 The bill modifies the present law on the inheritance and  
28 estate tax lien by requiring that if the department of revenue  
29 has released the lien on property because it was determined  
30 that the tax had been paid in full or that no tax was owing,  
31 but subsequently determines that additional tax is owing,  
32 that the lien must be recorded if it is to have priority over  
33 all subsequent mortgages, purchases or judgment creditors.  
34 Inheritance and estate tax liens are not required to be  
35 recorded. The bill provides that the powers that the director

1 of revenue has for the collection of income taxes which apply  
2 to the collection of inheritance taxes are the powers  
3 pertaining to jeopardy assessments and distress warrants.  
4 The bill also modifies the limitation period for claiming  
5 a refund from the later of five years from the time the tax  
6 is due or one year after the tax is paid to the later of three  
7 years from the time the tax is due (the same limit applies  
8 to income taxes) or one year after the tax is paid. It  
9 establishes a limitation period for making inheritance tax  
10 assessments of three years from the date the property was  
11 reported on the final inheritance tax return or if not listed  
12 on a return then three years from the time the omitted property  
13 is reported to the department.

14 The bill, except for section 8, takes effect July 1 fol-  
15 lowing enactment for the estates of persons dying on or after  
16 the July 1 effective date. Section 8 takes effect July 1  
17 following enactment for taxes, penalties, and interest still  
18 owing on that date or becoming due on or after that date.

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SENATE FILE 2323  
FISCAL NOTE

REQUESTED BY SENATOR PALMER

In compliance with a written request there is hereby submitted a Fiscal Note for Senate File 2323 pursuant to Joint Rule 17.

Senate File 2323 makes a number of changes in the states death taxes as follows:

- Removes the uncertainty that exists concerning a gift made within three years of death. Present law provides that such gifts are presumed to be taxable unless the estate shows otherwise. The bill would make these gifts conform to the federal exclusion providing that gifts within three years of death are taxable as part of the estate. It also provides for the federal exclusion of \$10,000 per year for each recipient of a gift and the exclusion of all gifts made for educational tuition or medical expenses.

- Changes the due date for the filing of returns and the payment of tax from the present date of nine months following the decedent's death to the last day of the ninth month after death. The interest computed on inheritance tax due and refunds owing would be calculated on a monthly basis with a fraction of a month counted as a full month. Current department of revenue practice is to compute this interest on a daily basis.

- Modifies the present law on the inheritance and estate lien by requiring that if the department of revenue has released a lien on property because it was determined that the tax has been paid in full or that no tax was owing, but subsequently determines that additional tax is owing, that the lien must be recorded if it is to have priority over all subsequent mortgages, purchases or judgment creditors. Currently inheritance and estate tax liens are not required to be recorded. The result of this change is to allow a title examiner to be certain the title is clear if the inheritance tax receipt is on file and no lien has been recorded.

- Provides that changes in the inheritance tax lien mentioned above also apply to the lien for unpaid Iowa estate tax. The Iowa estate tax is the difference between what the Internal Revenue Code allows as a maximum credit for the inheritance tax paid and the actual amount of inheritance tax. If the federal credit is greater than the inheritance tax, the difference is paid to Iowa; otherwise the excess credit would be lost.

- Provides for a statute of limitations for making assessments. Under present law there is no statute of limitations for making inheritance tax assessments. The bill provides for a three year assessment period for property that was reported on a return. For

property omitted from a return, the three year period begins when the omitted property is reported to the department of revenue.

- Reduces the period for claiming a refund of tax. Under current law, the period for claiming a refund is five years after the tax became due or one year after the tax was paid, whichever is later. The bill reduces the five years to three years after the tax became due or one year after the tax was paid, paralleling income tax limitations.

The bill takes effect July 1 following enactment for taxes, penalties, and interest still owing on that date for those sections of the bill relating to the statute of limitations for making assessments and the period for claiming a refund of tax. The remainder of the bill takes effect July 1 following enactment for the estates of persons dying on or after July 1 effective date.

FISCAL EFFECT: The bill will have a negligible effect on inheritance tax receipts. Including the few large gifts made within three years of death will increase revenue, but this increase will be offset by the more numerous small gifts of less than \$10,000 which are excluded under the bill.

Changing the due date of the returns to the last day of the month rather than the actual day of death will have little effect. While some interest is lost, there is no change in fiscal year effect. The interest lost due to changing the due date is more than offset by the interest gained by changing the payment of interest on inheritance tax due and refunds owing from a daily to a monthly basis.

Additional savings in administrative cost will result from including gifts within three years of death in excess of the annual \$10,000 exclusion as an expected result is a reduction in the number of administrative appeals. The expense to the department of revenue in filing an inheritance tax lien will also be minimal.  
(3334S, 84-214E, CMG)

Source: Department of Revenue

FILED:  
MARCH 15, 1984

BY DENNIS C. PROUTY, DIRECTOR  
LEGISLATIVE FISCAL BUREAU