

WAYS AND MEANS: Bruner, Chair; Mann and Hester

APR 18 1985

HOUSE FILE 761

BY COMMITTEE ON WAYS AND MEANS

WAYS & MEANS CALENDAR

(Formerly House Study Bill 174)

Passed House, Date 4-25-85 (p. 1845) Passed Senate, Date 5-2-85 (p. 1875)

Vote: Ayes 91 Nays 3 Vote: Ayes 30 Nays 16

Approved May 17, 1985

Proposed House 5-3-85 (p. 2217)
91-7

A BILL FOR

1 An Act relating to the state inheritance and fiduciary income
 2 tax by providing for an Iowa qualified terminable interest
 3 property election, for a six-month audit period after re-
 4 ceipt of a federal audit, for the taxation of the posses-
 5 sion of a general power of appointment, and for notice to
 6 the department of revenue prior to the discharge of the
 7 personal representative of an estate or trust and provid-
 8 ing effective date provisions.

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

S-4070

HOUSE FILE 761

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1 Amend House File 761 as passed by the House as
2 follows:

3 1. Page 3, by inserting after line 31 the
4 following:

5 "Sec. ____ Section 633.561, subsection 1, 1985
6 Iowa Acts, Senate File 531, section 3, is amended to
7 read as follows:

8 1. In a proceeding for the appointment of a
 9 guardian, if the proposed ward is an adult and is not
 10 the petitioner, the proposed ward is entitled to
 11 representation. In a proceeding for the appointment
 12 of a guardian, if the proposed ward is a minor or if
 13 the proposed ward is an adult under a standby order
 14 petition, the court shall determine whether, under the
 15 circumstances of the case, the proposed ward is
 16 entitled to representation. The determination
 17 regarding representation shall be made only after
 18 notice to the proposed ward is made as the court deems
 19 necessary."

1 Section 1. Section 422.27, subsection 1, Code 1985, is
2 amended to read as follows:

3 1. ~~No A final account of an-executor,-administrator,-or~~
4 ~~trustee~~ a personal representative shall not be allowed by any
5 court until thirty days after written notice is given to the
6 department of the proposed discharge of the personal
7 representative and unless such the account shows, and the
8 judge of said the court finds, that all taxes imposed by the
9 ~~provisions-of~~ this division upon the ~~executor,-administrator,-~~
10 ~~or-trustee~~ personal representative, which have become payable,
11 have been paid, and that all taxes which may become due are
12 secured by bond, deposit or otherwise. The certificate of the
13 director and the receipt for the amount of the tax therein
14 certified shall be conclusive as to the payment of the tax to
15 the extent of said the certificate.

16 Sec. 2. Section 450.3, subsection 4, Code 1985, is amended
17 to read as follows:

18 4. ~~Under-power-of-appointment-hereafter-exercised~~ To the
19 extent of any property with respect to which the decedent has
20 at the time of death a general power of appointment, or with
21 respect to which the decedent has within three years of death
22 exercised or released a general power of appointment by a
23 disposition which is of a nature that if it were a transfer of
24 property owned by the decedent, the property would be
25 includable in the decedent's gross estate under this section
26 whether the general power was created before or after the
27 taking effect of this chapter. Any ~~A~~ transfer involving
28 creation of a general power of appointment shall be treated as
29 a transfer of a fee or equivalent interest in the property
30 subject thereto to the donee of the power. Any transfer
31 involving creation of any other power of appointment shall be
32 treated, except when an election is made under subsection 7,
33 as the transfer of a life estate or term of years in the
34 property subject thereto to the donee of the power and as the
35 transfer of the remainder interests therein to those who would

1 take if the power is not exercised.

2 Sec. 3. Section 450.3, Code 1985, is amended by adding the
3 following new subsection 7:

4 NEW SUBSECTION. 7. Which qualifies as a qualified ter-
5 minable interest property as defined in section 2056(b)(7)(B)
6 of the Internal Revenue Code of 1954 as defined in section
7 422.3, shall, if an election is made, be treated and
8 considered as passing in fee, or its equivalent, to the
9 surviving spouse in the estate of the donor-grantor. Property
10 on which the election is made shall be included in the gross
11 estate of the surviving spouse and shall be deemed to have
12 passed in fee from the surviving spouse to the persons
13 succeeding to the remainder interest, unless the property was
14 sold, distributed, or otherwise disposed of prior to the death
15 of the surviving spouse. A sale, disposition, or disposal of
16 the property prior to the death of the surviving spouse shall
17 void the election, and shall subject the property disposed of,
18 less amounts received or retained by the surviving spouse, to
19 tax in the donor-grantor's estate in the same manner as if the
20 tax had been deferred under sections 450.44 through 450.49.

21 Unless the will or trust instrument provides otherwise, the
22 estate of the surviving spouse shall have the right to recover
23 from the persons succeeding to the remainder interests, the
24 additional tax imposed, if any, without interest, on the
25 surviving spouse by reason of the election being made. The
26 amount of tax recovered, if any, shall be a credit in the
27 donee's estate against the tax imposed on the qualified
28 terminable interest property.

29 An election under this subsection can only be made if an
30 election in relation to the qualified terminable interest
31 property is also made for federal estate tax purposes.

32 The director of revenue shall adopt and promulgate all
33 rules necessary for the enforcement and administration of this
34 subsection including the form and manner of making the
35 election.

1 Sec. 4. Section 450.58, Code 1985, is amended to read as
2 follows:

3 450.58 FINAL SETTLEMENT TO SHOW PAYMENT.

4 The final settlement of the account of a personal
5 representative shall not be accepted or allowed until thirty
6 days after written notice is given to the department of the
7 proposed discharge of the personal representative and unless
8 it shows, and the court finds, that all taxes imposed by this
9 chapter upon any property or interest in property that is made
10 payable by the personal representative and to be settled by
11 the account, has been paid, and that the receipt of the
12 department of revenue for the tax has been obtained as
13 provided in section 450.64. Any order contravening this
14 section is void.

15 Sec. 5. Section 450.94, subsection 5, Code 1985, is
16 amended by adding the following new unnumbered paragraph:

17 NEW UNNUMBERED PARAGRAPH. In addition to the applicable
18 periods of limitations for examination and determination
19 specified in paragraphs "a" and "b", the department may make
20 an examination and determination at any time within six months
21 from the date of receipt by the department of written notice
22 from the taxpayer of the final disposition of any matter
23 between the taxpayer and the internal revenue service with
24 respect to the federal estate, gift, or generation skipping
25 transfer tax. In order to begin the running of the six months
26 assessment period, the notice shall be in writing in form
27 sufficient to inform the department of the final disposition
28 of any matter with respect to the federal estate, gift, or
29 generation skipping transfer tax, and a copy of the federal
30 document showing the final disposition or final federal
31 adjustments shall be attached to the notice.

32 Sec. 6. This Act is effective July 1 following enactment
33 subject to the following: Sections 1 and 4 are effective for
34 final reports of personal representatives filed on or after
35 the effective date; section 2 is effective for estates of

1 decedents dying on or after January 1, 1988; section 3 is
2 effective for estates of decedents dying on or after the
3 effective date; and section 5 is effective for audit and
4 assessment limitation periods expiring on or after the
5 effective date.

6

EXPLANATION

7 This bill makes a number of changes in the inheritance tax
8 and fiduciary income tax law. The first change, sections 1
9 and 4, would require a notice be given to the department of
10 revenue before the discharge of the personal representative of
11 an estate or trust. This change will assist the department in
12 collecting inheritance and income tax before the estate or
13 trust is closed and the property distributed. The second
14 change, section 2, is to conform to the federal estate tax
15 treatment of the taxation of a general power of appointment.
16 The amendment provides that the possession of a general power
17 of appointment, rather than its exercise is taxable. This is
18 necessary to close a tax loophole. The third change is to
19 provide for a qualified terminable interest property election.
20 The change would tax property on the death of the surviving
21 spouse, rather than in the estate of the first spouse to die.
22 This would conform to the federal estate tax practice. The
23 fourth change extends the period of time for examination of a
24 return to six months after receiving a copy of a federal audit
25 of an estate, gift, or generation skipping transfer tax
26 return. This is the same extension of time the department of
27 revenue has for an income tax return. The bill provides
28 effective date provisions.

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HOUSE FILE 761

FISCAL NOTE

REQUESTED BY REPRESENTATIVE ROSENBERG

In compliance with a written request received April 18, 1985, a fiscal note for HOUSE FILE 761 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 761 makes several changes in the inheritance tax and fiduciary income tax law, and provides effective date provisions.

Sections 1 and 4 are expected to assist the Department of Revenue in collecting inheritance and income tax before the estate or trust is closed and the property distributed. Section 2 is included in the bill to close a tax loophole by providing that the possession of a general power of appointment, rather than its exercise, is taxable. Section 3 provides that property on the death of the surviving spouse, rather than in the estate of the first spouse, would be subject to tax.

FISCAL EFFECT: The net fiscal impact of House File 761 is not expected to be significant.

SOURCE: Department of Revenue

(LSB 2891H, RJH)

FILED APRIL 24, 1985

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE AMENDMENT TO HOUSE FILE 761

H-4213

1 Amend House File 761 as passed by the House as
2 follows:

3 1. Page 3, by inserting after line 31 the
4 following:

5 "Sec. ____ . Section 633.554, 1985 Iowa Acts, Senate
6 File 531, section 2, is amended to read as follows:

7 633.554 NOTICE TO PROPOSED WARD.

8 If the proposed ward is an adult, notice of the
9 filing of the petition shall be served upon the
10 proposed ward in the manner of an original notice and
11 the content of the notice is governed by the rules of
12 civil procedure governing original notice. If the
13 proposed ward is a minor or if the proposed ward is an
14 adult under a standby order petition and the court
15 determines, pursuant to section 633.561, subsection 1,
16 that the proposed ward is entitled to representation,
17 notice in the manner of original notice, or another
18 form of notice ordered by the court, given to the
19 attorney appointed to represent the ward is notice to
20 the proposed ward.

21 Sec. ____ . Section 633.561, subsection 1, 1985 Iowa
22 Acts, Senate File 531, section 3, is amended to read
23 as follows:

24 1. In a proceeding for the appointment of a
25 guardian, if the proposed ward is an adult and is not
26 the petitioner, the proposed ward is entitled to
27 representation. In a proceeding for the appointment
28 of a guardian, if the proposed ward is a minor or if
29 the proposed ward is an adult under a standby order
30 petition, the court shall determine whether, under the
31 circumstances of the case, the proposed ward is
32 entitled to representation. The determination
33 regarding representation shall be made only after
34 notice to the proposed ward is made as the court deems
35 necessary.

36 Sec. ____ . Section 633.568, 1985 Iowa Acts, Senate
37 File 531, section 5, is amended to read as follows:

38 633.568 NOTICE ON TO PROPOSED WARD.

39 If the proposed ward is an adult, notice of the
40 filing of the petition shall be served upon the
41 proposed ward in the manner of an original notice and
42 the content of the notice is governed by the rules of
43 civil procedure governing original notice. If the
44 proposed ward is a minor and the court determines,
45 pursuant to section 633.561 633.575, subsection 1,
46 that the proposed ward is entitled to representation,
47 notice in the manner of original notice, or another
48 form of notice ordered by the court, given to the
49 attorney appointed to represent the ward is notice to
50 the proposed ward.

1 Sec. ____ . Section 633.575, subsections 3, 4 and 5,
2 1985 Iowa Acts, Senate File 531, section 6 are amended
3 to read as follows:

4 3. If the proposed ward is entitled to
5 representation and is indigent or incapable of
6 requesting counsel, the court shall appoint an
7 attorney to represent the proposed ward. The cost of
8 court appointed counsel for indigents shall be
9 assessed against the county in which the proceedings
10 are pending. For the purposes of this subsection, the
11 court may find a person is indigent if the person's
12 income and resources do not exceed one hundred fifty
13 percent of the federal poverty level or the person
14 would be unable to pay such costs without prejudicing
15 the person's financial ability to provide economic
16 necessities for the person or the person's dependents.

17 4. An attorney appointed pursuant to this section,
18 to the extent possible, shall:

19 a. Ensure that the proposed ward has been properly
20 advised of the nature of the proceeding and its
21 purpose.

22 b. Ensure that the proposed ward has been properly
23 advised of the ward's rights in a conservatorship
24 proceeding.

25 c. Personally interview the proposed ward.

26 d. File a written report stating whether there is
27 a return on file showing that proper service on the
28 proposed ward has been made and also stating that
29 specific compliance with paragraphs "a" through "c"
30 has been made or stating the inability to comply by
31 reason of the proposed ward's condition.

32 e. Represent the proposed ward.

33 f. Ensure that the conservatorship procedures
34 conform to the statutory and due process requirements
35 of Iowa law.

36 5. In the event that an order of appointment is
37 entered, the attorney appointed pursuant to this
38 section, to the extent possible, shall:

39 g a. ~~Inform the proposed ward of the effects of~~
40 ~~any-order-entered-by-the-court,-including-the-effects~~
41 ~~of-an~~ the order entered for appointment of
42 conservator.

43 g b. ~~Advise the ward,-if-an-order-for-appointment~~
44 ~~of-conservator-is-entered,-~~ of the ward's rights to
45 petition for modification or termination of
46 conservatorship.

47 h c. ~~Advise the ward,-if-a-conservator-is~~
48 ~~appointed,-~~ of the rights retained by the ward.

49 5. ~~An attorney appointed pursuant to this section~~
50 ~~shall file an answer stating whether there is a return~~

Page Three

1 ~~on-file-showing-that-proper-service-on-the-proposed~~
2 ~~ward-has-been-made---The-answer-shall-also-state-that~~
3 ~~specific-compliance-with-subsection-4-has-been-made-by~~
4 ~~the-attorney-or-stating-the-inability-to-comply-with~~
5 ~~subsection-4-by-reason-of-the-proposed-ward's~~
6 ~~condition--"~~

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30 has been made or stating the inability to comply by
31 reason of the proposed ward's condition.

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46 conservatorship.

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48 ~~appointed,~~ of the rights retained by the ward.

49 ~~5. An attorney appointed pursuant to this section~~
50 ~~shall file an answer stating whether there is a return~~

1 ~~on-file showing that proper service on the proposed~~
2 ~~ward has been made. The answer shall also state that~~
3 ~~specific compliance with subsection 4 has been made by~~
4 ~~the attorney or stating the inability to comply with~~
5 ~~subsection 4 by reason of the proposed ward's~~
6 ~~condition."~~

1036 *th*



IOWA DEPARTMENT OF REVENUE

HOOVER STATE OFFICE BUILDING

DES MOINES, IOWA 50319

Gerald D. Bair
Director
(515) 281-3204

July 31, 1985

To the Members of the Iowa Bar:

The Department of Revenue, after consultation with representatives of the Probate and Taxation Committees of the Iowa Bar Association, has agreed to waive the provision of the 1985 Iowa Acts House File 761 which requires 30 day notice of the proposed discharge of the personal representative of an estate for income and inheritance tax purposes. The notice provision was intended to address the problem that estates were closed even though a state tax liability remained.

It was brought to our attention by members of the Iowa Bar Association that while compliance with the 30 day notice provision might address this problem the notice duplicates the present requirement of obtaining tax clearances from the Department prior to the closure of any estate. This requirement imposes additional paper work on the practitioner and may cause title problems for estate real estate.

The waiver of the 30 day notice will apply to all estates which have been closed or in which final reports have been filed since July 1, 1985. In all cases the standardized waiver form, which has been approved by representatives of the Iowa Bar Association, should be completed and sent to the Department in duplicate. The form can be reproduced as necessary. The Department will sign and date the original and return it to the attorney for the estate with the tax clearance for filing with the probate proceeding. The duplicate copy of the waiver form will be retained by the Department.

The Department's position on waiving the 30 day notice will remain in effect pending possible legislative change. If you have questions on this matter, please contact the Taxpayer Services Section at 515-281-3114.

Sincerely yours,

G. D. Bair
Director

Enclosure

THE
IOWA STATE BAR ASSOCIATION



Carl V. Nielsen
Executive Director
1101 Fleming Building
Des Moines, Iowa 50309
Telephone 515-243-3179

August 7, 1985

TO THE MEMBERS OF THE IOWA STATE BAR ASSOCIATION:

We set out below in full two sections of H.F. 761 of the 1985 Iowa Acts which took effect July 1, 1985.

Section 1. Section 422.27, subsection 1, Code 1985, is amended to read as follows:

1. No A final account of an executory-administratory-or trustee a personal representative shall not be allowed by any court until thirty days after written notice is given to the department of the proposed discharge of the personal representative and unless such the account shows, and the judge of said the court finds, that all taxes imposed by the provisions of this division upon the executory-administratory or-trustee personal representative, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit or otherwise. The certificate of the director and the receipt for the amount of the tax therein certified shall be conclusive as to the payment of the tax to the extent of said the certificate.

Sec. 4. Section 450.58, Code 1985, is amended to read as follows:

450.58 FINAL SETTLEMENT TO SHOW PAYMENT.

The final settlement of the account of a personal representative shall not be accepted or allowed until thirty days after written notice is given to the department of the proposed discharge of the personal representative and unless it shows, and the court finds, that all taxes imposed by this chapter upon any property or interest in property that is made payable by the personal representative and to be settled by the account, has been paid, and that the receipt of the department of revenue for the tax has been obtained as provided in section 450.64. Any order contravening this section is void.

You will find enclosed one copy of a form waiver of the 30 day notice.

On the reverse side of this letter we set out in full a letter from the Director of the Iowa Department of Revenue.

We suggest the following procedure be used:

1. On any estate/trust you have closed or attempted to close since July 1, 1985 send two completed copies of the enclosed form to the Department. (Note: Do not date the form.)
2. On any estate/trust which you intend to close in the next few months, send two completed copies of the form to the Department with the inheritance return or final income tax return, whichever is filed first.

We hope this will take care of the notice problem for the next few months. We believe legislation will be introduced in 1986 to remove the notice provisions.

As Mr. Bair states in his letter the waiver agreement was the result of the efforts of members of the Association's Probate Committee and the Tax Committee.

The enclosed form will not be a trademarked form of the Association. You are free to make as many photocopies as becomes necessary for your practice.

Respectfully,

CVN/dsw
Enclosure

HSB 174

Study Bill 174

WAYS AND MEANS

Ways and Means: Rosenberg, Chair; Holveck and Miller.

*new
HF 761*

SENATE/HOUSE FILE 761

BY (PREFILED DEPARTMENT OF REVENUE BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the state inheritance and fiduciary income
2 tax by providing for an Iowa qualified terminable interest
3 property election, for a six-month audit period after re-
4 ceipt of a federal audit, for the taxation of the posses-
5 sion of a general power of appointment, and for notice to
6 the department of revenue prior to the discharge of the
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9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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8 judge of ~~said~~ the court finds, that all taxes imposed by the
9 ~~provisions-of~~ this division upon the ~~executor,-administrator,-~~
10 ~~or-trustee~~ personal representative, which have become payable,
11 have been paid, and that all taxes which may become due are
12 secured by bond, deposit or otherwise. The certificate of the
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16 Sec. 2. Section 450.3, subsection 4, Code 1985, is amended
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18 4. ~~Under-power-of-appointment-hereafter-exercised~~ To the
19 extent of any property with respect to which the decedent has
20 at the time of death a general power of appointment, or with
21 respect to which the decedent has within three years of death
22 exercised or released a general power of appointment by a
23 disposition which is of a nature that if it were a transfer of
24 property owned by the decedent, the property would be
25 includable in the decedent's gross estate under this section
26 whether the general power was created before or after the
27 taking effect of this chapter. Any ~~A~~ transfer involving
28 creation of a general power of appointment shall be treated as
29 a transfer of a fee or equivalent interest in the property
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35 transfer of the remainder interests therein to those who would

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7 422.3, shall, at the election of the surviving spouse and the
8 persons succeeding to the remainder interest upon the termina-
9 tion of the qualified income interest for life, be treated and
10 considered as passing in fee, or its equivalent, to the
11 surviving spouse in the estate of the donor-grantor. Property
12 on which the election is made shall be included in the gross
13 estate of the surviving spouse and shall be deemed to have
14 passed in fee from the surviving spouse to the persons
15 succeeding to the remainder interest, unless the property was
16 sold, distributed, or otherwise disposed of prior to the death
17 of the surviving spouse. A sale, disposition, or disposal of
18 the property prior to the death of the surviving spouse shall
19 void the election, and shall subject the property disposed of,
20 less amounts received or retained by the surviving spouse, to
21 tax in the donor-grantor's estate in the same manner as if the
22 tax had been deferred under sections 450.44 through 450.49.

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24 estate of the surviving spouse shall have the right to recover
25 from the persons succeeding to the remainder interests, the
26 additional tax imposed, if any, without interest, on the
27 surviving spouse by reason of the election being made. The
28 amount of tax recovered, if any, shall be a credit in the
29 donee's estate against the tax imposed on the qualified
30 terminable interest property.

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32 election in relation to the qualified terminable interest
33 property is also made for federal estate tax purposes.

34 The director of revenue shall adopt and promulgate all
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S.F. _____ H.F. _____

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2 election.

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15 provided in section 450.64. Any order contravening this
16 section is void.

17 Sec. 5. Section 450.94, subsection 5, Code 1984, is
18 amended by adding the following new unnumbered paragraph:

19 NEW UNNUMBERED PARAGRAPH. In addition to the applicable
20 periods of limitations for examination and determination
21 specified in paragraphs "a" and "b", the department may make
22 an examination and determination at any time within six months
23 from the date of receipt by the department of written notice
24 from the taxpayer of the final disposition of any matter
25 between the taxpayer and the internal revenue service with
26 respect to the federal estate, gift, or generation skipping
27 transfer tax. In order to begin the running of the six months
28 assessment period, the notice shall be in writing in form
29 sufficient to inform the department of the final disposition
30 of any matter with respect to the federal estate, gift, or
31 generation skipping transfer tax, and a copy of the federal
32 document showing the final disposition or final federal
33 adjustments shall be attached to the notice.

34 Sec. 6. This Act is effective July 1 following enactment
35 subject to the following: Sections 1 and 4 are effective for

1 final reports of personal representatives filed on or after
2 the effective date; sections 2 and 3 are effective for estates
3 of decedents dying on or after the effective date; and section
4 5 is effective for audit and assessment limitation periods
5 expiring on or after the effective date.

6

EXPLANATION

7 This bill makes a number of changes in the inheritance tax
8 and fiduciary income tax law. The first change, sections 1
9 and 4, would require a notice be given to the department of
10 revenue before the discharge of the personal representative of
11 an estate or trust. This change will assist the department in
12 collecting inheritance and income tax before the estate or
13 trust is closed and the property distributed. The second
14 change, section 2, is to conform to the federal estate tax
15 treatment of the taxation of a general power of appointment.
16 The amendment provides that the possession of a general power
17 of appointment, rather than its exercise is taxable. This is
18 necessary to close a tax loophole. The third change is to
19 provide for a qualified terminable interest property election.
20 The change would tax property on the death of the surviving
21 spouse, rather than in the estate of the first spouse to die.
22 This would conform to the federal estate tax practice. The
23 fourth change extends the period of time for examination of a
24 return to six months after receiving a copy of a federal audit
25 of an estate, gift, or generation skipping transfer tax
26 return. This is the same extension of time the department of
27 revenue has for an income tax return. The bill provides
28 effective date provisions.

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HOUSE FILE 761

AN ACT

RELATING TO THE STATE INHERITANCE AND FIDUCIARY INCOME TAX BY PROVIDING FOR AN IOWA QUALIFIED TERMINABLE INTEREST PROPERTY ELECTION, FOR A SIX-MONTH AUDIT PERIOD AFTER RECEIPT OF A FEDERAL AUDIT, FOR THE TAXATION OF THE POSSESSION OF A GENERAL POWER OF APPOINTMENT, AND FOR NOTICE TO THE DEPARTMENT OF REVENUE PRIOR TO THE DISCHARGE OF THE PERSONAL REPRESENTATIVE OF AN ESTATE OR TRUST AND PROVIDING EFFECTIVE DATE PROVISIONS.

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

Section 1. Section 422.27, subsection 1, Code 1985, is amended to read as follows:

1. No A final account of an executor, administrator, or trustee a personal representative shall not be allowed by any court until thirty days after written notice is given to the department of the proposed discharge of the personal representative and unless such the account shows, and the judge of said the court finds, that all taxes imposed by the provisions of this division upon the executor, administrator, or trustee personal representative, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit or otherwise. The certificate of the director and the receipt for the amount of the tax therein certified shall be conclusive as to the payment of the tax to the extent of said the certificate.

Sec. 2. Section 450.3, subsection 4, Code 1985, is amended to read as follows:

4. Under-power-of-appointment-hereafter-exercised To the extent of any property with respect to which the decedent has at the time of death a general power of appointment, or with respect to which the decedent has within three years of death exercised or released a general power of appointment by a disposition which is of a nature that if it were a transfer of property owned by the decedent, the property would be includable in the decedent's gross estate under this section whether the general power was created before or after the taking effect of this chapter. Any A transfer involving creation of a general power of appointment shall be treated as a transfer of a fee or equivalent interest in the property subject thereto to the donee of the power. Any transfer involving creation of any other power of appointment shall be treated, except when an election is made under subsection 7, as the transfer of a life estate or term of years in the property subject thereto to the donee of the power and as the transfer of the remainder interests therein to those who would take if the power is not exercised.

Sec. 3. Section 450.3, Code 1985, is amended by adding the following new subsection 7:

NEW SUBSECTION. 7. Which qualifies as a qualified terminable interest property as defined in section 2056(b)(7)(B) of the Internal Revenue Code of 1954 as defined in section 422.3, shall, if an election is made, be treated and considered as passing in fee, or its equivalent, to the surviving spouse in the estate of the donor-grantor. Property on which the election is made shall be included in the gross estate of the surviving spouse and shall be deemed to have passed in fee from the surviving spouse to the persons succeeding to the remainder interest, unless the property was sold, distributed, or otherwise disposed of prior to the death of the surviving spouse. A sale, disposition, or disposal of the property prior to the death of the surviving spouse shall void the election, and shall subject the property disposed of,

less amounts received or retained by the surviving spouse, to tax in the donor-grantor's estate in the same manner as if the tax had been deferred under sections 450.44 through 450.49.

Unless the will or trust instrument provides otherwise, the estate of the surviving spouse shall have the right to recover from the persons succeeding to the remainder interests, the additional tax imposed, if any, without interest, on the surviving spouse by reason of the election being made. The amount of tax recovered, if any, shall be a credit in the donee's estate against the tax imposed on the qualified terminable interest property.

An election under this subsection can only be made if an election in relation to the qualified terminable interest property is also made for federal estate tax purposes.

The director of revenue shall adopt and promulgate all rules necessary for the enforcement and administration of this subsection including the form and manner of making the election.

Sec. 4. Section 450.58, Code 1985, is amended to read as follows:

450.58 FINAL SETTLEMENT TO SHOW PAYMENT.

The final settlement of the account of a personal representative shall not be accepted or allowed until thirty days after written notice is given to the department of the proposed discharge of the personal representative and unless it shows, and the court finds, that all taxes imposed by this chapter upon any property or interest in property that is made payable by the personal representative and to be settled by the account, has been paid, and that the receipt of the department of revenue for the tax has been obtained as provided in section 450.64. Any order contravening this section is void.

Sec. 5. Section 450.94, subsection 5, Code 1985, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. In addition to the applicable periods of limitations for examination and determination specified in paragraphs "a" and "b", the department may make an examination and determination at any time within six months from the date of receipt by the department of written notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the federal estate, gift, or generation skipping transfer tax. In order to begin the running of the six months assessment period, the notice shall be in writing in form sufficient to inform the department of the final disposition of any matter with respect to the federal estate, gift, or generation skipping transfer tax, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice.

Sec. 6. Section 633.554, 1985 Iowa Acts, Senate File 531, section 2, is amended to read as follows:

633.554 NOTICE TO PROPOSED WARD.

If the proposed ward is an adult, notice of the filing of the petition shall be served upon the proposed ward in the manner of an original notice and the content of the notice is governed by the rules of civil procedure governing original notice. If the proposed ward is a minor or if the proposed ward is an adult under a standby order petition and the court determines, pursuant to section 633.561, subsection 1, that the proposed ward is entitled to representation, notice in the manner of original notice, or another form of notice ordered by the court, given to the attorney appointed to represent the ward is notice to the proposed ward.

Sec. 7. Section 633.561, subsection 1, 1985 Iowa Acts, Senate File 531, section 3, is amended to read as follows:

1. In a proceeding for the appointment of a guardian, if the proposed ward is an adult and is not the petitioner, the proposed ward is entitled to representation. In a proceeding for the appointment of a guardian, if the proposed ward is a

minor or if the proposed ward is an adult under a standby order petition, the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation shall be made only after notice to the proposed ward is made as the court deems necessary.

Sec. 8. Section 633.568, 1985 Iowa Acts, Senate File 531, section 5, is amended to read as follows:

633.568 NOTICE ON TO PROPOSED WARD.

If the proposed ward is an adult, notice of the filing of the petition shall be served upon the proposed ward in the manner of an original notice and the content of the notice is governed by the rules of civil procedure governing original notice. If the proposed ward is a minor and the court determines, pursuant to section 633.568 633.575, subsection 1, that the proposed ward is entitled to representation, notice in the manner of original notice, or another form of notice ordered by the court, given to the attorney appointed to represent the ward is notice to the proposed ward.

Sec. 9. Section 633.575, subsections 3, 4 and 5, 1985 Iowa Acts, Senate File 531, section 6 are amended to read as follows:

3. If the proposed ward is entitled to representation and is indigent or incapable of requesting counsel, the court shall appoint an attorney to represent the proposed ward. The cost of court appointed counsel for indigents shall be assessed against the county in which the proceedings are pending. For the purposes of this subsection, the court may find a person is indigent if the person's income and resources do not exceed one hundred fifty percent of the federal poverty level or the person would be unable to pay such costs without prejudicing the person's financial ability to provide economic necessities for the person or the person's dependents.

4. An attorney appointed pursuant to this section, to the extent possible, shall:

- a. Ensure that the proposed ward has been properly advised of the nature of the proceeding and its purpose.
- b. Ensure that the proposed ward has been properly advised of the ward's rights in a conservatorship proceeding.
- c. Personally interview the proposed ward.
- d. File a written report stating whether there is a return on file showing that proper service on the proposed ward has been made and also stating that specific compliance with paragraphs "a" through "c" has been made or stating the inability to comply by reason of the proposed ward's condition.

d e. Represent the proposed ward.

e f. Ensure that the conservatorship procedures conform to the statutory and due process requirements of Iowa law.

5. In the event that an order of appointment is entered, the attorney appointed pursuant to this section, to the extent possible, shall:

f a. Inform the proposed ward of the effects of any order entered-by-the-court, including-the-effects-of-an the order entered for appointment of conservator.

g b. Advise the ward, if-an-order-for-appointment-of conservator-is-entered, of the ward's rights to petition for modification or termination of conservatorship.

h c. Advise the ward, if-a-conservator-is-appointed, of the rights retained by the ward.

5.--An-attorney-appointed-pursuant-to-this-section-shall file-an-answer-stating-whether-there-is-a-return-on-file showing-that-proper-service-on-the-proposed-ward-has-been made.--The-answer-shall-also-state-that-specific-compliance with-subsection-4-has-been-made-by-the-attorney-or-stating-the inability-to-comply-with-subsection-4-by-reason-of-the proposed-ward's-condition:

Sec. 10. This Act is effective July 1 following enactment subject to the following: Sections 1 and 4 are effective for final reports of personal representatives filed on or after

the effective date; section 2 is effective for estates of decedents dying on or after January 1, 1988; section 3 is effective for estates of decedents dying on or after the effective date; and section 5 is effective for audit and assessment limitation periods expiring on or after the effective date.

DONALD D. AVENSON
Speaker of the House

ROBERT T. ANDERSON
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 761, Seventy-first General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 17, 1985

TERRY E. BRANSTAD
Governor