

## CHAPTER 1158

## GENERATION SKIPPING TRANSFERS TAX

S. F. 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 Madisonian, a newspaper published in Winterset, Iowa, and in the Cherokee Daily Times, a newspaper published in Cherokee, Iowa.

Approved April 21, 1978

I hereby certify that the foregoing Act, Senate File 2137, was published in the Winterset Madisonian, Winterset, Iowa on April 26, 1978, and in the Cherokee Daily Times, Cherokee, Iowa on April 27, 1978.

MELVIN D. SYNHORST, *Secretary of State*