

CHAPTER 148**INHERITANCE AND FIDUCIARY INCOME TAX***H.F. 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 ~~633.561~~ 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.

Approved May 17, 1985

CHAPTER 149

ECONOMIC EMERGENCY FUND TRANSFER

H.F. 763

AN ACT to transfer funds credited to the Iowa economic emergency fund to the general fund of the state, effective upon publication.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Notwithstanding section 8.55, paragraph 3, Code 1985, the moneys in the Iowa economic emergency fund on the effective date of this Act are transferred to the general fund of the state on the effective date of this Act. Funds transferred to the general fund of the state shall be used to defray expenses incurred for fiscal year beginning July 1, 1984 and ending June 30, 1985.

Sec. 2. This Act, being deemed of immediate importance, takes effect from and after its publication in *The Sac Sun*, a newspaper published in Sac City, Iowa, and in *The Denison Bulletin*, a newspaper published in Denison, Iowa.

Approved May 17, 1985

I hereby certify that the foregoing Act was published in *The Denison Bulletin*, Denison, Iowa on May 23, 1985 and in *The Sac Sun*, Sac City, Iowa on May 28, 1985.

MARY JANE ODELL, *Secretary of State*