

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003

A Bill

SENATE BILL 60

4
5 By: Senator Altes
6
7

For An Act To Be Entitled

8 AN ACT TO REPEAL THE ESTATE TAX; AND FOR OTHER
9 PURPOSES.
10

Subtitle

11 TO REPEAL THE ESTATE TAX.
12
13
14
15

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
17

18 SECTION 1. Arkansas Code Title 26, Chapter 59, Subchapter 1 is
19 repealed.

20 ~~26-59-101. Title.~~

21 ~~This chapter may be cited as the "Estate Tax Law of Arkansas."~~

22
23 ~~26-59-102. Definitions.~~

24 ~~As used in this chapter, unless the context otherwise requires:~~

25 ~~(1) "Director" means the Director of the Department of Finance~~
26 ~~and Administration;~~

27 ~~(2) "Executor" means the executor, administrator, curator,~~
28 ~~fiduciary, or custodian of property of a decedent, or, if there is no~~
29 ~~executor, administrator, curator, fiduciary, or custodian appointed,~~
30 ~~qualified, and acting, then any person who is in the actual or constructive~~
31 ~~possession of any property included in the gross estate of the decedent;~~

32 ~~(3) "Person" means individuals, natural persons, corporations,~~
33 ~~associations, partnerships, limited liability companies, joint-stock~~
34 ~~companies, business trusts, and inter vivos trusts;~~

35 ~~(4) "Transfer" shall be taken to include the passing of property~~
36 ~~or any interest therein, in possession or enjoyment, present or future, by~~



1 inheritance, descent, devise, succession, bequest, grant, deed, bargain,
 2 sale, gift, or appointment in the manner described in this chapter;

3 (5) ~~"Decedent" shall include the testator, intestate, grantor,~~
 4 ~~bargainor, vendor, or donor;~~

5 (6) ~~"Resident" means an individual or natural person domiciled~~
 6 ~~in the State of Arkansas as provided by statute or otherwise;~~

7 (7) ~~"Nonresident" means an individual or natural person~~
 8 ~~domiciled without the State of Arkansas;~~

9 (8) ~~"Gross estate" means the gross estate as determined under~~
 10 ~~the provisions of the applicable federal revenue act;~~

11 (9) ~~"Net estate" means the net estate as determined under the~~
 12 ~~provisions of the applicable federal revenue act;~~

13 (10) ~~"Tangible personal property" means corporeal personal~~
 14 ~~property, including money.~~

15
 16 ~~26-59-103. Chapter to remain in effect while federal government~~
 17 ~~imposes estate tax.~~

18 ~~This chapter shall remain in force and effect so long as the United~~
 19 ~~States Government retains in full force and effect, as a part of the revenue~~
 20 ~~laws of the United States, the present federal estate tax, and this chapter~~
 21 ~~shall cease to be operative when the United States Government ceases to~~
 22 ~~impose any estate tax of the United States.~~

23
 24 ~~26-59-104. Federal rules of interpretation applicable.~~

25 ~~When not otherwise provided for in this chapter, the rules of~~
 26 ~~interpretation and construction applicable to the estate tax laws of the~~
 27 ~~United States shall apply to and be followed in the interpretation of this~~
 28 ~~chapter.~~

29
 30 ~~26-59-105. Administration and enforcement of chapter.~~

31 ~~The director shall, except as otherwise provided in this chapter, have~~
 32 ~~jurisdiction and be charged with the administration and enforcement of the~~
 33 ~~provisions of this chapter.~~

34
 35 ~~26-59-106. Amount of tax imposed—Resident estates.~~

36 ~~(a) A tax is imposed upon the transfer of real estate and personal~~

1 ~~property of every kind owned by every person who, at the time of death, was a~~
 2 ~~resident of the State of Arkansas, the amount of which shall be a sum equal~~
 3 ~~to the federal credit allowable under the federal estate tax laws, 26 U.S.C.~~
 4 ~~§ 2001 et seq., as in effect on January 1, 1999.~~

5 ~~(b) Ownership of property shall include shares or certificates of~~
 6 ~~indebtedness or other evidences of stock ownership in foreign companies or~~
 7 ~~corporations, which shares or certificates are present in this state.~~

8 ~~(c)(1) If any portion of the property of the estate is located in~~
 9 ~~another state and the other state participates in the federal credit~~
 10 ~~allowable, then the Arkansas tax shall be the proportional part of the credit~~
 11 ~~allowable as the Arkansas property bears to the entire estate. However, if~~
 12 ~~the other state shall have a reciprocal provision as to nontaxability of~~
 13 ~~property of nonresidents, then all of the federal credit allowable shall be~~
 14 ~~paid to this state.~~

15 ~~(2) However, if no federal estate tax is imposed upon the~~
 16 ~~transfer of property, no Arkansas estate tax shall be imposed on such~~
 17 ~~transfer.~~

18
 19 ~~26-59-107. Tax imposed—Nonresident estates.~~

20 ~~(a) A tax is imposed upon the transfer of all real, tangible, and~~
 21 ~~intangible personal property located in the State of Arkansas of any~~
 22 ~~nonresident of this state in a sum equal to the proportion of the federal~~
 23 ~~credit allowable under the federal estate tax laws, 26 U.S.C. § 2001 et seq.,~~
 24 ~~as in effect on January 1, 1999, for estate, inheritance, legacy, and~~
 25 ~~succession taxes that the Arkansas property of such deceased person bears to~~
 26 ~~the property of the entire estate, wherever located.~~

27 ~~(b) The term "Arkansas property" shall be construed to include,~~
 28 ~~without limiting its generality by this specification, the following items of~~
 29 ~~intangible personal property:~~

30 ~~(1) Debts including bank deposits owed to the decedent by any~~
 31 ~~individual resident in this state, or by any bank or other corporation~~
 32 ~~organized under the laws of this state, or by any national bank doing~~
 33 ~~business in this state without regard to the physical location of any written~~
 34 ~~evidence of indebtedness; and~~

35 ~~(2) Shares of the capital stock of any corporation organized~~
 36 ~~under the laws of this state without regard to the physical location of the~~

1 ~~stock certificate.~~

2 ~~(c) However, if the decedent at the time of death was a resident of a~~
 3 ~~state or territory of the United States, which, at the time of his death,~~
 4 ~~provides an exemption to residents of this state from transfer or death~~
 5 ~~taxes, then the nonresident of the other state or territory shall be exempt~~
 6 ~~from the payment of said estate or inheritance tax in this state.~~

7 ~~(d) However, if no federal estate tax is imposed upon the transfer of~~
 8 ~~property, no Arkansas estate tax shall be imposed on such transfer.~~

9
 10 ~~26-59-108. Exemptions.~~

11 ~~(a) There shall not be imposed any estate taxes, inheritance taxes, or~~
 12 ~~transfer taxes upon the succession of title to any property from any person,~~
 13 ~~association, company, or corporation, whether resident or nonresident of this~~
 14 ~~state, passing to or for the use of the State of Arkansas or to or for the~~
 15 ~~use of municipal corporations or other political subdivisions thereof for~~
 16 ~~exclusively public purposes, or public institutions of learning, or any~~
 17 ~~public hospital not for profit within this state.~~

18 ~~(b) No estate taxes, inheritance taxes, or transfer taxes levied by~~
 19 ~~this state shall be imposed upon any bequest made by a resident of this state~~
 20 ~~to any religious, charitable, or educational institution, organization, or~~
 21 ~~foundation, whether incorporated or unincorporated, no part of the net~~
 22 ~~earnings of which inures to the benefit of any private stockholder or other~~
 23 ~~individual or corporation, even though the institution, organization, or~~
 24 ~~foundation is located in another state, if the law of such other state~~
 25 ~~provides an equal and like exemption for bequests made by residents of that~~
 26 ~~state to such institutions, organizations, or foundations located in this~~
 27 ~~state.~~

28
 29 ~~26-59-109. Estate tax returns generally.~~

30 ~~(a) Returns by Executor. (1) Citizens or Residents of the United~~
 31 ~~States. In all cases where the gross estate at the death of a citizen or~~
 32 ~~resident of the United States exceeds one million dollars (\$1,000,000) and a~~
 33 ~~portion of the property comprising the gross estate is located in Arkansas,~~
 34 ~~then the executor shall make a return with respect to the estate tax imposed~~
 35 ~~by this chapter.~~

36 ~~(2) Nonresidents Not Citizens of the United States. In the case~~

1 of the estate of every nonresident not a citizen of the United States, if
2 that part of the gross estate which is situated in the United States exceeds
3 one million dollars (\$1,000,000) and a portion of the property comprising the
4 gross estate is located in Arkansas, then the executor shall make a return
5 with respect to the estate tax imposed by this chapter.

6 (3) ~~Phase in of Filing Requirement Amount.~~

7 In the case of decedents Subdivision (a)(1) shall be applied
8 dying in: by substituting for "\$1,000,000" the
9 following amount:

10	1999	\$650,000
11	2000 and 2001	675,000
12	2002 and 2003	700,000
13	2004	850,000
14	2005	950,000
15	2006 or thereafter	1,000,000

16 (b) ~~Returns by Beneficiaries.~~ If the executor is unable to make a
17 complete return as to any part of the gross estate of the decedent, he shall
18 include in his return a description of such part and the name of every person
19 holding a legal or beneficial interest therein. Upon notice from the
20 Director of the Department of Finance and Administration, such person shall
21 in like manner make a return as to such part of the gross estate.

22 (c) ~~Returns Due.~~ Returns made under subsection (a) of this section
23 shall be filed within nine (9) months after the date of the decedent's death.

24 (d) ~~Place of Filing.~~ Estate tax returns shall be filed with the
25 director at his office in Little Rock, Arkansas.

26
27 26-59-110. ~~Estate tax returns—Contents.~~

28 The executor shall also, at such times and in such manner as may be
29 required by regulations made pursuant to law, file with the director a return
30 under oath, setting forth:

31 (1) ~~A description and the value of the gross estate of the decedent at~~
32 ~~the time of his death, as defined in the applicable federal revenue act; or,~~
33 ~~in case of the estate of a decedent who at the time of death was not~~
34 ~~domiciled in the United States, of that part of his gross estate situated in~~
35 ~~the United States;~~

36 (2) ~~The deductions allowable under this chapter;~~

1 ~~(3) The value of the net estate of the decedent as defined in this~~
 2 ~~chapter;~~

3 ~~(4) A description and the value of such part of the real property and~~
 4 ~~tangible personal property of the gross estate of a decedent who at the time~~
 5 ~~of his death was a resident of the State of Arkansas as shall be located or~~
 6 ~~situate, at the time of his death, without the State of Arkansas;~~

7 ~~(5) A description and the value of such part of the real property and~~
 8 ~~tangible personal property of the gross estate of a decedent who at the time~~
 9 ~~of his death was a nonresident of the State of Arkansas but a resident of the~~
 10 ~~United States as shall be located or situate, at the time of his death,~~
 11 ~~within the State of Arkansas;~~

12 ~~(6) A description and the value of real property situate and personal~~
 13 ~~property having an actual situs in this state and intangible personal~~
 14 ~~property physically present within this state of the estate of a decedent who~~
 15 ~~at the time of his death was not a resident of the United States; and~~

16 ~~(7) The tax paid or payable thereon and the manner of computing the~~
 17 ~~tax; or such part of such information as may at the time be ascertainable and~~
 18 ~~such supplemental data as may be necessary to determine and establish the~~
 19 ~~correct tax.~~

20
 21 ~~26-59-111. Estate tax return—Extension of filing time.~~

22 ~~(a) Any person who requests and receives an extension of time in which~~
 23 ~~to file a federal estate tax return, as provided by 26 U.S.C. § 6081, as~~
 24 ~~amended, and in effect on January 1, 1999, shall be granted an extension of~~
 25 ~~time in which to file the Arkansas estate tax return for the same period of~~
 26 ~~time as granted for the filing of the federal estate tax return.~~

27 ~~(b) This request for extension of time in which to file shall be~~
 28 ~~granted by the timely filing of a copy of the federal application form with~~
 29 ~~the Director of the Department of Finance and Administration and then~~
 30 ~~attaching to the Arkansas estate tax return, when actually filed with the~~
 31 ~~director, a copy of the document granting such federal extension.~~

32 ~~(c) The director shall assess interest at the rate of ten percent~~
 33 ~~(10%) per annum on the amount of estate tax finally determined to be due from~~
 34 ~~the date the estate tax return was originally due to be filed.~~

35
 36 ~~26-59-112. Director to make return where no return filed.~~

1 ~~If any executor, administrator, fiduciary, trustee, person,~~
 2 ~~corporation, company, or association fails to make and file a return or list~~
 3 ~~at the time prescribed by law or by regulation made under authority of law,~~
 4 ~~or makes, willfully or otherwise, a false or fraudulent return or list, the~~
 5 ~~director shall make the return or list from his own knowledge and from such~~
 6 ~~information as he can obtain through testimony or otherwise.—Any return or~~
 7 ~~list so made by the director shall be prima facie good and sufficient for all~~
 8 ~~legal purposes.~~

9
 10 ~~26-59-113. Payment—Time limitations—Federal election.~~

11 ~~(a) The tax imposed by this chapter shall be due and payable nine (9)~~
 12 ~~months after decedent's death and shall be paid by the executor to the~~
 13 ~~Director of the Department of Finance and Administration.~~

14 ~~(b)(1) Where the director finds that the payment on the due date of~~
 15 ~~the tax or any part thereof would impose undue hardship upon the estate, the~~
 16 ~~director may extend the time for any payment of any such part.—However, no~~
 17 ~~extension shall be for more than eighteen (18) months, and the aggregate of~~
 18 ~~the extension with respect to any estate shall not exceed five (5) years from~~
 19 ~~the due date, except as provided in subsection (c) of this section.~~

20 ~~(2) In such case, the amount in respect of which the extension~~
 21 ~~is granted shall be paid on or before the date of the expiration of the~~
 22 ~~period of the extension unless further extension is granted.~~

23 ~~(c)(1) The provisions of 26 U.S.C. § 6166, as amended and in effect on~~
 24 ~~January 1, 1999, which provide for an election by the representative of a~~
 25 ~~decedent's estate to pay the federal estate tax due on certain qualifying~~
 26 ~~assets of the estate in deferred installments for a period of up to fifteen~~
 27 ~~(15) years at a two percent (2%) interest rate regarding either the estate~~
 28 ~~original shown due on the estate tax return or as later determined to be due~~
 29 ~~following audit, shall be adopted as a state estate tax law.~~

30 ~~(2) However, the two percent (2%) interest rate shall only apply~~
 31 ~~to the "2 percent portion" as that term is defined in 26 U.S.C. § 6601(j)(2),~~
 32 ~~as amended and in effect on January 1, 1999. The interest rate on the estate~~
 33 ~~tax exceeding the "2 percent portion" shall be at the rate specified in § 26-~~
 34 ~~18-508 concerning tax deficiencies.~~

35 ~~(3) Any timely filed election by the representative of the~~
 36 ~~decedent's estate for deferral of the payment of federal estate taxes shall~~

1 ~~be deemed to also defer the payment of the applicable portion of Arkansas~~
 2 ~~estate tax for the same periods of time for the Arkansas assets qualifying~~
 3 ~~for this special federal election.~~

4
 5 ~~26-59-114. Payment of tax—Discharge of executor.~~

6 ~~(a) The director shall issue, to the executor upon payment of the tax~~
 7 ~~imposed by this chapter, receipts in triplicate, any of which shall be~~
 8 ~~sufficient evidence of the payment, and shall entitle the executor to be~~
 9 ~~credited and allowed the amount thereof by any court having jurisdiction to~~
 10 ~~audit or settle his accounts.~~

11 ~~(b) If the executor files a complete return and makes written~~
 12 ~~application to the director for determination of the amount of the tax and~~
 13 ~~discharge from personal liability, the director as soon as possible, and in~~
 14 ~~any event within one (1) year after receipt of such application, shall notify~~
 15 ~~the executor of the amount of the tax and, upon payment thereof, the executor~~
 16 ~~shall be discharged from personal liability for any additional tax thereafter~~
 17 ~~found to be due and shall be entitled to receive from the director a receipt~~
 18 ~~in writing showing such discharge.~~

19 ~~(c) The discharge shall not operate to release the gross estate of the~~
 20 ~~lien of any additional tax that may thereafter be found to be due while the~~
 21 ~~title to such gross estate remains in the executor or in the heirs, devisees,~~
 22 ~~or distributees thereof. However, after the discharge is given, no part of~~
 23 ~~the gross estate shall be subject to the lien or to any claim or demand for~~
 24 ~~any such tax after the title thereto has passed to a bona fide purchaser for~~
 25 ~~value.~~

26
 27 ~~26-59-115. Payment of tax—Spread proportionately among distributees~~
 28 ~~and beneficiaries.~~

29 ~~Except as otherwise directed by the decedent's will, the burden of any~~
 30 ~~state and federal estate, death, and inheritance taxes paid by the executor~~
 31 ~~or administrator shall be spread proportionately among the distributees and~~
 32 ~~beneficiaries of the estate so that each shall bear his proportionate part of~~
 33 ~~the burden. However, no such taxes shall be apportioned against the~~
 34 ~~surviving spouse with respect to property received by the spouse, the value~~
 35 ~~of which is deductible for federal estate tax purposes.~~

36

1 ~~26-59-116. Payment of tax—Reimbursement to person paying tax.~~

2 ~~(a) If the tax or any part thereof is paid or collected out of that~~
 3 ~~part of the estate passing to or in possession of any person other than the~~
 4 ~~executor in his capacity as such, the person shall be entitled to a~~
 5 ~~reimbursement out of any part of the estate still undistributed or by a just~~
 6 ~~and equitable contribution by the person whose interest in the estate of the~~
 7 ~~decedent would have been reduced if the tax had been paid before the~~
 8 ~~distribution of the estate or whose interest in the estate is subject to an~~
 9 ~~equal or prior liability for the payment of tax, debts, or other charges~~
 10 ~~against the estate.~~

11 ~~(b) It is the purpose and intent of this section that insofar as is~~
 12 ~~practical and unless otherwise directed by the will of the decedent, the tax~~
 13 ~~shall be paid out of the estate before its distribution. However, the~~
 14 ~~director shall not be charged with enforcing contribution from any person.~~

15
 16 ~~26-59-117. Payment of tax—Executor's liability.~~

17 ~~If any executor makes distribution either in whole or in part of any of~~
 18 ~~the property of an estate to the heirs, next of kin, distributees, legatees,~~
 19 ~~or devisees without having paid or secured the tax due the State of Arkansas~~
 20 ~~under this chapter or obtained the release of the property from the lien of~~
 21 ~~such tax, he shall become personally liable for the tax so due the state, or~~
 22 ~~so much of the tax as may remain due and unpaid, to the full extent of the~~
 23 ~~full value of any property belonging to such person or estate which may come~~
 24 ~~into his hands, custody, or control.~~

25
 26 ~~26-59-118. Payment of tax—Executor's right to sell real estate.~~

27 ~~Every executor shall have the same right and power to take possession~~
 28 ~~of or sell, convey, and dispose of real estate as assets of the estate for~~
 29 ~~payment of the tax imposed by this chapter as he may have for the payment of~~
 30 ~~the debts of the decedent.~~

31
 32 ~~26-59-119. Executor—Notice of appointment.~~

33 ~~The executor, within two (2) months after the decedent's death, or~~
 34 ~~within a like period after qualifying as executor, shall give written notice~~
 35 ~~of his qualification as executor to the director.~~

36

1 ~~26-59-120. Duties of probate clerks—Information required.~~

2 ~~(a) When letters of administration or letters testamentary are issued~~
 3 ~~by any of the probate clerks of the counties of the State of Arkansas, they~~
 4 ~~shall immediately advise the Revenue Division of the Department of Finance~~
 5 ~~and Administration, Little Rock, Arkansas, that such letters were granted,~~
 6 ~~giving the name of the executor or administrator and an estimate of the value~~
 7 ~~of the estate of the deceased person so far as the probate clerk is able to~~
 8 ~~ascertain from information obtained, and the number of heirs of the deceased~~
 9 ~~person.~~

10 ~~(b) The probate clerks of the counties shall also furnish the Revenue~~
 11 ~~Division of the Department of Finance and Administration a certified copy of~~
 12 ~~the appraisal of the real and personal property of each estate when the~~
 13 ~~appraisal of the property of each of the estates is filed with the clerks.~~

14
 15 ~~26-59-121. Corporate executors of nonresident decedents—~~

16 ~~Restrictions.~~

17 ~~(a) If the executor of the estate of a nonresident is a corporation~~
 18 ~~authorized, qualified, and acting as executor in the jurisdiction of the~~
 19 ~~domicile of the decedent, it shall be under the same duties and obligations~~
 20 ~~as to the giving of notices and filing of returns required by this chapter~~
 21 ~~and may bring and defend actions and suits as may be authorized or permitted~~
 22 ~~by this chapter, to the same extent as an individual executor,~~
 23 ~~notwithstanding that the corporation may be prohibited from exercising in~~
 24 ~~this state any powers as executor.~~

25 ~~(b) Nothing contained in this section shall be taken or construed as~~
 26 ~~authorizing corporations not authorized to do business in this state to~~
 27 ~~qualify or act as executor, administrator, or in any other fiduciary capacity~~
 28 ~~if otherwise prohibited by the laws of this state except to the extent herein~~
 29 ~~expressly provided.~~

30
 31 ~~26-59-122. Disposition and allocation of funds.~~

32 ~~(a) All taxes, fees, penalties, and costs received by the Director of~~
 33 ~~the Department of Finance and Administration under the provisions of this~~
 34 ~~chapter shall be general revenues and shall be deposited in the State~~
 35 ~~Treasury to the credit of the State Apportionment Fund, except that the~~
 36 ~~amount of estate taxes collected in a calendar year that exceeds ten percent~~

1 ~~(10%) of the average annual estate taxes collected for a five year period~~
2 ~~immediately preceding the calendar year or fifteen million dollars~~
3 ~~(\$15,000,000), whichever is greater, shall be deposited into the State~~
4 ~~Treasury as special revenues and credited to the General Improvement Fund.~~

5 ~~(b) The Treasurer of State shall allocate and transfer the funds to~~
6 ~~the various State Treasury funds participating in general revenues in the~~
7 ~~respective proportions to each as provided by and to be used for the~~
8 ~~respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et~~
9 ~~seq.~~

10
11 SECTION 2. Arkansas Code § 19-6-201(13), regarding general revenues
12 collected from the estate tax, is repealed.

13 ~~(13) Estate taxes, as enacted by Act 136 of 1941, known as the "Estate~~
14 ~~Tax Law of Arkansas", and all laws amendatory thereto, §§ 26-59-101—26-59-~~
15 ~~107, 26-59-109—26-59-114, 26-59-116—26-59-119, 26-59-121, and 26-59-122;~~
16

17 SECTION 3. Arkansas Code § 19-6-301(171), regarding special revenues
18 collected from the estate tax, is repealed.

19 ~~(171) That portion of estate taxes collected in a calendar year that~~
20 ~~exceeds ten percent (10%) of the average annual estate taxes collected for a~~
21 ~~five year period immediately preceding the calendar year or fifteen million~~
22 ~~dollars (\$15,000,000), whichever is greater, § 26-59-122(a)(1);~~

23
24 SECTION 4. This act applies to the estate of decedents whose death
25 occurs on or after January 1, 2004.
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36