

State of Arkansas  
76th General Assembly  
Regular Session, 1987  
By: Representative Barclay

HOUSE BILL 1958

"AN ACT AMENDING SECTION 1 AND SECTION 3 OF ACT 209 OF 1967,  
[ARK. STATS. 62-2909.1 AND 62-2909.3] TO ALTER THE METHOD OF  
COMPUTING MARITAL DEDUCTIONS IN ESTATE PLANNING; DECLARING AN  
EMERGENCY; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 1 of Act 209 of 1967, the same being Arkansas Statute 62-2909.1, is hereby amended to read as follows:

"Section 1. TRANSFERS OF PECUNIARY BEQUESTS - ASSETS TO HAVE MARKET VALUE EQUAL TO FEDERAL ESTATE TAX VALUE. Whenever under any last will and testament or trust instrument of a decedent who is survived by a spouse, the executor, trustee or other fiduciary is authorized to or required by the terms of such instrument to satisfy a pecuniary bequest (including a pecuniary bequest in trust) or transfer in trust of a pecuniary amount, to or for the benefit of any beneficiary, by transferring or allocating assets in kind at their Federal Estate Tax values, or at any values or value other than the fair market value of such assets at the date of its distribution or allocation, then the fiduciary shall satisfy such pecuniary bequest or transfer in trust by the distribution or allocation of assets, including cash, having an aggregate fair market value on the date or dates of distribution or allocation equal to the amount of the pecuniary bequest or transfer in trust as finally determined for Federal Estate Tax purposes, unless the will or governing instrument provides otherwise."

SECTION 2. Section 3 of Act 209 of 1967, the same being Arkansas Statute 62-2909.3, is hereby amended to read as follows:

"Section 3. ALTERNATIVE VALUATIONS - REQUIREMENT TO USE MARKET VALUE EQUAL TO FEDERAL ESTATE TAX VALUE. Whenever there is a provision in the will

or governing instrument that an executor or fiduciary so authorized or required by its terms to satisfy such pecuniary bequest or transfer in trust (with assets in kind at their Federal Estate Tax values or at any values or value other than fair market values at date or dates of distribution or allocation) is authorized or required, in satisfying such bequest or transfer, to either:

(a) Distribute or allocate assets, including cash, having an aggregate fair market value on the date or dates of distribution or allocation equal to or at least equal to the amount of the pecuniary bequest or transfer in trust as finally determined for Federal Estate Tax purposes, or

(b) Distribute or allocate assets, including cash, fairly representative, on the date or dates of distribution or allocation, of the appreciation or depreciation in the value of all properties available for distribution or allocation,

then, the executor or fiduciary nevertheless must distribute or allocate assets, including cash, having an aggregate fair market value on the date or dates of distribution or allocation equal to the amount of the pecuniary bequest or transfer in trust as finally determined for Federal Estate Tax purposes."

SECTION 3. WILLS AND TRUSTS TO WHICH ACT APPLICABLE. This act shall be effective with respect to all wills and revocable inter-vivos trusts executed or created before or after the effective date of this Act by persons dying on or after January 1, 1987, and to irrevocable inter-vivos trusts created on or after the effective date of this act.

SECTION 4. SEVERABILITY. The provisions of this act are severable. If any sentence, paragraph, section or part of this act is declared invalid or unconstitutional such declaration shall not affect the part that remains nor impair its validity when applied to other circumstances.

SECTION 5. EMERGENCY CLAUSE. It is hereby found and determined by the Arkansas General Assembly that existing statutes concerning transfers of assets from decedents' estates at values referencing federal estate tax values may not be sufficient to preserve the estate tax marital deduction under potential challenges by the Internal Revenue Service where the non-marital

share of the estate is transferred to a pecuniary credit shelter trust and the marital share for the benefit of the surviving spouse consists of the residue of the estate (or trust) assets. If the Internal Revenue Service successfully adhered to such a position, the resulting loss of the marital deduction would bring about substantial estate tax costs, thereby placing an undue burden upon the families of decedents owning farms and family businesses. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from the date of its approval.

