

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007

A Bill

HOUSE BILL 1360

4
5 By: Representatives Wills, Maloch
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7

For An Act To Be Entitled

8
9 AN ACT TO ADOPT THE UNIFORM ESTATE TAX
10 APPORTIONMENT ACT; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 TO ADOPT THE UNIFORM ESTATE TAX
14 APPORTIONMENT ACT.
15
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code Title 28 is amended to add a new chapter to
20 read as follows:

21 28-54-101. Short title.

22 This chapter may be cited as the Uniform Estate Tax Apportionment Act.
23

24 28-54-102. Definitions.

25 In this chapter:

26 (1) "Apportionable estate" means the value of the gross estate
27 as finally determined for purposes of the estate tax to be apportioned
28 reduced by:

29 (A) any claim or expense allowable as a deduction for
30 purposes of the tax;

31 (B) the value of any interest in property that, for
32 purposes of the tax, qualifies for a marital or charitable deduction or
33 otherwise is deductible or is exempt; and

34 (C) any amount added to the decedent's gross estate
35 because of a gift tax on transfers made before death.

36 (2) "Estate tax" means a federal, state, or foreign tax imposed



1 because of the death of an individual and interest and penalties associated
 2 with the tax. The term does not include an inheritance tax, income tax, or
 3 generation-skipping transfer tax other than a generation-skipping transfer
 4 tax incurred on a direct skip taking effect at death.

5 (3) "Gross estate" means, with respect to an estate tax, all
 6 interests in property subject to the tax.

7 (4) "Person" means an individual, corporation, business trust,
 8 estate, trust, partnership, limited liability company, association, joint
 9 venture, public corporation, government, governmental subdivision, agency, or
 10 instrumentality, or any other legal or commercial entity.

11 (5) "Ratable" means apportioned or allocated pro rata according
 12 to the relative values of interests to which the term is to be applied.
 13 "Ratably" has a corresponding meaning.

14 (6) "Time-limited interest" means an interest in property which
 15 terminates on a lapse of time or on the occurrence or nonoccurrence of an
 16 event or which is subject to the exercise of discretion that could transfer a
 17 beneficial interest to another person. The term does not include a cotenancy
 18 unless the cotenancy itself is a time-limited interest.

19 (7) "Value" means, with respect to an interest in property, fair
 20 market value as finally determined for purposes of the estate tax that is to
 21 be apportioned, reduced by any outstanding debt secured by the interest
 22 without reduction for taxes paid or required to be paid or for any special
 23 valuation adjustment.

24
 25 28-54-103. Apportionment by will or other dispositive instrument.

26 (a) Except as otherwise provided in subsection (c), the following
 27 rules apply:

28 (1) To the extent that a provision of a decedent's will
 29 expressly and unambiguously directs the apportionment of an estate tax, the
 30 tax must be apportioned accordingly.

31 (2) Any portion of an estate tax not apportioned pursuant to
 32 paragraph (1) must be apportioned in accordance with any provision of a
 33 revocable trust of which the decedent was the settlor which expressly and
 34 unambiguously directs the apportionment of an estate tax. If conflicting
 35 apportionment provisions appear in two or more revocable trust instruments,
 36 the provision in the most recently dated instrument prevails. For purposes

1 of this paragraph:

2 (A) a trust is revocable if it was revocable
3 immediately after the trust instrument was executed, even if the trust
4 subsequently becomes irrevocable; and

5 (B) the date of an amendment to a revocable trust
6 instrument is the date of the amended instrument only if the amendment
7 contains an apportionment provision.

8 (3) If any portion of an estate tax is not apportioned pursuant
9 to paragraph (1) or (2), and a provision in any other dispositive instrument
10 expressly and unambiguously directs that any interest in the property
11 disposed of by the instrument is or is not to be applied to the payment of
12 the estate tax attributable to the interest disposed of by the instrument,
13 the provision controls the apportionment of the tax to that interest.

14 (b) Subject to subsection (c), and unless the decedent expressly and
15 unambiguously directs the contrary, the following rules apply:

16 (1) If an apportionment provision directs that a person
17 receiving an interest in property under an instrument is to be exonerated
18 from the responsibility to pay an estate tax that would otherwise be
19 apportioned to the interest,

20 (A) the tax attributable to the exonerated interest
21 must be apportioned among the other persons receiving interests passing under
22 the instrument, or

23 (B) if the values of the other interests are less
24 than the tax attributable to the exonerated interest, the deficiency must be
25 apportioned ratably among the other persons receiving interests in the
26 apportionable estate that are not exonerated from apportionment of the tax.

27 (2) If an apportionment provision directs that an estate tax is
28 to be apportioned to an interest in property a portion of which qualifies for
29 a marital or charitable deduction, the estate tax must first be apportioned
30 ratably among the holders of the portion that does not qualify for a marital
31 or charitable deduction and then apportioned ratably among the holders of the
32 deductible portion to the extent that the value of the nondeductible portion
33 is insufficient.

34 (3) Except as otherwise provided in paragraph (4), if an
35 apportionment provision directs that an estate tax be apportioned to property
36 in which one or more time-limited interests exist, other than interests in

1 specified property under § 28-54-107, the tax must be apportioned to the
 2 principal of that property, regardless of the deductibility of some of the
 3 interests in that property.

4 (4) If an apportionment provision directs that an estate tax is
 5 to be apportioned to the holders of interests in property in which one or
 6 more time-limited interests exist and a charity has an interest that
 7 otherwise qualifies for an estate tax charitable deduction, the tax must
 8 first be apportioned, to the extent feasible, to interests in property that
 9 have not been distributed to the persons entitled to receive the interests.

10 (c) A provision that apportions an estate tax is ineffective to the
 11 extent that it increases the tax apportioned to a person having an interest
 12 in the gross estate over which the decedent had no power to transfer
 13 immediately before the decedent executed the instrument in which the
 14 apportionment direction was made. For purposes of this subsection, a
 15 testamentary power of appointment is a power to transfer the property that is
 16 subject to the power.

17
 18 28-54-104. Statutory apportionment of estate taxes.

19 To the extent that apportionment of an estate tax is not controlled by
 20 an instrument described in § 28-54-103 and except as otherwise provided in §§
 21 28-54-106 and 28-54-107, the following rules apply:

22 (1) Subject to paragraphs (2), (3), and (4), the estate tax is
 23 apportioned ratably to each person that has an interest in the apportionable
 24 estate.

25 (2) A generation-skipping transfer tax incurred on a direct skip
 26 taking effect at death is charged to the person to which the interest in
 27 property is transferred.

28 (3) If property is included in the decedent's gross estate
 29 because of Section 2044 of the Internal Revenue Code of 1986 or any similar
 30 estate tax provision, the difference between the total estate tax for which
 31 the decedent's estate is liable and the amount of estate tax for which the
 32 decedent's estate would have been liable if the property had not been
 33 included in the decedent's gross estate is apportioned ratably among the
 34 holders of interests in the property. The balance of the tax, if any, is
 35 apportioned ratably to each other person having an interest in the
 36 apportionable estate.

1 (4) Except as otherwise provided in § 28-54-103(b)(4) and except
 2 as to property to which § 28-54-107 applies, an estate tax apportioned to
 3 persons holding interests in property subject to a time-limited interest must
 4 be apportioned, without further apportionment, to the principal of that
 5 property.

6
 7 28-54-105. Credits and deferrals.

8 Except as otherwise provided in §§ 28-54-106 and 28-54-107, the
 9 following rules apply to credits and deferrals of estate taxes:

10 (1) A credit resulting from the payment of gift taxes or from
 11 estate taxes paid on property previously taxed inures ratably to the benefit
 12 of all persons to which the estate tax is apportioned.

13 (2) A credit for state or foreign estate taxes inures ratably to
 14 the benefit of all persons to which the estate tax is apportioned, except
 15 that the amount of a credit for a state or foreign tax paid by a beneficiary
 16 of the property on which the state or foreign tax was imposed, directly or by
 17 a charge against the property, inures to the benefit of the beneficiary.

18 (3) If payment of a portion of an estate tax is deferred because
 19 of the inclusion in the gross estate of a particular interest in property,
 20 the benefit of the deferral inures ratably to the persons to which the estate
 21 tax attributable to the interest is apportioned. The burden of any interest
 22 charges incurred on a deferral of taxes and the benefit of any tax deduction
 23 associated with the accrual or payment of the interest charge is allocated
 24 ratably among the persons receiving an interest in the property.

25
 26 28-54-106. Insulated property – Advancement of tax.

27 (a) In this section:

28 (1) “Advanced fraction” means a fraction that has as its
 29 numerator the amount of the advanced tax and as its denominator the value of
 30 the interests in insulated property to which that tax is attributable.

31 (2) “Advanced tax” means the aggregate amount of estate tax
 32 attributable to interests in insulated property which is required to be
 33 advanced by uninsulated holders under subsection (c).

34 (3) “Insulated property” means property subject to a time-
 35 limited interest which is included in the apportionable estate but is
 36 unavailable for payment of an estate tax because of impossibility or

1 impracticability.

2 (4) "Uninsulated holder" means a person who has an interest in
 3 uninsulated property.

4 (5) "Uninsulated property" means property included in the
 5 apportionable estate other than insulated property.

6 (b) If an estate tax is to be advanced pursuant to subsection (c) by
 7 persons holding interests in uninsulated property subject to a time-limited
 8 interest other than property to which § 28-54-107 applies, the tax must be
 9 advanced, without further apportionment, from the principal of the
 10 uninsulated property.

11 (c) Subject to § 28-54-109(b) and (d), an estate tax attributable to
 12 interests in insulated property must be advanced ratably by uninsulated
 13 holders. If the value of an interest in uninsulated property is less than
 14 the amount of estate taxes otherwise required to be advanced by the holder of
 15 that interest, the deficiency must be advanced ratably by the persons holding
 16 interests in properties that are excluded from the apportionable estate under
 17 § 28-54-102(1)(B) as if those interests were in uninsulated property.

18 (d) A court having jurisdiction to determine the apportionment of an
 19 estate tax may require a beneficiary of an interest in insulated property to
 20 pay all or part of the estate tax otherwise apportioned to the interest if
 21 the court finds that it would be substantially more equitable for that
 22 beneficiary to bear the tax liability personally than for that part of the
 23 tax to be advanced by uninsulated holders.

24 (e) When a distribution of insulated property is made, each
 25 uninsulated holder may recover from the distributee a ratable portion of the
 26 advanced fraction of the property distributed. To the extent that
 27 undistributed insulated property ceases to be insulated, each uninsulated
 28 holder may recover from the property a ratable portion of the advanced
 29 fraction of the total undistributed property.

30 (f) Upon a distribution of insulated property for which, pursuant to
 31 subsection (d), the distributee becomes obligated to make a payment to
 32 uninsulated holders, a court may award an uninsulated holder a recordable
 33 lien on the distributee's property to secure the distributee's obligation to
 34 that uninsulated holder.

35
 36 28-54-107. Apportionment and recapture of special elective benefits.

1 (a) In this section:

2 (1) "Special elective benefit" means a reduction in an estate
 3 tax obtained by an election for:

4 (A) a reduced valuation of specified property that
 5 is included in the gross estate;

6 (B) a deduction from the gross estate, other than a
 7 marital or charitable deduction, allowed for specified property; or

8 (C) an exclusion from the gross estate of specified
 9 property.

10 (2) "Specified property" means property for which an election
 11 has been made for a special elective benefit.

12 (b) If an election is made for one or more special elective benefits,
 13 an initial apportionment of a hypothetical estate tax must be computed as if
 14 no election for any of those benefits had been made. The aggregate reduction
 15 in estate tax resulting from all elections made must be allocated among
 16 holders of interests in the specified property in the proportion that the
 17 amount of deduction, reduced valuation, or exclusion attributable to each
 18 holder's interest bears to the aggregate amount of deductions, reduced
 19 valuations, and exclusions obtained by the decedent's estate from the
 20 elections. If the estate tax initially apportioned to the holder of an
 21 interest in specified property is reduced to zero, any excess amount of
 22 reduction reduces ratably the estate tax apportioned to other persons that
 23 receive interests in the apportionable estate.

24 (c) An additional estate tax imposed to recapture all or part of a
 25 special elective benefit must be charged to the persons that are liable for
 26 the additional tax under the law providing for the recapture.

27
 28 28-54-108. Securing payment of estate tax from property in possession
 29 of fiduciary.

30 (a) A fiduciary may defer a distribution of property until the
 31 fiduciary is satisfied that adequate provision for payment of the estate tax
 32 has been made.

33 (b) A fiduciary may withhold from a distributee an amount equal to the
 34 amount of estate tax apportioned to an interest of the distributee.

35 (c) As a condition to a distribution, a fiduciary may require the
 36 distributee to provide a bond or other security for the portion of the estate

1 tax apportioned to the distributee.

2
3 28-54-109. Collection of estate tax by fiduciary.

4 (a) A fiduciary responsible for payment of an estate tax may collect
5 from any person the tax apportioned to and the tax required to be advanced by
6 the person.

7 (b) Except as otherwise provided in § 28-54-106, any estate tax due
8 from a person that cannot be collected from the person may be collected by
9 the fiduciary from other persons in the following order of priority:

10 (1) any person having an interest in the apportionable estate
11 which is not exonerated from the tax;

12 (2) any other person having an interest in the apportionable
13 estate;

14 (3) any person having an interest in the gross estate.

15 (c) A domiciliary fiduciary may recover from an ancillary personal
16 representative the estate tax apportioned to the property controlled by the
17 ancillary personal representative.

18 (d) The total tax collected from a person pursuant to this chapter may
19 not exceed the value of the person's interest.

20
21 28-54-110. Right of reimbursement.

22 (a) A person required under § 28-54-109 to pay an estate tax greater
23 than the amount due from the person under § 28-54-103 or § 28-54-104 has a
24 right to reimbursement from another person to the extent that the other
25 person has not paid the tax required by § 28-54-103 or § 28-54-104 and a
26 right to reimbursement ratably from other persons to the extent that each has
27 not contributed a portion of the amount collected under § 28-54-109(b).

28 (b) A fiduciary may enforce the right of reimbursement under
29 subsection (a) on behalf of the person that is entitled to the reimbursement
30 and shall take reasonable steps to do so if requested by the person.

31
32 28-54-111. Action to determine or enforce chapter.

33 A fiduciary, transferee, or beneficiary of the gross estate may
34 maintain an action for declaratory judgment to have a court determine and
35 enforce this chapter.

1 28-54-112. Uniformity of application and construction.

2 In applying and construing this uniform act, consideration must be
 3 given to the need to promote uniformity of the law with respect to its
 4 subject matter among states that enact it.

5
 6 28-54-113. Severability.

7 If any provision of this chapter or the application thereof to any
 8 person or circumstance is held invalid, the invalidity does not affect other
 9 provisions or applications of this chapter which can be given effect without
 10 the invalid provision or application, and to this end the provisions of this
 11 chapter are severable.

12
 13 28-54-114. Delayed application.

14 (a) Sections 28-54-103 – 28-54-107 do not apply to the estate of a
 15 decedent who dies on or within three years after January 1, 2008, nor to the
 16 estate of a decedent who dies more than three years after January 1, 2008, if
 17 the decedent continuously lacked testamentary capacity from the expiration of
 18 the three-year period until the date of death.

19 (b) For the estate of a decedent who dies on or after January 1, 2008,
 20 to which §§ 28-54-103 – § 28-54-107 do not apply, estate taxes must be
 21 apportioned pursuant to the law in effect immediately before January 1, 2008.

22
 23 28-54-115. Effective date.

24 This chapter takes effect on January 1, 2008.

25
 26 SECTION 2. Effective January 1, 2008, Arkansas Code § 26-59-115 is
 27 repealed.

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

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