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4

As Engrossed: S3/1/07
A Bill

HOUSE BILL 1360

5 By: Representatives Wills, Maloch
6 By: *Senators R. Thompson, Luker*
7

For An Act To Be Entitled

10 AN ACT TO ADOPT THE UNIFORM ESTATE TAX
11 APPORTIONMENT ACT; AND FOR OTHER PURPOSES.
12

Subtitle

14 TO ADOPT THE UNIFORM ESTATE TAX
15 APPORTIONMENT ACT.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

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

22 28-54-101. Short title.

23 This chapter may be cited as the Uniform Estate Tax Apportionment Act.
24

25 28-54-102. Definitions.

26 In this chapter:

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

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

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

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



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

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

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

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

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

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

25
26 28-54-103. Apportionment by will or other dispositive instrument.

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

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

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

1 the provision in the most recently dated instrument prevails. For purposes
2 of this paragraph:

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

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

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

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

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

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

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

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

35 (3) Except as otherwise provided in paragraph (4), if an
36 apportionment provision directs that an estate tax be apportioned to property

1 in which one or more time-limited interests exist, other than interests in
2 specified property under § 28-54-107, the tax must be apportioned to the
3 principal of that property, regardless of the deductibility of some of the
4 interests in that property.

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

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

18
19 28-54-104. Statutory apportionment of estate taxes.

20 To the extent that apportionment of an estate tax is not controlled by
21 an instrument described in § 28-54-103 and except as otherwise provided in §§
22 28-54-106 and 28-54-107, the following rules apply:

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

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

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

1 apportionable estate.

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

7
8 28-54-105. Credits and deferrals.

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

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

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

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

26
27 28-54-106. Insulated property – Advancement of tax.

28 (a) In this section:

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

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

35 (3) “Insulated property” means property subject to a time-
36 limited interest which is included in the apportionable estate but is

1 unavailable for payment of an estate tax because of impossibility or
2 impracticability.

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

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

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

12 (c) Subject to § 28-54-109(b) and (d), an estate tax attributable to
13 interests in insulated property must be advanced ratably by uninsulated
14 holders. If the value of an interest in uninsulated property is less than
15 the amount of estate taxes otherwise required to be advanced by the holder of
16 that interest, the deficiency must be advanced ratably by the persons holding
17 interests in properties that are excluded from the apportionable estate under
18 § 28-54-102(1)(B) as if those interests were in uninsulated property.

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

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

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

36

1 28-54-107. Apportionment and recapture of special elective benefits.

2 (a) In this section:

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

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

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

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

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

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

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

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

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

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

36 (c) As a condition to a distribution, a fiduciary may require the

1 distributee to provide a bond or other security for the portion of the estate
2 tax apportioned to the distributee.

3
4 28-54-109. Collection of estate tax by fiduciary.

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

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

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

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

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

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

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

21
22 28-54-110. Right of reimbursement.

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

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

32
33 28-54-111. Action to determine or enforce chapter.

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

1
2 28-54-112. Uniformity of application and construction.

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

6
7 28-54-113. Severability.

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

13
14 28-54-114. Delayed application.

15 (a) Sections 28-54-103 – 28-54-107 do not apply to the estate of a
16 decedent who dies more than three years after January 1, 2008, if the
17 decedent continuously lacked testamentary capacity from the expiration of the
18 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.~~

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/s/ Wills