

SENATE BILL No. 137

AN ACT enacting the Kansas estate tax apportionment act; repealing K.S.A. 2000 Supp. 79-15,120, 79-15,121, 79-15,122, 79-15,123 and 79-15,124.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) As used in this act:

(1) "Court" means a court in which proceedings for administration of an estate are pending or have been completed or, if no proceedings are pending or have been completed, a court in which venue lies for the administration of the estate of the decedent;

(2) "estate" means the gross estate of a decedent as determined for the purpose of estate taxes;

(3) "estate tax" means any estate, inheritance or death tax levied or assessed on the property of a decedent's estate, because of the death of a person, imposed by federal, state, local or foreign law, including the federal estate tax and including interest and penalties imposed in addition to those taxes. Estate tax does not include a tax imposed under section 2701 (d)(1)(A) of the federal internal revenue code of 1986;

(4) "person" includes a trust, natural person, partnership, association, joint stock company, corporation, limited liability company, government, political subdivision or governmental agency;

(5) "person interested in the estate" means a person, or a fiduciary on behalf of that person, who is entitled to receive, or who has received, from a decedent or because of the death of the decedent, property included in the decedent's estate for purposes of the estate tax, but does not include a creditor of the decedent or of the decedent's estate; and

(6) "representative" means the representative, executor or administrator of an estate or any other person who is required to pay estate taxes assessed against the estate.

(b) (1) The representative shall charge each person interested in the estate the fraction of the total estate tax assessed against the estate, that the taxable value of that person's interest in the estate included in determining the amount of the tax bears to the total taxable value of all the interests of all persons interested in the estate included in determining the amount of the tax. The representative shall not apportion estate taxes under this subsection that are otherwise apportioned by federal law.

(2) Subsection (b)(1) shall apply unless the decedent in a written inter vivos or testamentary instrument disposing of or creating an interest in property specifically directs the manner of apportionment of estate tax or grants a discretionary power of apportionment to another person. A direction for the apportionment or nonapportionment of estate tax is limited to the estate tax on the property passing under the instrument unless the instrument specifically provides that such direction is to apply to property passing outside the provisions of the instrument.

(3) If under subsection (b)(2) directions for the apportionment of an estate tax in two or more instruments executed by the same person conflict, the instrument disposing of or creating an interest in the property to be taxed controls. If directions for the apportionment of estate tax in two or more instruments executed by the same person conflicts with respect to an interest in property disposed of or created by neither instrument, the instrument executed or amended most recently controls. If the most recent instruments were executed or amended contemporaneously, and one of the instruments is a last will and testament or codicil, the last will and testament or codicil controls. If directions for the apportionment of estate tax in two or more instruments executed by different persons conflict, the direction of the person in whose estate the property is included controls.

(4) Subsections (b)(2) and (b)(3) do not grant or enlarge the power of a person to apportion estate tax to property passing under an instrument created by another person in excess of the estate tax attributable to the property. Subsections (b)(2) and (b)(3) do not apply to the extent federal law directs a different manner of apportionment.

(c) Any deduction, exemption or credit allowed by law in connection with the estate tax inures to a person interested in the estate as provided by subsections (d), (e) and (f).

(d) If the deduction, exemption or credit is allowed because of the relationship of the person interested in the estate to the decedent, or because of the purpose of the gift, the deduction, exemption or credit inures to the person having the relationship or receiving the gift, unless that person's interest in the estate is subject to a prior present interest

that is not allowable as a deduction. The estate tax apportionable to the person having the present interest shall be paid from the corpus of the gift or the interest of the person having the relationship.

(e) A deduction for property of the estate that was previously taxed and a credit for gift taxes or death taxes of a foreign country that were paid by the decedent or the decedent's estate inures proportionally to all persons interested in the estate who are liable for a share of the estate tax.

(f) A credit for inheritance, succession or estate taxes, or taxes of a similar nature applicable to property or interests includable in the estate, inures to the persons interested in the estate who are chargeable with payment of a portion of those taxes to the extent that the credit reduces proportionately those taxes.

(g) To the extent that property passing to or in trust for a surviving spouse or a charitable, public or similar gift or devise is not an allowable deduction for purposes of the estate tax solely because of an inheritance tax or other death tax imposed on and deductible from the property, the property is not included in the computation provided for by subsection (b), and to that extent no apportionment is made against the property. The exclusion provided by this subsection does not apply if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the federal internal revenue code of 1986, relating to deductions for state death taxes on transfers for public, charitable or religious uses.

(h) The estate tax attributable to an interest in income, an estate for years or for life or another temporary interest in any property or fund, and the remainder interest and any other split interest, is chargeable against the corpus of the property or the funds that are subject to the temporary interest and remainder.

(i) (1) In this subsection, "qualified real property" has the meaning assigned by section 2032A of the federal internal revenue code of 1986.

(2) If an election is made under section 2032A of the federal internal revenue code of 1986, the representative shall apportion estate taxes according to the amount of federal estate tax that would be payable if the election were not made. The amount of the reduction of the estate tax resulting from the election shall be applied to reduce the amount of estate tax allocated to those persons who receive real estate subject to the special use value election is allocated based on the value of the qualified real property that each receives. If the amount applied to reduce the taxes allocated based on the value of the qualified real property is greater than the amount of those taxes, the excess shall be applied to the portion of the taxes allocated for all other property. This amount is to be apportioned under subsection (b)(1).

(3) If additional federal estate tax is imposed under section 2032A(c) of the federal internal revenue code of 1986 because of an early disposition or cessation of a qualified use, the additional tax shall be equitable apportioned among the persons who have an interest in the portion of the qualified real property to which the additional tax is attributable in proportion to their interests. If the qualified real property is split between one or more life or term interests and remainder interests, the additional tax shall be apportioned to each person whose action or cessation of use caused the imposition of additional tax, unless all persons with an interest in the qualified real property agree in writing to dispose of the property, in which case the additional tax shall be apportioned among the remainder interests.

(j) (1) In this subsection, "qualified family-owned business interest" has the meaning assigned by Section 2057 of the federal internal revenue code of 1986.

(2) If an election is made under section 2057 of the federal internal revenue code of 1986, the representative shall apportion estate taxes according to the amount of federal estate tax that would be payable if the election were not made. The amount of the reduction of the estate tax resulting from the election shall be applied to reduce the amount of the estate tax allocated to those persons who receive property on which the election is allocated based on the value of the qualified family-owned business interest that each receives. If the amount applied to reduce the taxes allocated based on the value of the qualified family-owned business interest is greater than the amount of those taxes, the excess shall be

applied to the portion of the taxes allocated for all other property. This amount is to be apportioned under subsection (b)(1).

(3) If additional federal estate tax is imposed under section 2057(f) of the federal internal revenue code of 1986 because of an early disposition or cessation of a qualified use, the additional tax shall be equitably apportioned among the persons who have an interest in the portion of the qualified family-owned business interest to which the additional tax is attributable in proportion to their interest.

(k) If the date for the payment of any portion of an estate tax is extended, the amount of the extended tax and interest and penalties on such extended tax shall be apportioned to the persons who receive the specific property that gives rise to the extension, except to the extent caused by breach of fiduciary duty of a representative.

(l) If federal law directs the apportionment of the federal estate tax, a similar state tax shall be apportioned in the same manner.

(m) If property includable in an estate does not come into possession of the representative, the representative shall recover from each person interested in the estate the amount of the estate tax apportioned to the person under this act. A representative required to recover unpaid amounts of estate tax apportioned to persons interested in the estate under this act may initiate an action at any time to recover unpaid amounts, or reasonable estimates of such amounts, but is not required to initiate the action until the expiration of 90 days after the date of the final determination of the amount of the estate tax. A representative who initiates an action under this act within a reasonable time after the 90 day period is not subject to any liability or surcharge because any portion of the estate tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. The obligation to recover a tax under this subsection does not apply if:

(1) The duty is waived by the parties who would benefit from such recovery or by the instrument under which the representative derives powers; or

(2) in the reasonable judgment of the representative, proceeding to recover the tax is not cost effective.

(n) If, after complying with the provisions of subsection (m), a representative does not collect from a person interested in the estate an unpaid amount of estate tax apportioned to the person, the amount not collected shall be apportioned among the other persons interested in the estate who are subject to apportionment in the same manner as provided by subsection (b)(1). A person who is charged with or who pays an apportioned amount under this subsection because another person failed to pay an amount of estate tax apportioned to the person charged with the tax has a right of reimbursement for that amount from the person who failed to pay the tax. The representative may enforce the right of reimbursement. The person charged with the tax may also enforce such right of reimbursement provided the representative has either assigned the representative's right to seek reimbursement to the person charged with the tax or six months have expired since the person charged with the tax has paid such tax and there are no pending judicial proceedings in which the representative is pursuing such right of reimbursement.

(o) This section shall be applied after giving effect to any valid disclaimers.

(p) Except as otherwise provided in this act, interest and penalties assessed against the estate by a taxing authority shall be apportioned among and charged to the persons interested in the estate in the manner provided by subsection (b), unless, on application by any person interested in the estate, the court determines that the proposed apportionment is not equitable or that the assessment of interest or penalties was caused by a breach of fiduciary duty of a representative. If the apportionment is not equitable, the court may apportion interest and penalties in an equitable manner. If the assessment of interest or penalties was caused by a breach of fiduciary duty of a representative, the court may charge the representative with the amount of the interest and penalties assessed attributable to such representative's conduct.

(q) Expenses, including attorney and representative fees, reasonably incurred by a representative in determination of the amount, apportionment or collection of the estate tax shall be apportioned among and

charged to persons interested in the estate in the manner provided by subsection (b) unless, on application by any person interested in the estate, the court determines that the proposed apportionment is not equitable. If the court determines that the assessment is not equitable, the court may apportion the expenses in a equitable manner.

(r) A representative who has possession of any property of an estate that is distributable to a person interested in the estate may withhold from that property an amount equal to the person's apportioned share of the estate tax.

(s) A representative shall recover from any person interested in the estate the unpaid amount of the estate tax apportioned and charged to the person under this section, unless the representative determines in good faith that an attempt to recover this amount would be economically impractical.

(t) A representative acting in another state may initiate an action in a court of this state to recover a proportionate amount of the federal estate tax, of an estate tax payable to another state, or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is domiciled in this state or owns property in this state subject to attachment or execution. In the action, a determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct. This act applies only if the state in which the determination of apportionment was made affords a substantially similar remedy.

(u) The prevailing party in an action initiated by a person for the collection of estate taxes from a person interested in the estate to whom estate taxes were apportioned and charged under subsection (b) may be awarded necessary expenses, including reasonable attorney fees.

(v) Nothing in this act shall be construed as creating a lien on real estate.

(w) This act is named and may be cited as the Kansas estate tax apportionment act.

Sec. 2. K.S.A. 2000 Supp. 79-15,120, 79-15,121, 79-15,122, 79-15,123 and 79-15,124 are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.