

Regular Session, 2011
HOUSE BILL NO. 123

ACT No. 346

BY REPRESENTATIVE RICHARD AND SENATOR THOMPSON

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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AN ACT

To amend and reenact R.S. 6:765(B) and 767(D) and R.S. 9:2449(B) and to enact R.S. 9:2432 through 2439, relative to the estate tax apportionment; to authorize the payment of certain savings or shares; to provide for the death of a member or depositor; to provide for the withholding of taxes; to provide exemptions, deductions, and credits when apportioning taxes; to provide an action for the recovery of taxes paid; to provide for actions against nonresidents; to provide for the estate tax marital deduction; to provide for individual retirement accounts; to provide for retroactive application; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 6:765(B) and 767(D) are hereby amended and reenacted to read as follows:

§765. Shares or savings accounts payable to two or more persons; survivorship

* * *

~~B. No association paying any such account in accord with this Section shall thereby be liable for any estate, inheritance, or succession taxes which may be due this state.~~ The pledge to an association of all or part of a savings account or shares owned or subscribed for by two or more persons, executed by a person upon whose signature withdrawals may be made shall, unless the terms of the savings account provide specifically to the contrary, be a valid pledge and transfer to the association of all the shares or savings pledges.

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§767. Death of member or depositor

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1 D. ~~Except as authorized by Subsections C and E of this Section and R.S.~~
2 ~~6:765, no association domiciled and doing business in Louisiana shall transfer any~~
3 ~~shares or savings or demand accounts pursuant to any part of this Section to any heir,~~
4 ~~legatee, or representative of any deceased person under any order, judgment, or~~
5 ~~decree of any court in or outside of this state until the inheritance taxes due the state~~
6 ~~of Louisiana, if any, have been fixed and paid, nor shall any such association pay the~~
7 ~~withdrawal value of any shares or savings or demand accounts to any such heir,~~
8 ~~legatee, or representative of any deceased person pursuant to any Subpart of this~~
9 ~~Section until the inheritance taxes due on the shares or accounts have been fixed and~~
10 ~~paid. Any association paying or transferring shares or accounts prior to the~~
11 ~~Louisiana inheritance taxes being fixed and paid shall be liable for the tax due on the~~
12 ~~shares or savings accounts. Any association may pay to the surviving spouse the~~
13 ~~value of any savings or demand account or shares standing in the name of the~~
14 ~~decendent in such association without authorization by any court proceeding, order,~~
15 ~~or judgment, whether the savings account or shares belong to the separate estate of~~
16 ~~the decendent or to the community property regime which existed between the~~
17 ~~decendent and the surviving spouse, subject to the provisions of R.S. 9:1513.~~

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19 Section 2. R.S. 9:2449(B) is hereby amended and reenacted and R.S. 9:2432 through
20 2439 are hereby enacted to read as follows:

21 §2432. Apportionment of tax liability among persons interested in estate

22 A. If the deceased has made no provision in his testament for the
23 apportionment of the tax among the persons interested in the estate, the tax shall be
24 apportioned among them by the court in the proportion that the value of the interest
25 of each person interested in the estate bears to the total value of the interests of all
26 persons interested in the estate. The values used in determining the tax shall be used
27 for this purpose.

28 B. If the deceased has provided in his testament for the apportionment of the
29 tax among all the persons interested in the estate, the court shall apportion the tax as
30 directed by the deceased.

1 C. If the deceased has provided in his testament for the apportionment of the
2 tax of some, but not of all the persons interested in the estate, the amount of the tax
3 which has not been apportioned shall be apportioned by the court among those as to
4 whom no provision has been made, in the same manner as is provided in Subsection
5 A of this Section.

6 §2433. No apportionment between principal and income beneficiaries of trust and
7 between usufructuaries and naked owners

8 No beneficial interest in income from a trust and no usufruct shall be subject
9 to apportionment as between the principal beneficiary in the case of the trust and the
10 naked owner in the case of the usufruct. The tax on the beneficial interest in income
11 from a trust or the usufruct shall be chargeable against the principal of the trust or
12 the naked ownership of the property in the case of the usufruct. The court shall order
13 that portion of the property subject to the usufruct, or that portion of the trust
14 principal subject to the rights of an income beneficiary, to be sold in whole or in part
15 to pay the tax apportioned in accordance with this Section. Thereafter, only the
16 balance of the property remaining after the sale or the balance of the proceeds of the
17 sale not necessary for the payment of the tax shall be subject to the usufruct or the
18 rights of an income beneficiary of a trust. To avoid the sale or other disposition of
19 property which is subject to a usufruct or an income interest in a trust to satisfy the
20 tax liability, the usufructuary and the naked owner, or the principal beneficiary and
21 the income beneficiary, may agree to the method of and responsibility for payment
22 of the tax.

23 §2434. Fiduciary's right to withhold or recover proportion of tax attributable to
24 persons interested in estate; security by person interested in estate for
25 payment of tax

26 A. The fiduciary or other person in possession of the property of the
27 deceased required to pay the tax may withhold from any property distributable to any
28 person interested in the estate, upon its distribution to him, the amount of tax
29 attributable to his interest. If the property in possession of the fiduciary or other
30 person required to pay the tax and distributable to any person interested in the estate

1 is insufficient to satisfy the proportionate amount of the tax determined to be due
2 from the person, the fiduciary or other person required to pay the tax may recover the
3 deficiency from the person interested in the estate. If the property is not in the
4 possession of the fiduciary or other person required to pay the tax, the fiduciary or
5 other person required to pay the tax may recover from any person interested in the
6 estate, in accordance with R.S. 9:2436, the amount of the tax apportioned to that
7 person as provided in R.S. 9:2432.

8 B. If property is to be distributed prior to final apportionment of the tax, the
9 court may require, upon application of the fiduciary or other person who may be
10 required to pay the tax, any person who is to share in the distribution of the estate to
11 provide a bond or other security for the apportionment liability in the form and
12 amount prescribed by the court. This application shall be made by contradictory
13 motion or rule to show cause.

14 §2435. Allowance for exemptions, deductions, and credits

15 A. In making an apportionment, allowances shall be made for any
16 exemptions granted, any classification made of persons interested in the estate, and
17 for any deductions and credits allowed by the law imposing the tax.

18 B. Any exemption or deduction allowed by reason of the relationship of any
19 person to the decedent or by reason of the purposes of the gift shall inure to the
20 benefit of the person bearing such relationship or receiving the gift, except when an
21 interest is subject to a prior present interest which is not allowable as a deduction,
22 the tax apportionable against the present interest shall be paid from principal.

23 C. Any deduction for property previously taxed and any credit for gift taxes
24 or death taxes of a foreign country paid by the decedent or his estate shall inure to
25 the proportionate benefit of all persons liable to apportionment.

26 D. Any credit for inheritance, succession or estate taxes, or taxes in the
27 nature thereof in respect to property or interests includable in the estate shall inure
28 to the benefit of the persons or interests chargeable with the payment thereof to the
29 extent that or in proportion as the credit reduces the tax.

1 E. To the extent that property passing to or in trust for a surviving spouse or
2 any charitable, public, or similar gift or bequest does not constitute an allowable
3 deduction for purposes of the tax solely by reason of an inheritance tax imposed
4 upon and deductible from the property, the property shall not be included in the
5 computation provided for in R.S. 9:2432, and to that extent no apportionment shall
6 be made against the property. This Subsection shall not apply where the result will
7 deprive the estate of a deduction otherwise allowable under Section 2053(d) of the
8 Internal Revenue Code of 1954 of the United States, relating to deduction for state
9 death taxes on transfers for public, charitable, or religious uses.

10 §2436. Action to recover amount of tax or deficiency from person interested in
11 estate; time of filing; liability of fiduciary

12 A. A fiduciary or other person required to pay the tax has a right of action
13 against any person interested in the estate to recover the original amount of the tax
14 apportioned to the person, and any additional amounts based upon the assertion of
15 deficiencies in the amount of the tax, and if the amounts sued for have become
16 uncollectible at the time of the filing of the suit, the tax or the deficiencies shall be
17 equitably apportioned among the other persons interested in the estate and subject
18 to apportionment.

19 B. This action shall be instituted as an ordinary proceeding. If the action is
20 for the recovery of the original amount of the tax apportioned, it shall be instituted
21 within a reasonable time after the expiration of one year from the date of payment.
22 If the action is for the recovery of a deficiency, it shall be instituted within a
23 reasonable time after the expiration of one year from the date of payment of the
24 deficiency. Unless the action has been timely instituted, the fiduciary or other person
25 required to pay the tax or the deficiency shall not be entitled to reimbursement for
26 any portion of the tax or deficiency which he may have paid or has been required to
27 pay and shall, in addition, be liable to any person interested in the estate for any loss
28 occasioned by the delay.

1 §2437. Action by nonresident; reciprocity

2 A. A fiduciary or any other person required to pay the tax due who is
 3 domiciled or residing in a jurisdiction other than Louisiana, has a right of action for
 4 the proportionate amount (1) of the federal estate tax, (2) of an estate tax payable to
 5 another state, or (3) of a death duty due by the estate of a person deceased to another
 6 state, against any person interested in the estate domiciled or residing in Louisiana
 7 or who owns property in Louisiana subject to attachment or execution. This action
 8 shall be brought as an ordinary proceeding in the domicile of the defendant or, if not
 9 domiciled or residing in Louisiana, in the court of the parish where the property of
 10 the defendant is situated.

11 B. For the purposes of this action, the apportionment of the tax liability as
 12 determined by the court having jurisdiction of the administration of the estate of the
 13 deceased in the other state shall be prima facie correct.

14 C. With respect to the federal tax, this Section applies only if apportionment
 15 of the tax is authorized by congress. In all other respects, this Section applies only
 16 if the other state or jurisdiction affords a substantially similar remedy to a Louisiana
 17 resident.

18 §2438. Application of provisions

19 R.S. 9:2431 through 2437 shall not apply to taxes due on account of the death
 20 of a person dying prior to January 1, 1961.

21 §2439. Estate tax marital deduction; formula qualifying

22 A. In the event of the death of any person after December 31, 1981, if the
 23 testament contains a formula expressly providing that the spouse is to receive the
 24 maximum amount of property qualifying for the federal estate tax marital deduction
 25 allowable by federal law, the formula shall be construed as referring to the federal
 26 estate tax marital deduction as allowable by federal law as provided by Section
 27 2056(a) of the Internal Revenue Code as amended by Section 403 of the Economic
 28 Recovery Tax Act of 1981.

29 B. The provisions of this Section shall not apply unless:

30 (1) The decedent dies after December 31, 1981.

1 (2) By reason of the death, property is acquired by the decedent's spouse
 2 under a formula provided in the testament.

3 (3) The formula provided in the testament was not amended or otherwise
 4 changed as permitted by the laws of this state at any time on or after September 12,
 5 1981, and before the death of the decedent.

6 C. It is the intention of this Section to allow an increase in the amount of the
 7 federal estate tax marital deduction available to certain estates by reason of Section
 8 2056 of the Internal Revenue Code to be conferred upon estates that would have
 9 been excluded from the benefits of Section 403 of the Economic Recovery Tax Act
 10 of 1981. To the extent necessary, this Section shall be retroactive to January 1, 1982.

11 D. Nothing contained in the provisions of this Section shall be construed to
 12 impinge upon the legitime of a forced heir or to divest the rights of a forced heir to
 13 the legitime.

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15 §2449. Individual retirement accounts; payment of benefits

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17 ~~B. No account holder paying a beneficiary in accordance with this Section~~
 18 ~~shall be liable to the estate or any heir of the decedent nor shall the account holder~~
 19 ~~be liable for any estate, inheritance, or succession taxes which may be due the state.~~
 20 The provisions of this Section shall apply even when the decedent designates a
 21 beneficiary by last will and testament.

22 Section 3. This Act is declared to be remedial, curative, and procedural and therefore
 23 is to be applied retroactively as well as prospectively.

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 PRESIDENT OF THE SENATE

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____