

ASSEMBLY BILL NO. 348—ASSEMBLYMEN OHRENSCHALL,
SHERWOOD, MUNFORD; AIZLEY, CARLTON, CARRILLO,
DALY, DIAZ, FLORES, HANSEN, HARDY, HICKEY, KITE,
PIERCE AND SEGERBLOM

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the apportionment of federal transfer taxes upon the death of a person. (BDR 12-569)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to estates; revising provisions governing the apportionment of federal transfer taxes upon the death of a person; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires that upon the death of a person, if the person’s estate is
2 insufficient to pay all federal gift taxes or federal generation-skipping transfer taxes
3 due, the unpaid tax must be paid on a pro rata basis by those persons receiving the
4 transfers which triggered the tax in the proportion that the value of the property,
5 interest or benefit of each such person bears to the total value of the property
6 subject to the federal tax, unless the donor or decedent provided otherwise in
7 writing. (NRS 150.400) This bill provides that notwithstanding such provisions of
8 law relating to the apportionment of federal transfer taxes upon the death of a
9 person: (1) such provisions must not be construed to allow the apportionment or
10 enforcement of the collection of any tax to the extent such tax has not been paid
11 and the collection thereof is no longer enforceable under applicable federal law;
12 and (2) a recipient of a transfer is not required to pay tax in an amount that exceeds
13 the value of the property received by the recipient or the maximum amount payable
14 by the recipient under federal law, whichever is less.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** (Deleted by amendment.)



1 **Sec. 2.** NRS 150.400 is hereby amended to read as follows:

2 150.400 **1.** Except as otherwise provided by the donor or
3 decedent in writing:

4 ~~1-1~~ **(a)** Except as otherwise provided in ~~[subsection 3,]~~
5 *paragraph (c)*, for gifts that were made subject to the federal gift tax
6 and in cases where the decedent's estate is insufficient to pay all
7 federal gift taxes due at the time of the decedent's death, the unpaid
8 federal gift tax must be borne on a pro rata basis by those receiving
9 the transfers that triggered the tax in the proportion that the value of
10 the property, interest or benefit of each such person bears to the total
11 value of the property subject to the federal gift tax.

12 ~~2-1~~ **(b)** The federal generation-skipping transfer tax must be
13 borne on a pro rata basis by those persons receiving the transfers
14 that triggered the tax in the proportion that the value of the property,
15 interest or benefit of each such person bears to the total value of the
16 property subject to the federal generation-skipping transfer tax.

17 ~~3-1~~ **(c)** The application of exclusions, exemptions, deferrals or
18 other provisions of the law available at the time of each transfer
19 must be applied in chronological order to the transfers to which they
20 relate.

21 ~~4-1~~ **(d)** To the extent issues remain unresolved after applying
22 the principles set forth in ~~[subsections 1, 2 and 3,]~~ *paragraphs (a),*
23 *(b) and (c)*, the provisions of NRS 150.290 to 150.380, inclusive:

24 ~~(a)~~ **(1)** Must be applied to determine the allocation,
25 apportionment and collection of federal transfer taxes other than the
26 federal estate tax, including, without limitation, the federal gift tax
27 and the federal generation-skipping transfer tax; and

28 ~~(b)~~ **(2)** Must be applied to determine the procedures for the
29 judicial determination of the apportionment of federal transfer taxes
30 other than the federal estate tax, including, without limitation, the
31 federal gift tax and the federal generation-skipping transfer tax.

32 **2. Notwithstanding the provisions of subsection 1:**

33 **(a) This section must not be construed to allow the**
34 *apportionment or enforcement of the collection of any tax to the*
35 *extent such tax has not been paid and the collection thereof is no*
36 *longer enforceable under applicable federal law; and*

37 **(b) A recipient of a transfer is not required to pay tax in an**
38 *amount that exceeds the value of the property received by the*
39 *recipient or the maximum amount payable by the recipient under*
40 *federal law, whichever is less.*

41 **3. As used in this section, "estate" means all property**
42 *included for federal estate tax purposes in determining the federal*
43 *estate tax pursuant to the federal estate tax law.*

