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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO TAXATION -- ESTATE AND TRANSFER TAXES

Introduced By: Senators McCaffrey, and Lynch

Date Introduced: February 16, 2011

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 44-22 of the General Laws entitled "Estate and Transfer Taxes -
2 Liability and Computation" is hereby amended by adding thereto the following section:

3 **44-22-1.2. Construction of wills and trusts containing formula marital clauses. – (a)**

4 If a testator or settlor, under the terms of a governing instrument executed prior to September 12,
5 1981, leaves outright to or in trust for the benefit of that testator's surviving spouse an amount or
6 fractional share of that testator's or settlor's estate or a trust estate expressed in terms of one-half
7 of that testator's federal adjusted gross estate, or by any other reference to the maximum estate
8 tax marital deduction allowable under federal law without referring, either in that governing
9 instrument or in any codicil or amendment thereto, specifically to the unlimited federal estate tax
10 marital deduction enacted as part of the economic recovery tax act of 1981, such expression shall,
11 unless subsection (b) or (c) of this section applies, be construed as referring to the unlimited
12 federal estate tax marital deduction, and also as expressing such amount of fractional share, as the
13 case may be, in terms of the minimum amount which will cause the least possible amount of
14 federal estate tax to be payable as a result of the testator's or settlor's death, taking into account
15 other property passing to the surviving spouse that qualifies for the marital deduction at the value
16 at which it qualifies, and also taking into account all credits against the federal estate tax, but only
17 to the extent that the use of these credits do not increase the estate taxes payable.

18 (b) If this subsection applies to a testator or settlor, such expression shall be construed as
19 referring to the estate tax marital deduction allowed by the federal law immediately prior to the

1 enactment of the unlimited estate tax marital deduction as part of the economic recovery tax act
2 of 1981. This subsection applies if subsection (c) of this section does not apply and:

3 (1) The application of this subsection to the testator or settlor will not cause an increase in
4 the federal estate taxes payable as a result of the testator's or settlor's death over the amount of
5 such taxes which would be payable if subsection (a) of this section applied; or

6 (2) The testator or settlor amended the governing instrument containing such expression
7 after December 31, 1981, without amending such expression to refer expressly to the unlimited
8 federal estate tax marital deduction.

9 (c) If the governing instrument contains language expressly stating that federal law of a
10 particular time prior to January 1, 1982, is to govern the construction or interpretation of such
11 expression, the expression shall be construed as referring to the marital deduction allowable under
12 federal law in force and effect as of that time.

13 (d) If subsection (b) or (c) of this section applies to the testator or settlor, the expression
14 shall not be construed as referring to any property that the executor of the testator's or settlor's
15 estate or other authorized fiduciary elects to qualify for the federal estate tax marital deduction as
16 qualified terminable interest property. If subsection (a) of this section applies to the testator or
17 settlor, any provision shall be construed as referring to any property that the executor of the
18 testator's or settlor's estate or other authorized fiduciary elects to qualify for the federal estate tax
19 marital deduction as qualified terminable interest property, but only to the extent that such
20 construction does not cause the amount of fractional share left to or for the benefit of the
21 surviving spouse to be reduced below the amount that would pass under subsection (b) or (c) of
22 this section, whichever is applicable.

23 (e) This section is effective with respect to testators and settlors dying after December 31,
24 1981.

25 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
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1 This act would provide for the construction of wills and trusts executed prior to
2 September 12, 1981 that contain marital deduction formula clauses in a manner that would
3 provide for the optimum federal estate tax marital deduction. This would enable wills and trusts
4 executed prior to September 12, 1981, to qualify for the unlimited Rhode Island estate tax marital
5 deduction available after federal estate tax law permitted an unlimited federal estate tax marital
6 deduction. Prior to September 12, 1981, wills and trusts using a formula clause that utilized the
7 “maximum” or “optimum” marital deduction would obtain a marital deduction for one-half of the
8 adjusted gross estate, the most permitted under federal law.

9 This act would take effect upon passage.

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