HB4650

LRB099 19931 HLH 44330 b

99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB4650

by Rep. Stephanie A. Kifowit

SYNOPSIS AS INTRODUCED:

35 ILCS 405/2 from Ch. 120, par. 405A-2

Amends the Illinois Estate and Generation-Skipping Transfer Tax Act. Provides that the value of farm property transferred to a qualified heir shall not be included in the decedent's taxable estate for the purposes of calculating the State tax credit if any qualified heir of the decedent will be engaged in active management of the farm for a period of at least 10 years after the date of the transfer, or until the death of that qualified heir, whichever occurs first. Defines "active management", "farm property", and "qualified heir". Effective immediately.

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FISCAL NOTE ACT
MAY APPLY

A BILL FOR

AN ACT concerning revenue.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Estate and Generation-Skipping Transfer Tax Act is amended by changing Section 2 as follows:

(35 ILCS 405/2) (from Ch. 120, par. 405A-2)

Sec. 2. Definitions.

"Federal estate tax" means the tax due to the United States with respect to a taxable transfer under Chapter 11 of the Internal Revenue Code.

"Federal generation-skipping transfer tax" means the tax due to the United States with respect to a taxable transfer under Chapter 13 of the Internal Revenue Code.

"Federal return" means the federal estate tax return with respect to the federal estate tax and means the federal generation-skipping transfer tax return with respect to the federal generation-skipping transfer tax.

"Federal transfer tax" means the federal estate tax or the federal generation-skipping transfer tax.

"Illinois estate tax" means the tax due to this State with respect to a taxable transfer.

"Illinois generation-skipping transfer tax" means the tax due to this State with respect to a taxable transfer that gives rise to a federal generation-skipping transfer tax.

"Illinois transfer tax" means the Illinois estate tax or the Illinois generation-skipping transfer tax.

"Internal Revenue Code" means, unless otherwise provided, the Internal Revenue Code of 1986, as amended from time to time.

"Non-resident trust" means a trust that is not a resident of this State for purposes of the Illinois Income Tax Act, as amended from time to time.

"Person" means and includes any individual, trust, estate, partnership, association, company or corporation.

"Qualified heir" means a qualified heir as defined in Section 2032A(e)(1) of the Internal Revenue Code.

"Resident trust" means a trust that is a resident of this State for purposes of the Illinois Income Tax Act, as amended from time to time.

"State" means any state, territory or possession of the United States and the District of Columbia.

"State tax credit" means:

(a) For persons dying on or after January 1, 2003 and through December 31, 2005, an amount equal to the full credit calculable under Section 2011 or Section 2604 of the Internal Revenue Code as the credit would have been computed and allowed under the Internal Revenue Code as in effect on December 31, 2001, without the reduction in the State Death Tax Credit as provided in Section 2011(b)(2) or the termination of the State

Death Tax Credit as provided in Section 2011(f) as enacted by the Economic Growth and Tax Relief Reconciliation Act of 2001, but recognizing the increased applicable exclusion amount through December 31, 2005.

(b) For persons dying after December 31, 2005 and on or before December 31, 2009, and for persons dying after December 31, 2010, an amount equal to the full credit calculable under Section 2011 or 2604 of the Internal Revenue Code as the credit would have been computed and allowed under the Internal Revenue Code as in effect on December 31, 2001, without the reduction in the State Death Tax Credit as provided in Section 2011(b)(2) or the termination of the State Death Tax Credit as provided in Section 2011(f) as enacted by the Economic Growth and Tax Relief Reconciliation Act of 2001, but recognizing the exclusion amount of only (i) $2,000,000 for persons dying prior to January 1, 2012, (ii) $3,500,000 for persons dying on or after January 1, 2012 and prior to January 1, 2013, and (iii) $4,000,000 for persons dying on or after January 1, 2013, and with reduction to the adjusted taxable estate for any qualified terminable interest property election as defined in subsection (b-1) of this Section. <u>For persons dying on or after July 1, 2016, for the purposes of computing the State tax credit, the person's adjusted taxable estate shall not include the value of farm property transferred to a qualified heir if any qualified heir of the decedent will be engaged in active management of the farm for a period of at least 10 years after the date of the</u>

transfer, or until the death of that qualified heir, whichever occurs first. For the purposes of this subsection (b):

"Active management" means material participation, as defined in Section 469 of the Internal Revenue Code.

"Farm property" means any real property or tangible personal property used for farming purposes.

"Farming purposes" means:

(1) cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of animals on a farm;

(2) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

(3) the planting, cultivating, caring for, or cutting of trees, or the preparation, other than milling, of trees for market.

"Qualified heir" means:

(1) an ancestor of the decedent;

(2) the spouse of the decedent;

(3) a lineal descendant of any of the following: (i) the decedent, (ii) the decedent's spouse, or (iii) a parent of the decedent; or

(4) the spouse of any lineal descendant described

<u>in item (3).</u>

(b-1) The person required to file the Illinois return may elect on a timely filed Illinois return a marital deduction for qualified terminable interest property under Section 2056(b)(7) of the Internal Revenue Code for purposes of the Illinois estate tax that is separate and independent of any qualified terminable interest property election for federal estate tax purposes. For purposes of the Illinois estate tax, the inclusion of property in the gross estate of a surviving spouse is the same as under Section 2044 of the Internal Revenue Code.

In the case of any trust for which a State or federal qualified terminable interest property election is made, the trustee may not retain non-income producing assets for more than a reasonable amount of time without the consent of the surviving spouse.

"Taxable transfer" means an event that gives rise to a state tax credit, including any credit as a result of the imposition of an additional tax under Section 2032A(c) of the Internal Revenue Code.

"Transferee" means a transferee within the meaning of Section 2603(a)(1) and Section 6901(h) of the Internal Revenue Code.

"Transferred property" means:

(1) With respect to a taxable transfer occurring at the death of an individual, the deceased individual's gross

estate as defined in Section 2031 of the Internal Revenue Code.

(2) With respect to a taxable transfer occurring as a result of a taxable termination as defined in Section 2612(a) of the Internal Revenue Code, the taxable amount determined under Section 2622(a) of the Internal Revenue Code.

(3) With respect to a taxable transfer occurring as a result of a taxable distribution as defined in Section 2612(b) of the Internal Revenue Code, the taxable amount determined under Section 2621(a) of the Internal Revenue Code.

(4) With respect to an event which causes the imposition of an additional estate tax under Section 2032A(c) of the Internal Revenue Code, the qualified real property that was disposed of or which ceased to be used for the qualified use, within the meaning of Section 2032A(c)(1) of the Internal Revenue Code.

"Trust" includes a trust as defined in Section 2652(b)(1) of the Internal Revenue Code.

(Source: P.A. 96-789, eff. 9-8-09; 96-1496, eff. 1-13-11; 97-636, eff. 6-1-12.)

Section 99. Effective date. This Act takes effect upon becoming law.