

1 AN ACT concerning taxation.

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

4 Section 5. The Illinois Estate and Generation-Skipping
5 Transfer Tax Act is amended by changing Sections 2, 3, 5, 6,
6 7, 8, and 10 as follows:

7 (35 ILCS 405/2) (from Ch. 120, par. 405A-2)

8 Sec. 2. Definitions.

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

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

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

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

21 "Illinois estate tax" means the tax due to this State
22 with respect to a taxable transfer ~~that--gives--rise--to--a~~
23 ~~federal-estate-tax.~~

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

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

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

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

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

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

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

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

13 "State tax credit" means:

14 (a) For persons dying on or after January 1, 2003 and
15 through December 31, 2005, an amount equal to the full credit
16 calculable under Section 2011 or Section 2604 of the Internal
17 Revenue Code as the credit would have been computed and
18 allowed under the Internal Revenue Code as in effect on
19 December 31, 2001, without the reduction in the State Death
20 Tax Credit as provided in Section 2011(b)(2) or the
21 termination of the State Death Tax Credit as provided in
22 Section 2011(f) as enacted by the Economic Growth and Tax
23 Relief Reconciliation Act of 2001, but recognizing the
24 increased applicable exclusion amount through December 31,
25 2005.

26 (b) For persons dying after December 31, 2005 and on or
27 before December 31, 2009, an amount equal to the full credit
28 calculable under Section 2011 or 2604 of the Internal Revenue
29 Code as the credit would have been computed and allowed under
30 the Internal Revenue Code as in effect on December 31, 2001,
31 without the reduction in the State Death Tax Credit as
32 provided in Section 2011(b)(2) or the termination of the
33 State Death Tax Credit as provided in Section 2011(f) as
34 enacted by the Economic Growth and Tax Relief Reconciliation

1 Act of 2001, but recognizing the exclusion amount of only
2 \$2,000,000.

3 (c) For persons dying after December 31, 2009, the
4 credit for state tax allowable under Section 2011 or Section
5 2604 of the Internal Revenue Code.

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

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

13 "Transferred property" means:

14 (1) With respect to a taxable transfer occurring at
15 the death of an individual ~~that results in the imposition~~
16 ~~of federal estate tax~~, the deceased individual's gross
17 estate as defined in Section 2031 of the Internal Revenue
18 Code.

19 (2) With respect to a taxable transfer occurring as
20 a result of a taxable termination as defined in Section
21 2612(a) of the Internal Revenue Code, the taxable amount
22 determined under Section 2622(a) of the Internal Revenue
23 Code.

24 (3) With respect to a taxable transfer occurring as
25 a result of a taxable distribution as defined in Section
26 2612(b) of the Internal Revenue Code, the taxable amount
27 determined under Section 2621(a) of the Internal Revenue
28 Code.

29 (4) With respect to an event which causes the
30 imposition of an additional estate tax under Section
31 2032A(c) of the Internal Revenue Code, the qualified real
32 property that was disposed of or which ceased to be used
33 for the qualified use, within the meaning of Section
34 2032A(c)(1) of the Internal Revenue Code.

1 "Trust" includes a trust as defined in Section 2652(b)(1)
 2 of the Internal Revenue Code.
 3 (Source: P.A. 86-737.)

4 (35 ILCS 405/3) (from Ch. 120, par. 405A-3)

5 Sec. 3. Illinois estate tax.

6 (a) Imposition of Tax. An Illinois estate tax is
 7 imposed on every taxable transfer involving transferred
 8 property having a tax situs within the State of Illinois.

9 (b) Amount of tax. The amount of the Illinois estate
 10 tax shall be the maximum state tax credit, as defined in
 11 Section 2 of this Act, allowable with respect to the taxable
 12 transfer reduced by the lesser of:

13 (1) the amount of the state tax credit paid to any
 14 other state or states; and

15 (2) the amount determined by multiplying the
 16 maximum state tax credit allowable with respect to the
 17 taxable transfer by the percentage which the gross value
 18 of the transferred property not having a tax situs in
 19 Illinois bears to the gross value of the total
 20 transferred property.

21 (Source: P.A. 86-737.)

22 (35 ILCS 405/5) (from Ch. 120, par. 405A-5)

23 Sec. 5. Determination of tax situs and valuation.

24 (a) Illinois estate tax.

25 (1) For purposes of the Illinois estate tax, in the
 26 case of a decedent who was a resident of this State at
 27 the time of death, all of the transferred property has a
 28 tax situs in this State, including any such property held
 29 in trust, except real or tangible personal property
 30 physically situated in another state.

31 (2) For purposes of the Illinois estate tax, in the
 32 case of a decedent who was not a resident of this State

1 at the time of death, the transferred property having a
2 tax situs in this State, including any such property held
3 in trust, is only the real estate and tangible personal
4 property physically situated in this State.

5 (b) Illinois generation-skipping transfer tax.

6 (1) For purposes of the Illinois
7 generation-skipping transfer tax, all transferred
8 property from or in a resident trust has a tax situs in
9 this State, including any such property held in trust,
10 except real or tangible personal property physically
11 situated in another state on the date that the taxable
12 transfer occurs.

13 (2) For purposes of the Illinois
14 generation-skipping transfer tax, none of the transferred
15 property from or in a non-resident trust has a tax situs
16 in this State, except that portion of the transferred
17 property that is real or tangible personal property
18 physically situated in this State, including any such
19 property held in trust, on the date that the taxable
20 transfer occurs.

21 (c) Valuation. Except as otherwise expressly provided,
22 for purposes of this Act, the gross value of transferred
23 property shall be its value as finally determined for
24 purposes of the related federal transfer tax, undiminished by
25 any mortgages, liens or other encumbrances upon such
26 transferred property for which the decedent was personally
27 liable.

28 (Source: P.A. 86-737.)

29 (35 ILCS 405/6) (from Ch. 120, par. 405A-6)

30 Sec. 6. Returns and payments.

31 (a) Due Dates. The Illinois transfer tax shall be paid
32 and the Illinois transfer tax return shall be filed on the
33 due date or dates, respectively, including extensions, for

1 paying the related federal transfer tax and filing the
2 related federal return.

3 (b) Installment payments and deferral. In the event
4 that any portion of the federal transfer tax is deferred or
5 to be paid in installments under the provisions of the
6 Internal Revenue Code, the portion of the Illinois transfer
7 tax which is subject to deferral or payable in installments
8 shall be determined by multiplying the Illinois transfer tax
9 by a fraction, the numerator of which is the gross value of
10 the assets included in the transferred property having a tax
11 situs in this State and which give rise to the deferred or
12 installment payment under the Internal Revenue Code, and the
13 denominator of which is the gross value of all assets
14 included in the transferred property having a tax situs in
15 this State. Deferred payments and installment payments, with
16 interest, shall be paid at the same time and in the same
17 manner as payments of the federal transfer tax are required
18 to be made under the applicable Sections of the Internal
19 Revenue Code, provided that the rate of interest on unpaid
20 amounts of Illinois transfer tax shall be determined under
21 this Act. Acceleration of payment under this Section shall
22 occur under the same circumstances and in the same manner as
23 provided in the Internal Revenue Code.

24 (c) Who shall file and pay. The Illinois transfer tax
25 return (including any supplemental or amended return) shall
26 be filed, and the Illinois transfer tax (including any
27 additional tax that may become due) shall be paid by the same
28 person or persons, respectively, who are required to pay the
29 related federal transfer tax and file the related federal
30 return, or who would have been required to pay a federal
31 transfer tax and file a federal return if a federal transfer
32 tax were due.

33 (d) Where to file return. The executed Illinois
34 transfer tax return shall be filed with the Attorney General.

1 In addition, a copy of the Illinois transfer tax return shall
2 be filed with the county treasurer to whom the Illinois
3 transfer tax is paid, determined under subsection (e) of this
4 Section.

5 (e) Where to pay tax. The Illinois transfer tax shall
6 be paid to the treasurer of the county determined under the
7 following rules:

8 (1) Illinois Estate Tax. The Illinois estate tax
9 shall be paid to the treasurer of the county in which the
10 decedent was a resident on the date of the decedent's
11 death or, if the decedent was not a resident of this
12 State on the date of death, the county in which the
13 greater part, by gross value, of the transferred property
14 with a tax situs in this State is located.

15 (2) Illinois Generation-Skipping Transfer Tax. The
16 Illinois generation-skipping transfer tax involving
17 transferred property from or in a resident trust shall be
18 paid to the county treasurer for the county in which the
19 grantor resided at the time the trust became irrevocable
20 (in the case of an inter vivos trust) or the county in
21 which the decedent resided at death (in the case of a
22 trust created by the will of a decedent). In the case of
23 an Illinois generation-skipping transfer tax involving
24 transferred property from or in a non-resident trust, the
25 Illinois generation-skipping transfer tax shall be paid
26 to the county treasurer for the county in which the
27 greater part, by gross value, of the transferred property
28 with a tax situs in this State is located.

29 (f) Forms; confidentiality. The Illinois transfer tax
30 return shall be in all respects in the manner and form
31 prescribed by the regulations of the Attorney General. At
32 the same time the Illinois transfer tax return is filed, the
33 person required to file shall also file with the Attorney
34 General a copy of the related federal return. For individuals

1 dying after December 31, 2005, in cases where no federal
2 return is required to be filed, the person required to file
3 an Illinois return shall also file with the Attorney General
4 schedules of assets in the manner and form prescribed by the
5 Attorney General. The Illinois transfer tax return and the
6 copy of the federal return filed with the Attorney General or
7 any county treasurer shall be confidential, and the Attorney
8 General, each county treasurer and all of their assistants or
9 employees are prohibited from divulging in any manner any of
10 the contents of those returns, except only in a proceeding
11 instituted under the provisions of this Act.

12 (g) County Treasurer shall accept payment. No county
13 treasurer shall refuse to accept payment of any amount due
14 under this Act on the grounds that the county treasurer has
15 not yet received a copy of the appropriate Illinois transfer
16 tax return.

17 (Source: P.A. 86-737.)

18 (35 ILCS 405/7) (from Ch. 120, par. 405A-7)

19 Sec. 7. Supplemental returns; refunds.

20 (a) Supplemental returns. If the State tax credit is
21 increased after the filing of the Illinois transfer tax
22 return, the person or persons required to file the Illinois
23 transfer tax return and pay the Illinois transfer tax shall
24 file a supplemental Illinois transfer tax return. The
25 supplemental return shall be filed and the additional tax
26 shall be paid in the same place and manner as provided in
27 Section 6 of this Act. The due date for the supplemental
28 return and for the payment of the additional tax reported in
29 the supplemental return shall be no later than 3 months after
30 the earliest of:

31 (1) the date an amended~~7-related~~ federal return is
32 filed;

33 (2) the date an increase in the federal transfer

1 tax is paid or accepted in writing; or

2 (3) the date the Internal Revenue Service issues a
3 request for evidence of payment of the State tax credit;
4 or

5 (4) the date that any increase to the taxable
6 estate is discovered;

7 provided that if the related federal transfer tax may be
8 deferred or paid in installments, then part or all of the
9 additional Illinois transfer tax may be deferred or paid in
10 installments under rules consistent with subsection (b) of
11 Section 6 of this Act.

12 (b) Refunds. If the state tax credit is reduced after
13 the filing of the Illinois transfer tax return, the person
14 who paid the Illinois transfer tax (or the person upon whom
15 the burden of payment fell) shall file an amended Illinois
16 transfer tax return and shall be entitled to a refund of tax
17 or interest paid on the Illinois transfer tax. No interest
18 shall be paid on any amount refunded.

19 (Source: P.A. 86-737.)

20 (35 ILCS 405/8) (from Ch. 120, par. 405A-8)

21 Sec. 8. Penalties for failure to file tax return or to
22 pay tax.

23 (a) Failure to file return. In case of failure to file
24 any return required under this Act with the Attorney General
25 by the due date, unless it is shown that the failure to file
26 is due to a reasonable cause, there shall be added to the
27 amount required to be shown as tax on the return 5% of the
28 amount of that tax (or 5% of the additional tax due in the
29 case of a supplemental return) if the failure is for not more
30 than one month from the due date, with an additional 5% for
31 each additional month or fraction of a month thereafter
32 during which the failure to file continues, not exceeding in
33 the aggregate 25% of the tax or, in the case of a

1 supplemental return, 25% of the additional tax.

2 (b) Failure to pay tax. In the case of failure to pay
3 the amount of tax shown due on any return required under this
4 Act on or before the due date for payment of that tax, unless
5 it is shown that the failure to pay is due to reasonable
6 cause, there shall be added to the unpaid amount of the tax
7 0.5% of that unpaid amount if the failure is for not more
8 than one month from the due date, with an additional 0.5% for
9 each additional month or fraction of a month thereafter
10 during which the failure to pay continues, not exceeding in
11 the aggregate 25% of the unpaid amount.

12 (c) Extensions of Time.

13 (1) Internal Revenue Service Extensions. If the
14 date for filing the related federal return or the date
15 for payment of the related federal transfer tax is
16 extended by the Internal Revenue Service, the filing of
17 the return and payment of the tax imposed by this Act
18 shall be due on the respective date specified by the
19 Internal Revenue Service in granting a request for
20 extension. If the request for extension is granted by
21 the Internal Revenue Service, the person required to file
22 the Illinois transfer tax return shall furnish the
23 Attorney General with a copy of the request for extension
24 showing approval of the extension by the Internal Revenue
25 Service. If a request for extension of time to file the
26 federal return is denied by the Internal Revenue Service,
27 no penalty shall be due under this Act if the return
28 required by this Act is filed within the time specified
29 by the Internal Revenue Service for filing the federal
30 return. If a request for extension of time to pay the
31 federal transfer tax is denied by the Internal Revenue
32 Service, no penalty shall be due under this Act if the
33 tax is paid within the time specified by the Internal
34 Revenue Service for paying the federal transfer tax.

1 (2) Attorney General Extensions. The person or
2 persons required to file the Illinois transfer tax return
3 and to pay the Illinois transfer tax may apply to the
4 Attorney General for an extension of time to file the
5 Illinois transfer tax return or to pay the Illinois
6 transfer tax. The application must establish reasonable
7 cause why it is impossible or impractical to file a
8 reasonably complete return or to pay the full amount of
9 tax due by the due date. The Attorney General may for
10 reasonable cause extend the time for filing the return or
11 paying the tax for a reasonable period from the date
12 fixed for filing the return or paying the tax.

13 (d) Waiver of Penalties.

14 (1) Internal Revenue Service Waiver. If the
15 Internal Revenue Service waives the penalty provided in
16 the Internal Revenue Code for failure to timely file the
17 related federal return or the penalty for failure to
18 timely pay the related federal transfer tax liability,
19 such waiver or waivers shall be deemed to constitute
20 reasonable cause for purposes of this Section.

21 (2) Attorney General Waiver. The Attorney General
22 may waive the penalty or penalties for failure to file or
23 pay for reasonable cause, notwithstanding the failure of
24 the Internal Revenue Service to waive the penalty or
25 penalties for failure to timely file the federal transfer
26 tax return or to pay the federal transfer tax.

27 (Source: P.A. 86-737.)

28 (35 ILCS 405/10) (from Ch. 120, par. 405A-10)

29 Sec. 10. Liens and Personal Liability.

30 (a) Lien for Illinois transfer tax. Unless the Illinois
31 transfer tax is sooner paid in full, the Illinois transfer
32 tax shall be a lien in favor of this State upon the
33 transferred property having a tax situs within this State for

1 10 years from the date of the taxable transfer, or, in the
2 case of Illinois transfer tax subject to deferral or payable
3 in installments, the later of 10 years from the date of the
4 taxable transfer or one year after the last deferred or
5 installment payment may become due. The lien imposed by this
6 Section on the transferred property shall not be valid as
7 against any purchaser, mortgagee, pledgee, or other holder of
8 a security interest for a full and adequate consideration in
9 money or money's worth; provided, however, that any property,
10 consideration or proceeds received as a result of any sale,
11 mortgage, pledge or granting of a security interest shall
12 remain subject to the lien imposed by this Section. In
13 addition, the lien imposed by this Section on the transferred
14 property shall be subject to the exceptions set forth in
15 Section 6324(c)(i) of the Internal Revenue Code as if the
16 lien were a lien imposed by that Section. In no event shall
17 the issuance by the Attorney General of a release of the lien
18 imposed by this subsection be required with respect to the
19 sale, mortgage, pledge, granting of a security interest in,
20 transfer or distribution of transferred property.

21 (b) Special lien for property valued under Section 2032A
22 of the Internal Revenue Code. In the event the Illinois
23 estate tax is reduced as a result of an election under
24 Section 2032A of the Internal Revenue Code, then an amount
25 equal to the additional Illinois estate tax that would be due
26 in the absence of such an election shall be a lien in favor
27 of this State on the transferred property that has a tax
28 situs in this State and is subject to such election. The
29 lien imposed by this subsection shall arise at the time an
30 election is filed under Section 2032A of the Internal Revenue
31 Code and shall continue with respect to such transferred
32 property:

33 (1) until the liability for the Illinois estate tax
34 with respect to such transferred property has been

1 satisfied or has become unenforceable by reason of lapse
2 of time or otherwise; or

3 (2) until it is established to the satisfaction of
4 the Attorney General that no further tax liability may
5 arise under this Act with respect to such transferred
6 property.

7 The lien imposed by this subsection shall not be valid as
8 against any purchaser, mortgagee, pledgee, other holder of a
9 security interest, mechanic's lien, or judgment lien creditor
10 until notice of such lien has been filed as provided by the
11 laws of this State. In regulations prescribed in accordance
12 with Section 16 of this Act, the Attorney General may require
13 that the qualified heir file such notice of lien. Even
14 though notice of said lien has been filed as provided in the
15 preceding sentence, such lien shall be subject to the rules
16 set forth in paragraph (3) of Section 6324A(d) of the
17 Internal Revenue Code as if the lien were a lien imposed by
18 that Section.

19 (c) Personal liability. If the Illinois transfer tax is
20 not paid when due, then the person required to file the
21 related federal return and the transferee of any transferred
22 property having a tax situs within this State shall be
23 personally liable for the Illinois transfer tax, to the
24 extent of such transferred property originally received,
25 controlled or transferred to that person or transferee, less
26 the amount of any expenses or charges against the transferred
27 property, related to the taxable transfer, which have a
28 higher priority of payment under applicable law than the
29 Illinois transfer tax.

30 (d) Collection. The Attorney General shall have the
31 right to sue for collection of the Illinois transfer tax for
32 3 years after the date of the actual filing of the related
33 Illinois transfer tax return with the Attorney General, or,
34 if later, the last date upon which application for refund of

1 the Illinois transfer tax could be filed with the State
2 Treasurer.

3 (e) Waiver of lien and personal liability. If the
4 Attorney General is satisfied that no liability for Illinois
5 transfer tax exists or that the Illinois transfer tax has
6 been fully discharged or provided for, the Attorney General
7 shall issue a certificate releasing all of the transferred
8 property having a tax situs within the State of Illinois from
9 the lien imposed by this Section. Issuance of such
10 certificate shall discharge the person required to file the
11 Illinois ~~related--federal~~ return and any transferee from
12 personal liability for the Illinois transfer tax.

13 (Source: P.A. 86-737.)

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