



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**

Introduced 2/5/2004, by Peter J. Roskam

**SYNOPSIS AS INTRODUCED:**

35 ILCS 405/2	from Ch. 120, par. 405A-2
35 ILCS 405/3	from Ch. 120, par. 405A-3
35 ILCS 405/5	from Ch. 120, par. 405A-5
35 ILCS 405/6	from Ch. 120, par. 405A-6
35 ILCS 405/7	from Ch. 120, par. 405A-7
35 ILCS 405/8	from Ch. 120, par. 405A-8
35 ILCS 405/10	from Ch. 120, par. 405A-10

Amends the Illinois Estate and Generation-Skipping Transfer Tax Act. Restores the imposition and collection of the tax to its status prior to June 20, 2003 (the effective date of Public Act 93-30). Effective immediately.

LRB093 19350 SJM 45086 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning taxes.

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, 7,  
6 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 States  
10 with respect to a taxable transfer under Chapter 11 of the  
11 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 the  
20 federal generation-skipping transfer tax.

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

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

32 "Non-resident trust" means a trust that is not a resident

1 of this State for purposes of the Illinois Income Tax Act, as  
2 amended from time to time.

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

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

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

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

12 "State tax credit" means:

13 (a) For persons dying on or after January 1, 2003 and  
14 through the effective date of this amendatory Act of the 93rd  
15 General Assembly December 31, 2005, an amount equal to the full  
16 credit calculable under Section 2011 or Section 2604 of the  
17 Internal Revenue Code as the credit would have been computed  
18 and allowed under the Internal Revenue Code as in effect on  
19 December 31, 2001, without the reduction in the State Death Tax  
20 Credit as provided in Section 2011(b) (2) or the termination of  
21 the State Death Tax Credit as provided in Section 2011(f) as  
22 enacted by the Economic Growth and Tax Relief Reconciliation  
23 Act of 2001, but recognizing the increased applicable exclusion  
24 amount through December 31, 2005.

25 (b) (Blank). ~~For persons dying after December 31, 2005 and~~  
26 ~~on or before December 31, 2009, an amount equal to the full~~  
27 ~~credit calculable under Section 2011 or 2604 of the Internal~~  
28 ~~Revenue Code as the credit would have been computed and allowed~~  
29 ~~under the Internal Revenue Code as in effect on December 31,~~  
30 ~~2001, without the reduction in the State Death Tax Credit as~~  
31 ~~provided in Section 2011(b) (2) or the termination of the State~~  
32 ~~Death Tax Credit as provided in Section 2011(f) as enacted by~~  
33 ~~the Economic Growth and Tax Relief Reconciliation Act of 2001,~~  
34 ~~but recognizing the exclusion amount of only \$2,000,000.~~

35 (c) For persons dying on or after the effective date of  
36 this amendatory Act of the 93rd General Assembly December 31,

1 ~~2009~~, the credit for state tax allowable under Section 2011 or  
2 Section 2604 of the Internal Revenue Code.

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

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

10 "Transferred property" means:

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

15 (2) With respect to a taxable transfer occurring as a  
16 result of a taxable termination as defined in Section  
17 2612(a) of the Internal Revenue Code, the taxable amount  
18 determined under Section 2622(a) of the Internal Revenue  
19 Code.

20 (3) With respect to a taxable transfer occurring as a  
21 result of a taxable distribution as defined in Section  
22 2612(b) of the Internal Revenue Code, the taxable amount  
23 determined under Section 2621(a) of the Internal Revenue  
24 Code.

25 (4) With respect to an event which causes the  
26 imposition of an additional estate tax under Section  
27 2032A(c) of the Internal Revenue Code, the qualified real  
28 property that was disposed of or which ceased to be used  
29 for the qualified use, within the meaning of Section  
30 2032A(c) (1) of the Internal Revenue Code.

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

33 (Source: P.A. 93-30, eff. 6-20-03.)

34 (35 ILCS 405/3) (from Ch. 120, par. 405A-3)

35 Sec. 3. Illinois estate tax.

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

4 (b) Amount of tax. The amount of the Illinois estate tax  
5 shall be the maximum state tax credit allowable ~~, as defined in~~  
6 ~~Section 2 of this Act,~~ with respect to the taxable transfer  
7 reduced by the lesser of:

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

10 (2) the amount determined by multiplying the maximum  
11 state tax credit allowable with respect to the taxable  
12 transfer by the percentage which the gross value of the  
13 transferred property not having a tax situs in Illinois  
14 bears to the gross value of the total transferred property.

15 (Source: P.A. 93-30, eff. 6-20-03.)

16 (35 ILCS 405/5) (from Ch. 120, par. 405A-5)

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

18 (a) Illinois estate tax.

19 (1) For purposes of the Illinois estate tax, in the  
20 case of a decedent who was a resident of this State at the  
21 time of death, all of the transferred property has a tax  
22 situs in this State, including any such property held in  
23 trust, except real or tangible personal property  
24 physically situated in another state.

25 (2) For purposes of the Illinois estate tax, in the  
26 case of a decedent who was not a resident of this State at  
27 the time of death, the transferred property having a tax  
28 situs in this State, including any such property held in  
29 trust, is only the real estate and tangible personal  
30 property physically situated in this State.

31 (b) Illinois generation-skipping transfer tax.

32 (1) For purposes of the Illinois generation-skipping  
33 transfer tax, all transferred property from or in a  
34 resident trust has a tax situs in this State, including any  
35 such property held in trust, except real or tangible

1 personal property physically situated in another state on  
2 the date that the taxable transfer occurs.

3 (2) For purposes of the Illinois generation-skipping  
4 transfer tax, none of the transferred property from or in a  
5 non-resident trust has a tax situs in this State, except  
6 that portion of the transferred property that is real or  
7 tangible personal property physically situated in this  
8 State, including any such property held in trust, on the  
9 date that the taxable transfer occurs.

10 (c) Valuation. Except as otherwise expressly provided, for  
11 purposes of this Act, the gross value of transferred property  
12 shall be its value as finally determined for purposes of the  
13 related federal transfer tax, undiminished by any mortgages,  
14 liens or other encumbrances upon such transferred property for  
15 which the decedent was personally liable.

16 (Source: P.A. 93-30, eff. 6-20-03.)

17 (35 ILCS 405/6) (from Ch. 120, par. 405A-6)

18 Sec. 6. Returns and payments.

19 (a) Due Dates. The Illinois transfer tax shall be paid and  
20 the Illinois transfer tax return shall be filed on the due date  
21 or dates, respectively, including extensions, for paying the  
22 related federal transfer tax and filing the related federal  
23 return.

24 (b) Installment payments and deferral. In the event that  
25 any portion of the federal transfer tax is deferred or to be  
26 paid in installments under the provisions of the Internal  
27 Revenue Code, the portion of the Illinois transfer tax which is  
28 subject to deferral or payable in installments shall be  
29 determined by multiplying the Illinois transfer tax by a  
30 fraction, the numerator of which is the gross value of the  
31 assets included in the transferred property having a tax situs  
32 in this State and which give rise to the deferred or  
33 installment payment under the Internal Revenue Code, and the  
34 denominator of which is the gross value of all assets included  
35 in the transferred property having a tax situs in this State.

1 Deferred payments and installment payments, with interest,  
2 shall be paid at the same time and in the same manner as  
3 payments of the federal transfer tax are required to be made  
4 under the applicable Sections of the Internal Revenue Code,  
5 provided that the rate of interest on unpaid amounts of  
6 Illinois transfer tax shall be determined under this Act.  
7 Acceleration of payment under this Section shall occur under  
8 the same circumstances and in the same manner as provided in  
9 the Internal Revenue Code.

10 (c) Who shall file and pay. The Illinois transfer tax  
11 return (including any supplemental or amended return) shall be  
12 filed, and the Illinois transfer tax (including any additional  
13 tax that may become due) shall be paid by the same person or  
14 persons, respectively, who are required to pay the related  
15 federal transfer tax and file the related federal return, ~~or~~  
16 ~~who would have been required to pay a federal transfer tax and~~  
17 ~~file a federal return if a federal transfer tax were due.~~

18 (d) Where to file return. The executed Illinois transfer  
19 tax return shall be filed with the Attorney General. In  
20 addition, a copy of the Illinois transfer tax return shall be  
21 filed with the county treasurer to whom the Illinois transfer  
22 tax is paid, determined under subsection (e) of this Section.

23 (e) Where to pay tax. The Illinois transfer tax shall be  
24 paid to the treasurer of the county determined under the  
25 following rules:

26 (1) Illinois Estate Tax. The Illinois estate tax shall  
27 be paid to the treasurer of the county in which the  
28 decedent was a resident on the date of the decedent's death  
29 or, if the decedent was not a resident of this State on the  
30 date of death, the county in which the greater part, by  
31 gross value, of the transferred property with a tax situs  
32 in this State is located.

33 (2) Illinois Generation-Skipping Transfer Tax. The  
34 Illinois generation-skipping transfer tax involving  
35 transferred property from or in a resident trust shall be  
36 paid to the county treasurer for the county in which the

1 grantor resided at the time the trust became irrevocable  
2 (in the case of an inter vivos trust) or the county in  
3 which the decedent resided at death (in the case of a trust  
4 created by the will of a decedent). In the case of an  
5 Illinois generation-skipping transfer tax involving  
6 transferred property from or in a non-resident trust, the  
7 Illinois generation-skipping transfer tax shall be paid to  
8 the county treasurer for the county in which the greater  
9 part, by gross value, of the transferred property with a  
10 tax situs in this State is located.

11 (f) Forms; confidentiality. The Illinois transfer tax  
12 return shall be in all respects in the manner and form  
13 prescribed by the regulations of the Attorney General. At the  
14 same time the Illinois transfer tax return is filed, the person  
15 required to file shall also file with the Attorney General a  
16 copy of the related federal return. ~~For individuals dying after~~  
17 ~~December 31, 2005, in cases where no federal return is required~~  
18 ~~to be filed, the person required to file an Illinois return~~  
19 ~~shall also file with the Attorney General schedules of assets~~  
20 ~~in the manner and form prescribed by the Attorney General.~~ The  
21 Illinois transfer tax return and the copy of the federal return  
22 filed with the Attorney General or any county treasurer shall  
23 be confidential, and the Attorney General, each county  
24 treasurer and all of their assistants or employees are  
25 prohibited from divulging in any manner any of the contents of  
26 those returns, except only in a proceeding instituted under the  
27 provisions of this Act.

28 (g) County Treasurer shall accept payment. No county  
29 treasurer shall refuse to accept payment of any amount due  
30 under this Act on the grounds that the county treasurer has not  
31 yet received a copy of the appropriate Illinois transfer tax  
32 return.

33 (Source: P.A. 93-30, eff. 6-20-03.)

34 (35 ILCS 405/7) (from Ch. 120, par. 405A-7)

35 Sec. 7. Supplemental returns; refunds.



1 (a) Supplemental returns. If the State tax credit is  
2 increased after the filing of the Illinois transfer tax return,  
3 the person or persons required to file the Illinois transfer  
4 tax return and pay the Illinois transfer tax shall file a  
5 supplemental Illinois transfer tax return. The supplemental  
6 return shall be filed and the additional tax shall be paid in  
7 the same place and manner as provided in Section 6 of this Act.  
8 The due date for the supplemental return and for the payment of  
9 the additional tax reported in the supplemental return shall be  
10 no later than 3 months after the earliest of:

11 (1) the date an amended, related federal return is  
12 filed;

13 (2) the date an increase in the federal transfer tax is  
14 paid or accepted in writing; or

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

17 ~~(4) the date that any increase to the taxable estate is~~  
18 ~~discovered;~~

19 provided that if the related federal transfer tax may be  
20 deferred or paid in installments, then part or all of the  
21 additional Illinois transfer tax may be deferred or paid in  
22 installments under rules consistent with subsection (b) of  
23 Section 6 of this Act.

24 (b) Refunds. If the state tax credit is reduced after the  
25 filing of the Illinois transfer tax return, the person who paid  
26 the Illinois transfer tax (or the person upon whom the burden  
27 of payment fell) shall file an amended Illinois transfer tax  
28 return and shall be entitled to a refund of tax or interest  
29 paid on the Illinois transfer tax. No interest shall be paid on  
30 any amount refunded.

31 (Source: P.A. 93-30, eff. 6-20-03.)

32 (35 ILCS 405/8) (from Ch. 120, par. 405A-8)

33 Sec. 8. Penalties for failure to file tax return or to pay  
34 tax.

35 (a) Failure to file return. In case of failure to file any

1 return required under this Act with the Attorney General by the  
2 due date, unless it is shown that the failure to file is due to  
3 a reasonable cause, there shall be added to the amount required  
4 to be shown as tax on the return 5% of the amount of that tax  
5 (or 5% of the additional tax due in the case of a supplemental  
6 return) if the failure is for not more than one month from the  
7 due date, with an additional 5% for each additional month or  
8 fraction of a month thereafter during which the failure to file  
9 continues, not exceeding in the aggregate 25% of the tax or, in  
10 the case of a supplemental return, 25% of the additional tax.

11 (b) Failure to pay tax. In the case of failure to pay the  
12 amount of tax shown due on any return required under this Act  
13 on or before the due date for payment of that tax, unless it is  
14 shown that the failure to pay is due to reasonable cause, there  
15 shall be added to the unpaid amount of the tax 0.5% of that  
16 unpaid amount if the failure is for not more than one month  
17 from the due date, with an additional 0.5% for each additional  
18 month or fraction of a month thereafter during which the  
19 failure to pay continues, not exceeding in the aggregate 25% of  
20 the unpaid amount.

21 (c) Extensions of Time.

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

1 specified by the Internal Revenue Service for filing the  
2 federal return. If a request for extension of time to pay  
3 the federal transfer tax is denied by the Internal Revenue  
4 Service, no penalty shall be due under this Act if the tax  
5 is paid within the time specified by the Internal Revenue  
6 Service for paying the federal transfer tax.

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

19 (d) Waiver of Penalties.

20 (1) Internal Revenue Service Waiver. If the Internal  
21 Revenue Service waives the penalty provided in the Internal  
22 Revenue Code for failure to timely file the related federal  
23 return or the penalty for failure to timely pay the related  
24 federal transfer tax liability, such waiver or waivers  
25 shall be deemed to constitute reasonable cause for purposes  
26 of this Section.

27 (2) Attorney General Waiver. The Attorney General may  
28 waive the penalty or penalties for failure to file or pay  
29 for reasonable cause, notwithstanding the failure of the  
30 Internal Revenue Service to waive the penalty or penalties  
31 for failure to timely file the federal transfer tax return  
32 or to pay the federal transfer tax.

33 (Source: P.A. 93-30, eff. 6-20-03.)

34 (35 ILCS 405/10) (from Ch. 120, par. 405A-10)  
35 Sec. 10. Liens and Personal Liability.

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

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

36           (1) until the liability for the Illinois estate tax

1 with respect to such transferred property has been  
2 satisfied or has become unenforceable by reason of lapse of  
3 time or otherwise; or

4 (2) until it is established to the satisfaction of the  
5 Attorney General that no further tax liability may arise  
6 under this Act with respect to such transferred 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 though  
14 notice of said lien has been filed as provided in the preceding  
15 sentence, such lien shall be subject to the rules set forth in  
16 paragraph (3) of Section 6324A(d) of the Internal Revenue Code  
17 as if the lien were a lien imposed by that Section.

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

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

34 (e) Waiver of lien and personal liability. If the Attorney  
35 General is satisfied that no liability for Illinois transfer  
36 tax exists or that the Illinois transfer tax has been fully

1 discharged or provided for, the Attorney General shall issue a  
2 certificate releasing all of the transferred property having a  
3 tax situs within the State of Illinois from the lien imposed by  
4 this Section. Issuance of such certificate shall discharge the  
5 person required to file the related federal ~~Illinois~~ return and  
6 any transferee from personal liability for the Illinois  
7 transfer tax.

8 (Source: P.A. 93-30, eff. 6-20-03.)

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