

SENATE BILL NO. 343

BY SENATOR MARIONNEAUX (On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 283, 3061, 3228, and 3396.18(B),
3 and R.S. 9:1514(A)(1), (2) and (4) and (B), 1551(B), 1552(C) and (D), 2156(C)(10),
4 2157, 2431(7) and 3839, and R.S. 23:638, and R.S. 33:1501, 4545.23, 4546.16, and
5 R.S. 47:55(2), 1673, and 2451; and to repeal Code of Civil Procedure Articles 2951,
6 2953 and 2954, and R.S. 6:653.4(F), 765(C), and 767(E), and R.S. 8:814, and R.S.
7 9:1552(E), 2432 through 2439, and 2449(C), and R.S. 12:603(F), and R.S. 40:33(H);
8 all relating to inheritance taxes; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Civil Procedure Articles 283, 3061, 3228, and 3396.18(B) are
11 hereby amended and reenacted to read as follows:

12 Art. 283. Orders and judgments which may be signed by district court clerk

13 A. The clerk of a district court may sign any of the following orders or
14 judgments:

15 (1) An order or judgment effecting or evidencing the doing of any of the acts
16 authorized in Article 282;

17 (2) An order for the issuance of executory process, of a writ of attachment
18 or of sequestration, or of garnishment process under a writ of fieri facias, attachment,
19 or of sequestration; the release under bond of property seized under a writ of
20 attachment or of sequestration; or to permit the filing of an intervention;

21 (3) An order for the execution of a probated testament; the affixing of seals;
22 the taking of an inventory; the public sale of succession property to pay debts, on the
23 written application of the succession representative accompanied by a list of the
24 debts of the succession; the advertisement of the filing of a tableau of distribution or
25 of an account by a legal representative; or requiring a legal representative to file an
26 account; or

1 the estate, of paying estate debts ~~and inheritance taxes~~, and for expenditures in the
2 regular course of business conducted in accordance with Article 3224. As security
3 for ~~such the~~ loans the court may authorize the succession representative to encumber
4 succession property upon ~~such the~~ terms and conditions as it may direct.

5 * * *

6 Art. 3396.18. Inventory or sworn descriptive list

7 * * *

8 B. A successor shall not be placed in possession of property without the
9 filing of an inventory or sworn descriptive list of assets and liabilities ~~and proof that~~
10 ~~the inheritance tax, if any, shown as due on the return has been paid.~~ The successor
11 may be placed in possession by a final or partial judgment of possession.

12 Section 2. R.S. 9:1514(A)(1), (2) and (4) and (B), 1551(B), 1552(C) and (D), 2156
13 (C)(10), 2157, 2431(7) and 3839 are hereby amended and reenacted to read as follows:

14 §1514. Credit unions; payment to surviving spouse without court proceedings

15 A.(1) Any credit union in Louisiana may pay to the surviving spouse the
16 value of any shares standing in the name of the decedent in ~~such the~~ credit union not
17 in excess of ten thousand dollars without any court proceedings, order or judgment
18 authorizing the same and without determining ~~whether or not any inheritance taxes~~
19 ~~may be due~~ or whether ~~said the~~ shares belong to the separate estate of decedent or
20 to the community which existed between the decedent and the surviving spouse. The
21 surviving spouse shall give to the paying depository an affidavit that the total funds
22 withdrawn do not exceed ten thousand dollars from all depositories.

23 (2) The receipt of the surviving spouse for ~~such the~~ payment shall constitute
24 a full release and discharge of the credit union for the amount paid ~~and for all~~
25 ~~inheritance taxes which may be determined to be due.~~ No person, natural or
26 juridical, shall have any right or cause of action against ~~such a~~ credit union because
27 of ~~such the~~ payment. ~~R.S. 47:2410 does not apply in such cases.~~

28 * * *

29 (4) The receipt of ~~the major child or children~~ **a major child** of the deceased
30 member for ~~such the~~ payment shall constitute a full release and discharge of the

1 credit union for the amount paid ~~and for all inheritance taxes which may be~~
2 ~~determined to be due.~~ No person, natural or juridical, shall have any right or cause
3 of action against ~~such a~~ credit union because of ~~such~~ **the** payment. ~~R.S. 47:2410~~
4 ~~shall not apply in such cases.~~

5 B.(1) Any credit union may pay to the surviving spouse of a depositor a sum
6 not to exceed ten thousand dollars out of the deposits of a decedent or out of deposits
7 of the community between the survivor and the decedent, deposited in the name of
8 decedent or of the survivor or in the name of the decedent jointly with the survivor
9 or otherwise, without any court proceedings, order or judgment authorizing the same
10 ~~or determining whether or not an inheritance tax is due.~~ The surviving spouse shall
11 give the paying depository an affidavit that the total funds withdrawn do not exceed
12 ten thousand dollars from all depositories.

13 (2) ~~In event of such payment, the~~ **The** receipt of the surviving spouse to
14 whom it **payment** is made is a full release and discharge of the payor credit union
15 for the amount paid ~~and for any inheritance tax determined to be due,~~ and no tax
16 collector, creditor, heir, personal representative, or any other person shall have any
17 right or cause of action against any credit union on account of the payment. ~~R.S.~~
18 ~~47:2410 does not apply to such cases.~~

19 * * *

20 §1551. Burial of unclaimed bodies

21 * * *

22 B. If a decedent's body is unclaimed by friends or relatives and the decedent
23 had known assets or property of a sufficient value to defray the expenses of burial,
24 the coroner shall cause the body to be interred within thirty days, preferably by a
25 recognized funeral home. The invoices for the expenses of the burial shall be
26 forwarded to ~~the inheritance tax collector and copies thereof shall be forwarded to~~
27 the public administrator if there is one in the parish or to the clerk of the district court
28 if there is no public administrator, and the person or official authorized by law to be
29 appointed administrator of the succession of the decedent shall provide for the
30 payment of the burial expenses out of the assets of the decedent in accordance with

1 the existing provisions of law for the administration of successions and in accordance
 2 with the provisions of this Part.

3 §1552. Administration of successions of value of \$500 **five hundred dollars** or less

4 * * *

5 C. The officials authorized by law to be appointed administrators of vacant
 6 successions shall have authority to administer those successions having assets of a
 7 value of five hundred dollars or less, and having no immovable property, in
 8 accordance with the procedure ~~contained~~ in Articles 3431 through 3434 of the
 9 ~~Louisiana~~ Code of Civil Procedure pertaining to small successions. ~~Such~~ **The**
 10 officials shall execute the affidavits required by Article 3432 of the ~~Louisiana~~ Code
 11 of Civil Procedure for heirs or surviving spouses, setting forth the additional fact that
 12 no friends or relatives or heirs of the decedent claimed the body of the decedent and
 13 that the decedent's burial was provided by the coroner pursuant to the provisions of
 14 this Part. Upon the execution of ~~such affidavits~~ **an affidavit** ~~with the endorsement~~
 15 ~~thereon of the inheritance tax collector provided by Article 3433 of the Louisiana~~
 16 ~~Code of Civil Procedure~~, the official authorized to be appointed administrator of the
 17 vacant succession shall have authority to receive all property and funds of the
 18 decedent and to execute a receipt and release therefor in accordance with the
 19 provisions of Article 3434 of the ~~Louisiana~~ Code of Civil Procedure applicable to
 20 heirs or surviving spouses. No judicial opening of the succession shall be required,
 21 and the official authorized hereby to act shall sell any property of the decedent, other
 22 than immovables, without inventory, ~~or appraisalment,~~ ~~or advertisement,~~ or judicial
 23 authorization ~~to such persons~~ at private sale upon ~~such~~ **the** terms and conditions and
 24 for ~~such a price as said~~ **the** official shall determine in his sound discretion. The
 25 proceeds of such sales and the funds of the decedent shall be disbursed in accordance
 26 with the provisions of this Section.

27 ~~D. If the inheritance tax collector has been notified by the coroner of the~~
 28 ~~burial of a person pursuant to the provisions of this Part, he shall not execute the~~
 29 ~~certificate provided by Article 3433 of the Louisiana Code of Civil Procedure for the~~
 30 ~~administration of small successions, wherein no judicial opening is required, unless~~

1 and until he shall ascertain that the heirs of the decedent have paid for the expenses
2 of the burial of the decedent either out of the decedent's assets or with their own
3 funds.

4 E. D. No coroner, public administrator, or clerk of court shall be liable for
5 any good faith acts taken or performed by him or pursuant to his direction in the
6 performance of his duties or in the exercise of his sound discretion pursuant to the
7 provisions of this Part. No bond shall be required of said the officials for the faithful
8 performance of the additional duties imposed by this Part.

9 * * *

10 §2156. Charges

11 * * *

12 C. The following charges shall be made against principal:

13 * * *

14 (10) The amount of an estate ~~or inheritance~~ tax apportioned to the trust,
15 including interest and penalties;

16 * * *

17 §2157. Inventory value defined

18 The term "inventory value," as used in this ~~Sub-part~~ Subpart, means the cost
19 of property purchased by the trustee and the market value of other property at the
20 time it became subject to the trust, but in the case of a testamentary trust the trustee
21 may use any value finally determined for the purposes of an estate ~~or inheritance~~ tax.

22 * * *

23 §2431. Definitions

24 Unless the context clearly indicates otherwise, the following terms have the
25 meaning ascribed to them in this Section:

26 * * *

27 (7) "Tax" means the Federal estate tax and the Louisiana estate transfer tax,
28 and includes interest and penalties imposed or accrued thereunder, ~~but it does not~~
29 ~~include the Louisiana inheritance tax.~~

30 * * *

1 §3839. Tax obligations

2 This Chapter does not affect any obligation of a corporation or transfer agent
 3 with respect to ~~estate, inheritance, succession or other~~ taxes imposed by the laws of
 4 Louisiana.

5 Section 3. R.S. 23:638 is hereby amended and reenacted to read as follows:

6 §638. Payment under retirement or other benefit plans; discharge of insurer, trustee
 7 or employee

8 A. Whenever payment or refund is made to any employee, former employee
 9 or his beneficiary or estate pursuant to a written retirement, death or other employee
 10 benefit plan or savings plan, ~~such~~ **the** payment or refund shall fully discharge the
 11 employer and any trustee or insurance company making ~~such~~ payment or refund
 12 from all adverse claims thereto ~~and from all liability for inheritance taxes due the~~
 13 ~~state~~, unless, before ~~such~~ **the** payment or refund is made, the employer or former
 14 employer, where the payment is made by the employer or former employer, has
 15 received at its principal place of business within this state, written notice by or on
 16 behalf of some other person ~~that such other person claims to be entitled to such~~
 17 **claiming to be entitled to the** payment or refund or some part thereof or where a
 18 trustee or insurance company is making the payment, such notice has been delivered
 19 by the employer to the home office of ~~such trustee or such~~ **the trustee or** insurance
 20 company or has otherwise been received by ~~said~~ **the** parties. In the event the
 21 employee is deceased and a judgment of possession has been entered in ~~his or her~~
 22 **the** succession, payment of ~~such~~ money, or portions thereof, pursuant to the terms
 23 of the judgment of possession shall likewise fully protect the employer and any
 24 trustee or insurance company making such payment unless before ~~such~~ **the** payment
 25 is made written notice of an adverse claim is received as provided herein.

26 B. Nothing contained in this Section shall affect any claim or right ~~or~~
 27 ~~inheritance tax~~ to or on any such payment or refund or part thereof as between all
 28 persons other than the employer and the trustee or insurance company making ~~such~~
 29 **a** payment or refund.

30 Section 4. R.S. 33:1501, 4545.23, and 4546.16 are hereby amended and reenacted

1 to read as follows:

2 §1501. Salary and expense fund of civil sheriff

3 There shall be a salary and expense fund for the office of the civil sheriff for
 4 the parish of Orleans. The sum of sixty-three thousand dollars shall be allowed for
 5 each calendar year toward the payment of compensation for all services required of
 6 the civil sheriff and toward the payment of all the expenses of his office, ~~forty~~
 7 ~~thousand dollars of which shall be paid into the salary and expense fund by the~~
 8 ~~inheritance tax collector from the avails of the inheritance tax collected in Orleans~~
 9 ~~Parish, and the remaining~~ twenty-three thousand dollars of which shall be paid into
 10 the salary and expense fund by the Board of Commissioners of the Orleans Levee
 11 District from millage levied by it. ~~Such~~ **The** sums shall be remitted annually in
 12 advance or in monthly installments, to the civil sheriff for the parish of Orleans.

13 * * *

14 §4545.23. Bonds exempt from taxation

15 Bonds, their transfer and the income therefrom, including any profit made on
 16 the sale thereof, shall at all times be exempt from all taxation by the state or any
 17 political subdivision thereof ~~excepting inheritance or estate taxes.~~

18 * * *

19 §4546.16. Bonds exempt from taxation

20 Bonds, their transfer and the income therefrom, including any profit made on
 21 the sale thereof, shall at all times be exempt from all taxation by the state or any
 22 political subdivision thereof ~~excepting inheritance or estate taxes.~~

23 Section 5. R.S. 47:55(2), 1673, and 2451 are hereby amended and reenacted to read
24 as follows:

25 §55. Deductions from gross income; taxes generally

26 In computing net income, there shall be allowed as deductions all taxes paid
 27 or accrued within the taxable year except:

28 * * *

29 (2) ~~Estate, inheritance, legacy, succession and gift taxes;~~

30 * * *

1 §1673. Application of provisions of this Chapter

2 ~~A.~~ The provisions of this Chapter shall be applicable in the assessment,
3 collection, administration, and enforcement of all taxes, licenses, fees, penalties, and
4 interest due the state of Louisiana under any Title of the Louisiana Revised Statutes
5 of 1950, ~~except the provisions of Chapter 1 of Subtitle IV of Title 47 of the~~
6 ~~Louisiana Revised Statutes of 1950 relative to inheritance and estate taxes,~~ that have
7 been delegated to the Department of Revenue, and the remedies and procedures
8 prescribed herein shall be in addition to and supplementary to any special remedies
9 and procedures prescribed in any other Title of the Louisiana Revised Statutes of
10 1950.

11 ~~B. In the event that any provision of this Chapter is found to be in conflict~~
12 ~~with the provisions of Chapter 1 of Subtitle IV of Title 47 of the Louisiana Revised~~
13 ~~Statutes of 1950 or of any other Title, the provision of such Chapter 1 of Subtitle IV~~
14 ~~of said Title 47 or other Title shall prevail over that herein contained, but the general~~
15 ~~validity or applicability of such provision of this Chapter in the assessment,~~
16 ~~collection, administration, or enforcement of other Titles shall not be affected by~~
17 ~~such conflict.~~

18 * * *

19 §2451. Claims and suits for refund

20 A. Claims for refund of any erroneous payment or overpayment made of
21 ~~inheritance, succession, legacy, or estate~~ **transfer** taxes paid to the secretary of the
22 Department of Revenue shall be filed with the secretary by the latest of the
23 following:

24 (1) Within fifteen months from the time ~~said~~ **the** erroneous payment or
25 overpayment was made by the taxpayer; ~~or,~~

26 (2) Within six months after the judgment of the highest court in which any
27 succession contest between the heirs and legatees becomes final; ~~or,~~

28 (3) Within six months after a payment of federal estate tax, as to which tax
29 a credit was allowed under the United States Internal Revenue Code for death taxes
30 paid to the state of Louisiana, is refunded, in whole or in part, or a judgment of court

1 for such refund becomes final, whichever is later, ~~or,~~

2 (4) Within ninety days after filing an amended federal estate tax return if the
3 credit allowed for death taxes paid to the state of Louisiana was reduced from the
4 federal estate tax return filed immediately prior to the amended return.

5 ~~(5) For deaths occurring after June 30, 2004, by June 30, 2008. All persons
6 who paid the tax levied under R.S. 47:2401 based on deaths occurring after June 30,
7 2004 may claim a refund between August 1, 2008 and December 31, 2009.~~

8 B. In the event the claim is denied, ~~then suit may be instituted by the taxpayer
9 within ninety days after the denial of the claim for the recovery of the erroneous
10 payment or overpayment against the secretary of the Department of Revenue the
11 aggrieved taxpayer may proceed with the remedies provided in R.S. 47:1625.~~

12 C. The state treasurer shall pay any amount recovered out of the general fund.

13 Section 6. Code of Civil Procedure Articles 2951, 2953 and 2954, and R.S.
14 6:653.4(F), 765(C), and 767(E), and R.S. 8:814, and R.S. 9:1552(E), 2432 through 2439, and
15 2449(C), and R.S. 12:603(F), and R.S. 40:33(H) are hereby repealed in their entirety.

16 Section 7. The Louisiana State Law Institute is hereby directed to delete the
17 semicolon and the phrase "necessity for paying inheritance tax" from the heading of R.S.
18 12:603 in order to reflect the repeal of R.S. 12:603(F).

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____