Regular Session, 2011

HOUSE BILL NO. 123

BY REPRESENTATIVE RICHARD

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX/INHERITANCE TAX: Provides for estate tax apportionment

AN ACT

To amend and reenact R.S. 6:765(B) and 767(D) and R.S. 9:2449(B) and to enact R.S. 9:2432 through 2439, relative to the estate tax apportionment; to authorize the payment of certain savings or shares; to provide for the death of a member or depositor; to provide for the withholding of taxes; to provide exemptions, deductions, and credits when apportioning taxes; to provide an action for the recovery of taxes paid; to provide for actions against nonresidents; to provide for the estate tax marital deduction; to provide for individual retirement accounts; to provide for retroactive application; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 6:765(B) and 767(D) are hereby amended and reenacted to read as follows:

§765. Shares or savings accounts payable to two or more persons; survivorship

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B. ~~No association paying any such account in accord with this Section shall thereby be liable for any estate, inheritance, or succession taxes which may be due this state.~~ The pledge to an association of all or part of a savings account or shares owned or subscribed for by two or more persons, executed by a person upon whose signature withdrawals may be made shall, unless the terms of the savings account

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provide specifically to the contrary, be a valid pledge and transfer to the association of all the shares or savings pledges.

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§767. Death of member or depositor

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D. ~~Except as authorized by Subsections C and E of this Section and R.S. 6:765, no association domiciled and doing business in Louisiana shall transfer any shares or savings or demand accounts pursuant to any part of this Section to any heir, legatee, or representative of any deceased person under any order, judgment, or decree of any court in or outside of this state until the inheritance taxes due the state of Louisiana, if any, have been fixed and paid, nor shall any such association pay the withdrawal value of any shares or savings or demand accounts to any such heir, legatee, or representative of any deceased person pursuant to any Subpart of this Section until the inheritance taxes due on the shares or accounts have been fixed and paid. Any association paying or transferring shares or accounts prior to the Louisiana inheritance taxes being fixed and paid shall be liable for the tax due on the shares or savings accounts.~~ Any association may pay to the surviving spouse the value of any savings or demand account or shares standing in the name of the decedent in such association without authorization by any court proceeding, order, or judgment, whether the savings account or shares belong to the separate estate of the decedent or to the community property regime which existed between the decedent and the surviving spouse, subject to the provisions of R.S. 9:1513.

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Section 2. R.S. 9:2449(B) is hereby amended and reenacted and R.S. 9:2432 through 2439 are hereby enacted to read as follows:

§2432. Apportionment of tax liability among persons interested in estate

A. If the deceased has made no provision in his testament for the apportionment of the tax among the persons interested in the estate, the tax shall be apportioned among them by the court in the proportion that the value of the interest

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of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for this purpose.

B. If the deceased has provided in his testament for the apportionment of the tax among all the persons interested in the estate, the court shall apportion the tax as directed by the deceased.

C. If the deceased has provided in his testament for the apportionment of the tax of some, but not of all the persons interested in the estate, the amount of the tax which has not been apportioned shall be apportioned by the court among those as to whom no provision has been made, in the same manner as is provided in Subsection A of this Section.

§2433. No apportionment between principal and income beneficiaries of trust and between usufructuaries and naked owners

No beneficial interest in income from a trust and no usufruct shall be subject to apportionment as between the principal beneficiary in the case of the trust and the naked owner in the case of the usufruct. The tax on the beneficial interest in income from a trust or the usufruct shall be chargeable against the principal of the trust or the naked ownership of the property in the case of the usufruct. The court shall order that portion of the property subject to the usufruct, or that portion of the trust principal subject to the rights of an income beneficiary, to be sold in whole or in part to pay the tax apportioned in accordance with this Section. Thereafter, only the balance of the property remaining after the sale or the balance of the proceeds of the sale not necessary for the payment of the tax shall be subject to the usufruct or the rights of an income beneficiary of a trust. To avoid the sale or other disposition of property which is subject to a usufruct or an income interest in a trust to satisfy the tax liability, the usufructuary and the naked owner, or the principal beneficiary and the income beneficiary, may agree to the method of and responsibility for payment of the tax.

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§2434. Fiduciary's right to withhold or recover proportion of tax attributable to persons interested in estate; security by person interested in estate for payment of tax

A. The fiduciary or other person in possession of the property of the deceased required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the fiduciary or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the fiduciary or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the fiduciary or other person required to pay the tax, the fiduciary or other person required to pay the tax may recover from any person interested in the estate, in accordance with R.S. 9:2436, the amount of the tax apportioned to that person as provided in R.S. 9:2432.

B. If property is to be distributed prior to final apportionment of the tax, the court may require, upon application of the fiduciary or other person who may be required to pay the tax, any person who is to share in the distribution of the estate to provide a bond or other security for the apportionment liability in the form and amount prescribed by the court. This application shall be made by contradictory motion or rule to show cause.

§2435. Allowance for exemptions, deductions, and credits

A. In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate, and for any deductions and credits allowed by the law imposing the tax.

B. Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift shall inure to the benefit of the person bearing such relationship or receiving the gift, except when an

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interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

C. Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate shall inure to the proportionate benefit of all persons liable to apportionment.

D. Any credit for inheritance, succession or estate taxes, or taxes in the nature thereof in respect to property or interests includable in the estate shall inure to the benefit of the persons or interests chargeable with the payment thereof to the extent that or in proportion as the credit reduces the tax.

E. To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in R.S. 9:2432, and to that extent no apportionment shall be made against the property. This Subsection shall not apply where the result will deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954 of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

§2436. Action to recover amount of tax or deficiency from person interested in estate; time of filing; liability of fiduciary

A. A fiduciary or other person required to pay the tax has a right of action against any person interested in the estate to recover the original amount of the tax apportioned to the person, and any additional amounts based upon the assertion of deficiencies in the amount of the tax, and if the amounts sued for have become uncollectible at the time of the filing of the suit, the tax or the deficiencies shall be equitably apportioned among the other persons interested in the estate and subject to apportionment.

B. This action shall be instituted as an ordinary proceeding. If the action is for the recovery of the original amount of the tax apportioned, it shall be instituted

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within a reasonable time after the expiration of one year from the date of payment. If the action is for the recovery of a deficiency, it shall be instituted within a reasonable time after the expiration of one year from the date of payment of the deficiency. Unless the action has been timely instituted, the fiduciary or other person required to pay the tax or the deficiency shall not be entitled to reimbursement for any portion of the tax or deficiency which he may have paid or has been required to pay and shall, in addition, be liable to any person interested in the estate for any loss occasioned by the delay.

§2437. Action by nonresident; reciprocity

A. A fiduciary or any other person required to pay the tax due who is domiciled or residing in a jurisdiction other than Louisiana, has a right of action for the proportionate amount (1) of the federal estate tax, (2) of an estate tax payable to another state, or (3) of a death duty due by the estate of a person deceased to another state, against any person interested in the estate domiciled or residing in Louisiana or who owns property in Louisiana subject to attachment or execution. This action shall be brought as an ordinary proceeding in the domicile of the defendant or, if not domiciled or residing in Louisiana, in the court of the parish where the property of the defendant is situated.

B. For the purposes of this action, the apportionment of the tax liability as determined by the court having jurisdiction of the administration of the estate of the deceased in the other state shall be prima facie correct.

C. With respect to the federal tax, this Section applies only if apportionment of the tax is authorized by Congress. In all other respects, this Section applies only if the other state or jurisdiction affords a substantially similar remedy to a Louisiana resident.

§2438. Application of provisions

R.S. 9:2431 through 2437 shall not apply to taxes due on account of the death of a person dying prior to January 1, 1961.

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§2439. Estate tax marital deduction; formula qualifying

A. In the event of the death of any person after December 31, 1981, if the testament contains a formula expressly providing that the spouse is to receive the maximum amount of property qualifying for the federal estate tax marital deduction allowable by federal law, the formula shall be construed as referring to the federal estate tax marital deduction as allowable by federal law as provided by Section 2056(a) of the Internal Revenue Code as amended by Section 403 of the Economic Recovery Tax Act of 1981.

B. The provisions of this Section shall not apply unless:

(1) The decedent dies after December 31, 1981.

(2) By reason of the death, property is acquired by the decedent's spouse under a formula provided in the testament.

(3) The formula provided in the testament was not amended or otherwise changed as permitted by the laws of this state at any time on or after September 12, 1981, and before the death of the decedent.

C. It is the intention of this Section to allow an increase in the amount of the federal estate tax marital deduction available to certain estates by reason of Section 2056 of the Internal Revenue Code to be conferred upon estates that would have been excluded from the benefits of Section 403 of the Economic Recovery Tax Act of 1981. To the extent necessary, this Section shall be retroactive to January 1, 1982.

D. Nothing contained in the provisions of this Section shall be construed to impinge upon the legitime of a forced heir or to divest the rights of a forced heir to the legitime.

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§2449. Individual retirement accounts; payment of benefits

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B. ~~No account holder paying a beneficiary in accordance with this Section shall be liable to the estate or any heir of the decedent nor shall the account holder be liable for any estate, inheritance, or succession taxes which may be due the state.~~

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The provisions of this Section shall apply even when the decedent designates a beneficiary by last will and testament.

Section 3. This Act is declared to be remedial, curative, and procedural and therefore is to be applied retroactively as well as prospectively.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Richard HB No. 123

Abstract: Provides for the apportionment of estate taxes.

Present law provides that when shares or savings accounts are payable to two or more persons and the association pays any one person, it is not liable for any estate, inheritance, or succession taxes due to this state.

Proposed law deletes present law and provides that a pledge of all or part of a savings account or shares owned by two or more persons made to an association by an eligible person, shall be a valid pledge and transfer.

Present law prohibits an association from transferring or paying the withdrawal value of any shares or savings or demand accounts to any heir, legatee, or representative until the inheritance taxes due are paid.

Proposed law deletes present law and authorizes an association to pay to a surviving spouse up to $10,000 of any savings or demand account or shares, without a court order and regardless of whether they are separate or community assets.

Proposed law provides that when a deceased does not arrange for the apportionment of taxes, the tax shall be apportioned among them in proportion to the value of the interest each person bears to the total value of the interests.

Proposed law provides that no beneficial interest in income from a trust and no usufruct shall be subject to apportionment with the principal beneficiary and the naked owner.

Proposed law provides that the person in possession of the property and required to pay the tax, may withhold, prior to distribution, the amount of tax attributable to each person's interest or the court can require interested persons to post a bond for the apportionment liability.

Proposed law provides for exemptions, deductions, and credits in making an apportionment because of a certain relationship to the decedent, previous gift received, or credit for taxes already paid.

Proposed law provides a right of action to recover the original amount of tax apportioned to each person and any additional amounts based on deficiencies in the amount. Provides for a one-year time limitation.

Proposed law provides that if a person required to pay the tax is domiciled outside of this state, he has a right of action for the proportionate amount of the federal estate tax, estate tax payable to another state, or a death duty due to another state.

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Proposed law provides that certain provisions of proposed law shall not apply to taxes due on account of the death of a person dying prior to Jan. 1, 1961.

Proposed law provides special provisions and exclusions regarding the estate tax marital deduction for the death of a person after Dec. 31, 1981. Provides that these provisions do not impinge upon the legitime of a forced heir.

Present law provides that no account holder paying benefits from an individual retirement account due to a death shall be liable for any estate, inheritance, or succession taxes due the state.

Proposed law deletes present law and provides that the provisions regarding benefits payable by reason of death from an individual retirement account shall apply regardless of the fact that the decedent designates a beneficiary.

Proposed law provides for retroactive application of the provisions of this Act.

(Amends R.S. 6:765(B) and 767(D) and R.S. 9:2449(B); Adds R.S. 9:2432-2439)

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