

**REVISION OF UNIFORM ESTATE TAX APPORTIONMENT ACT \***

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**REVISION OF UNIFORM ESTATE TAX APPORTIONMENT ACT**

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**DRAFTING COMMITTEE TO REVISE  
UNIFORM ESTATE TAX APPORTIONMENT ACT**

RICHARD V. WELLMAN, University of Georgia, School of Law, Athens, GA 30602, *Chair*

THOMAS L. JONES, University of Alabama School of Law, University Station, P.O. Box  
865557, Tuscaloosa, AL 35486-0050

EDWARD F. LOWRY, JR., 4200 N. 82nd St., Suite 2001, Scottsdale, AZ 85251

MATTHEW S. RAE, JR., 520 S. Grand Ave., 7th Floor, Los Angeles, CA 90071-2645

CHARLES A. TROST, Nashville City Center, 511 Union St., Suite 2100, Nashville, TN 37219

FRANK W. DAYKIN, 2180 Thomas Jefferson Dr., Reno, NV 89509, *Enactment Plan*

*Coordinator*

DOUGLAS A. KAHN, University of Michigan, Law School, 625 South State St., Ann Arbor, MI  
48109-1215, *Reporter*

**EX OFFICIO**

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JACK DAVIES, 687 Woodridge Dr., Mendota Heights, MN 55118, *Division Chair*

**AMERICAN BAR ASSOCIATION ADVISOR**

JOSEPH KARTIGANER, 812 Fifth Ave., New York, NY 10021

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WILLIAM H. HENNING, University of Alabama, School of Law, P.O. Box 870382,  
Tuscaloosa, AL 35487-0382, *Executive Director*

WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, *Executive Director Emeritus*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
211 E. Ontario Street, Suite 1300  
Chicago, Illinois 60611  
312/915-0195  
[www.nccusl.org](http://www.nccusl.org)

## **REVISION OF UNIFORM ESTATE TAX APPORTIONMENT ACT**

**SECTION 1. SHORT TITLE.** This [Act] may be cited as the Uniform Estate Tax Apportionment Act.

**SECTION 2. DEFINITIONS.** In this [Act]:

(1) “Apportionable estate” means, with respect to an estate tax, the value of the gross estate for the estate tax reduced by:

(A) any claim or expense allowable as a deduction for purposes of the tax;

(B) the value of any interest in property that, for purposes of the tax, qualifies for a marital or charitable deduction or otherwise is deductible or exempt; and

(C) any amount added to the decedent’s gross estate for a gift tax on transfers made before death.

(2) “Estate tax” means a federal, state, or foreign tax imposed because of the death of an individual and interest and penalties associated with the tax. The term does not include an inheritance tax, income tax, or generation-skipping transfer tax other than a generation-skipping transfer tax incurred on a direct skip taking effect at death.

(3) “Gross estate” means, with respect to an estate tax, all interests in property subject to the estate tax.

(4) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, or joint venture; government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(5) “Ratably” means apportioned or allocated pro rata according to the relative values of interests in property to which the term is to be applied.

(6) “Time-limited interest” means an interest in property which terminates on a lapse of time or on the occurrence or nonoccurrence of an event or which is subject to the exercise of

discretion that could transfer a beneficial interest to another person. The term does not include a cotenancy unless the cotenancy itself is a time-limited interest.

(7) “Value” means fair market value of an interest in property as finally determined for purposes of the estate tax that is to be apportioned, reduced by any outstanding debt secured by the interest without reduction for taxes paid or required to be paid or for any special valuation adjustment.

### **SECTION 3. APPORTIONMENT BY WILL OR OTHER DISPOSITIVE INSTRUMENT.**

(a) To the extent that a provision of a decedent’s will expressly and unambiguously directs or precludes the apportionment of an estate tax, the tax must be so apportioned.

(b) Any portion of an estate tax not apportioned pursuant to subsection (a) must be apportioned in accordance with any provision of a revocable trust of which the decedent was the settlor which expressly and unambiguously directs or precludes the apportionment of an estate tax. If conflicting apportionment provisions appear in two or more revocable trust instruments, the provision in the most recently dated instrument prevails. For purposes of this subsection:

(1) a revocable trust is a trust that was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and

(2) the date of an amendment to a revocable trust instrument is the date of the amended instrument only if the amendment contains an apportionment provision.

(c) If any portion of an estate tax is not apportioned pursuant to subsection (a) or (b), a provision in a dispositive instrument which expressly and unambiguously directs that any of the property disposed of by the instrument is or is not to be applied to the payment of the estate tax attributable to the property disposed of by the instrument controls the apportionment of the estate tax to that property.

(d) If a decedent gives a direction valid under this section that a person receiving an interest under an instrument is to be exonerated from the responsibility to pay an estate tax that would otherwise be apportioned to the interest, absent express and unambiguous language to the contrary, the tax attributable to the exonerated interest must be apportioned among the other persons receiving interests passing under the instrument or, if the values of the other interests are less than the tax attributable to the exonerated interest, the deficiency must be apportioned ratably among the other persons receiving interests in the apportionable estate that are not exonerated from apportionment of the tax.

(e) If a decedent gives a direction valid under this section that an estate tax is to be apportioned to an interest in property a portion of which qualifies for a marital or charitable deduction, unless the decedent's direction expressly and unambiguously provides that the tax be apportioned among holders of the deductible portion of the interest, the estate tax must first be apportioned ratably among the holders of the portion that does not qualify for a marital or charitable deduction and then apportioned ratably among the holders of the deductible portion to the extent that the value of the nondeductible portion is insufficient.

(f) Unless the decedent's direction expressly and unambiguously provides otherwise, except as otherwise provided in subsection (g), if a direction valid under this section requires that an estate tax be paid from an interest in property in which there are one or more time-limited interests, the tax must be paid from the principal of that property, regardless of the deductibility of some of the interests in that property.

(g) If a decedent gives a direction valid under this section that an estate tax is to be apportioned to the holders of interests in property in which one or more time-limited interests exist and a charity has an interest that otherwise qualifies for an estate tax charitable deduction, unless the decedent's direction expressly and unambiguously provides otherwise, the payment of the tax must first be made, to the extent feasible, from property that has not been distributed to the person entitled to receive that property.

(h) A decedent's direction that apportions an estate tax is invalid to the extent that it increases the tax apportioned to a person having an interest in the gross estate over which the decedent had no power to transfer immediately before the decedent executed the instrument in which the apportionment direction was made. For purposes of this subsection, a testamentary power of appointment is a power to transfer the property that is subject to that power.

**SECTION 4. STATUTORY APPORTIONMENT OF ESTATE TAXES.** To the extent that apportionment of an estate tax is not controlled by an instrument described in Section 3 and except as otherwise provided in Sections 6 and 7, the following rules apply:

(1) Subject to paragraphs (2), (3), and (4), the estate tax is apportioned ratably to each person that has an interest in the apportionable estate.

(2) A generation-skipping transfer tax incurred on a direct skip taking effect at death is charged to the person to which the interest in property is transferred.

(3) If property is included in the decedent's gross estate because of Section 2044 of the Internal Revenue Code of 1986 or any comparable estate tax provision, the difference between the total estate tax for which the decedent's estate is liable and the amount of estate tax for which the decedent's estate would have been liable if the property had not been included in the decedent's gross estate is apportioned ratably among the holders of interests in the property. The balance of the tax, if any, is apportioned ratably to each other person having an interest in the apportionable estate.

(4) Except as otherwise provided in Section 3(g), an estate tax apportioned to persons holding interests in property subject to a time-limited interest must be paid, without further apportionment, from the principal of that property.

**SECTION 5. CREDITS AND DEFERRALS.** Except as otherwise provided in Sections 6 and 7, the following rules apply to credits and deferrals of estate taxes:

(1) A credit resulting from the payment of gift taxes or from estate taxes paid on property previously taxed inures ratably to the benefit of all persons to which the estate tax is apportioned.

(2) A credit for state or foreign estate taxes inures ratably to the benefit of all persons to which the estate tax is apportioned, except that the amount of a credit for a state or foreign tax paid by a beneficiary of the property on which the state or foreign tax was imposed, directly or by a charge against the property, inures to the benefit of that beneficiary.

(3) If payment of any part of an estate tax is deferred because of the inclusion in the gross estate of a particular interest in property, the benefit of the deferral inures ratably to the persons to which the estate tax attributable to the interest is apportioned; and the burden of any interest charges incurred on a deferral of taxes and the benefit of any tax deduction associated with the accrual or payment of the interest charge is allocated ratably among the persons receiving an interest in the property.

## **SECTION 6. ADVANCEMENT OF TAX APPORTIONED TO PERSONS WHO HAVE INTERESTS IN INSULATED PROPERTY.**

(a) In this section:

(1) “Advanced fraction” is a fraction that has as its numerator the amount of the advanced tax and as its denominator the value of the interests in insulated property to which that tax is attributable.

(2) “Advanced tax” means the aggregate amount of estate tax attributable to interests in insulated property which is required to be advanced by uninsulated holders under subsection (c).

(3) “Insulated property” means property subject to a time-limited interest which is included in the apportionable estate but is unavailable for payment of an estate tax because collection is impossible or impracticable.

(4) “Uninsulated holder” means a person who has an interest in uninsulated property.

(5) “Uninsulated property” means property included in the apportionable estate other than insulated property.

(b) If an estate tax is to be advanced pursuant to subsection (c) by persons holding interests in uninsulated property subject to a time-limited interest, the tax must be paid or advanced, without further apportionment, from the principal of the uninsulated property.

(c) Subject to Section 9(b) and in the absence of a contrary determination pursuant to subsection (e), an estate tax attributable to interests in insulated property must be advanced ratably by uninsulated holders. If the value of an interest in uninsulated property is less than the amount of estate taxes otherwise required to be advanced by the holder of that interest, the deficiency must be advanced ratably by the persons holding interests in properties that are excluded from the apportionable estate under Section 2(1)(B) as if those interests were in uninsulated property.

(d) When a distribution of insulated property is made, each uninsulated holder may recover from the distributee a ratable portion of the advanced fraction of the property distributed. To the extent that undistributed insulated property ceases to be insulated, each uninsulated holder may recover from the property a ratable portion of the advanced fraction of the total undistributed property.

(e) A court having jurisdiction to determine the apportionment of an estate tax may require a beneficiary of an interest in insulated property to pay all or part of the estate tax attributable to the interest if the court finds that it would be substantially more equitable for that beneficiary to bear the tax liability personally than for that part of the tax to be advanced by uninsulated holders.

(f) Upon a distribution of insulated property for which, pursuant to subsection (d), the distributee becomes obligated to make a payment to uninsulated holders, an uninsulated holder may be awarded a recordable lien on the distributee’s property to secure the distributee’s obligation to that uninsulated holder.



**SECTION 7. APPORTIONMENT AND RECAPTURE OF SPECIAL ELECTIVE BENEFITS.**

(a) In this section:

(1) “Special elective benefit” means a reduction in an estate tax obtained by an election for:

(A) a lower valuation of specified property that is included in the gross estate;

(B) a deduction from the gross estate, other than a marital or charitable deduction, allowed for specified property; or

(C) an exclusion from the gross estate of specified property.

(2) “Specified property” means property for which an election has been made for a special elective benefit.

(b) If an election is made for one or more special elective benefits, an initial apportionment of a hypothetical estate tax must be computed as if no election for any of those benefits had been made. The aggregate reduction in estate tax resulting from all elections made is then allocated among holders of interests in the specified property in the proportion that the amount of deduction, reduced valuation, or exemption attributable to each holder’s interest bears to the aggregate amount of deductions, reduced valuations, exemptions obtained by the decedent’s estate from the elections. If the estate tax initially apportioned to the holder of an interest in specified property is reduced to zero, any excess amount of reduction reduces ratably the estate tax apportioned to other persons that receive interests in the apportionable estate.

(c) An additional estate tax imposed to recapture all or part of a special elective benefit must be charged to the persons that are liable under estate tax law for the additional tax.

**SECTION 8. SECURING PAYMENT OF TAX FROM PROPERTY IN POSSESSION OF FIDUCIARY.**

(a) A fiduciary may defer a distribution of property until the fiduciary is satisfied that adequate provision for payment of the estate tax has been made.

(b) A fiduciary may withhold from a distributee the amount of estate tax apportioned to an interest of the distributee.

(c) As a condition to a distribution, a fiduciary may require the distributee to provide a bond or other security for the distributee's share of the estate tax.

#### **SECTION 9. COLLECTION OF TAX BY FIDUCIARY.**

(a) A fiduciary responsible for payment of an estate tax may collect from any person the tax apportioned to and the tax required to be advanced by that person.

(b) Except as otherwise provided in Section 6, any estate tax due from a person that cannot be collected from that person may be collected by the fiduciary from other persons in the following order of priority:

(1) any person having an interest in the apportionable estate which is not exonerated from tax;

(2) any other person having an interest in the apportionable estate;

(3) any person having an interest in the gross estate.

(c) A domiciliary fiduciary may recover from an ancillary personal representative the estate tax apportioned to the property controlled by the ancillary personal representative.

(d) The total tax collected from a person pursuant to the [Act] may not exceed the value of the person's interest.

#### **SECTION 10. RIGHT OF REIMBURSEMENT.**

(a) A person required under Section 9 to pay an estate tax greater than the amount due from it under Section 3 or 4 has a right to reimbursement from other persons to the extent that each has not paid the tax required by Section 3 or 4 and a right to reimbursement ratably from

other persons to the extent that each has not contributed a portion of the amount collected under Section 9(b)(1), (2), or (3).

(b) A fiduciary may enforce the right of reimbursement under subsection (a) on behalf of the person that is entitled to the reimbursement and shall take reasonable steps to do so if requested by the person.

#### **SECTION 11. JUDICIAL ACTION TO DETERMINE OR ENFORCE APPORTIONMENT.**

(a) A fiduciary, transferee, or beneficiary of the gross estate may maintain an action to have a court determine and enforce this [Act].

(b) If a court of competent jurisdiction has entered an order relating to the apportionment of an estate tax, a fiduciary or other person may maintain an action in this State to enforce the order. For purposes of the action, the apportionment is presumed to be correct.

**SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

**[SECTION 13. SEVERABILITY CLAUSE.** If any provision of this [Act] or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.]

#### **SECTION 14. DELAYED APPLICATION.**

(a) Sections 3 through 7 do not apply to the estate of a decedent who dies on or within [three] years after [the effective date of this [Act]], nor to the estate of a decedent who dies more

then [three] years after [the effective date of this [Act]] if the decedent continuously lacked testamentary capacity from the expiration of the [three-year] period until the date of death.

(b) For the estate of a decedent who dies on or after [the effective date of this [Act]] to which Sections 3 through 7 do not apply, estate taxes must be apportioned pursuant to the law in effect immediately before [the effective date of this [Act]].

**SECTION 15. EFFECTIVE DATE.** This [Act] shall take effect ..... .

**[SECTION 16. REPEALS.** The following acts and parts of acts are repealed:

(1) .....

(2) .....

(3) .....]