

DRAFT

FOR DISCUSSION ONLY

**REVISION OF
UNIFORM ESTATE TAX APPORTIONMENT ACT AND
SECTION 3-916 OF THE UNIFORM PROBATE CODE**

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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With Prefatory Note and Reporter's Notes

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**DRAFTING COMMITTEE TO REVISE
UNIFORM ESTATE TAX APPORTIONMENT ACT AND SECTION 3-916 OF
THE UNIFORM PROBATE CODE**

RICHARD V. WELLMAN, University of Georgia, School of Law, Athens, GA 30062,
Chair

FRANK W. DAYKIN, 4745 Giles Way, Carson City, NV 89704, *Enactment Plan
Coordinator*

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

EDWARD F. LOWRY, JR., Suite 1120, 2901 N. Central Avenue, Phoenix, AZ 85012

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

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

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

EX OFFICIO

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TERESA ANN BECK, House Legislative Services Office, P.O. Box 1018, Jackson, MS
39215, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

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EXECUTIVE DIRECTOR

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Norman, OK 73019, *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

1 **UNIFORM APPORTIONMENT OF DEATH AND RELATED TAXES ACT**

2 **SECTION 1. SHORT TITLE.** This [Act] may be cited as the
3 "Uniform Apportionment of Death and Related Taxes Act"

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

5 (1) "Death and related taxes" means any tax that is
6 occasioned by or results from the death of an individual,
7 including the Federal estate tax, the Federal generation-
8 skipping transfer tax, State estate and inheritance taxes,
9 State generation-skipping transfer taxes, Federal and State
10 income tax on "Income in Respect of Decedents" that is used to
11 pay death and related taxes or to pay Federal and State income
12 tax on "Income in Respect of Decedents" that is so used. The
13 term applies to taxes whether now existing or hereafter
14 enacted, and the term includes penalties, ad valorem amounts
15 and interest imposed in connection with taxes included in this
16 subsection.

1 (2) "Estate" means the fictional entity that
2 comprises all of the decedent's assets and liabilities.

3 (3) "Fiduciary" means an executor, personal
4 representative, or administrator of any description, guardian,
5 conservator, or trustee. The term includes any person, acting
6 on behalf of another, having a fiduciary responsibility to pay
7 or to contribute to the payment of a death or related tax.

8 (4) "Gross estate" means the gross assets that
9 comprise the properties that are subjected to a tax that is
10 apportioned by this [Act]. The identity of properties included
11 in the gross estate depends upon the scope of the tax to be
12 apportioned and may not be the same for different taxes.

13 (5) "Income in Respect of a Decedent" means those
14 amounts to which a decedent was entitled as gross income for
15 Federal income tax purposes but were not properly included in
16 the decedent's taxable income for the taxable year ending with
17 the date of death, or for a previous taxable year, under the
18 method of accounting employed by the decedent.

19 (6) "Internal Revenue Code" means Title 26 of the
20 United States Code as currently in existence or as
21 subsequently amended.

1 (7) "Person" means any individual, limited
2 liability company, limited liability partnership, partnership,
3 association, joint stock company, corporation, government,
4 political subdivision, or governmental agency.

5 (8) "Person interested in the gross estate" means
6 any person, including a fiduciary, entitled to receive, or who
7 has received (whether before or after the decedent's death),
8 property or an interest therein that is included in the
9 decedent's gross estate.

10 (9) "Property received by a person" includes an
11 interest in property and a right to receive property or an
12 interest therein without reduction for any taxes charged to
13 such property or paid by the recipient.

14 (10) "State" means any State, territory, or
15 possession of the United States, the District of Columbia, and
16 the Commonwealth of Puerto Rico.

17 (11) "Transferee" means any person who receives, is
18 deemed to receive, or is the beneficiary of, any property that
19 is subject to a generation-skipping transfer tax.

20 (12) "Value" means fair market value as determined

1 for purposes of the tax that is to be apportioned under this
2 [Act] without reduction for the portion of the property that
3 is used, or required to be used, for the payment of death and
4 related taxes.

5 **SECTION 3. APPORTIONMENT OF DEATH AND RELATED TAXES.**

6 (a) Except as provided in subsections (b) through
7 (h), any death or related tax is apportioned among the persons
8 interested in the gross estate in the proportion that the
9 value of the property received by each person interested in
10 the gross estate bears to the total value of the gross estate.
11 If property that constitutes Income in Respect of a Decedent
12 is included in the gross estate and is held by a person who is
13 to distribute that property to the persons who have the right
14 to receive it, the amount of a death or related tax that is
15 apportioned to the property pursuant to this [Act] is charged
16 to that property and may be collected by the fiduciary
17 directly from the person holding that property.

18 (b) Unless other assets of the gross estate are
19 inadequate to satisfy the decedent's Federal estate tax

1 liability, none of that tax is apportioned to specific or
2 pecuniary bequests. If the other assets of the gross estate
3 are inadequate, the shortfall is apportioned to the
4 beneficiaries of the specific and pecuniary bequests in
5 proportion to the respective values of those bequests. This
6 subsection does not apply to a pecuniary bequest of an amount
7 that exceeds Twenty-Five Thousand (\$25,000) dollars.

8 © A State inheritance tax that is imposed on the
9 receipt of property is charged to the person receiving that
10 property.

11 (d) A Federal or State generation-skipping transfer
12 tax is charged to the property to which that tax is applied.
13 If there is more than one transferee, the tax is apportioned
14 among them in accordance with the values of their respective
15 interests.

16 (e) The Federal or State income tax on Income in
17 Respect of Decedents that is used to pay any death or related
18 tax is apportioned among the persons interested in the gross
19 estate, as determined for Federal estate tax purposes, in
20 proportion to the value of the property received by each
21 person to the total value of the gross estate.

1 (f) No apportionment of a death or related tax is
2 made pursuant to this [Act] to the extent that the decedent's
3 will provides for a different apportionment.

4 (g) This [Act] does not apply to the extent that
5 Federal law provides the decedent's estate, or a fiduciary
6 representing the estate, with a right to collect Federal
7 estate taxes from a person. The granting of such a right is
8 treated as a rule of apportionment. A similar State tax is
9 apportioned in the same manner.

10 (h) To the extent that an instrument executed by
11 the decedent transferring property in trust or designating the
12 beneficiary of life insurance, an annuity, or deferred
13 compensation, requires that the properties subject to that
14 instrument be used to pay all or part of a death or related
15 tax, this [Act] applies only to the extent that the properties
16 are insufficient. If there is a conflict between the
17 provisions for payment of taxes in a nontestamentary
18 instrument and in the decedent's will, the decedent's will
19 takes priority.

20 **SECTION 4. ALLOWANCE FOR EXEMPTIONS, DEDUCTIONS, SPECIAL**
21 **VALUATIONS, CREDITS, AND DEFERRALS.**

1 (a) In making an apportionment, allowances must be
2 made, as provided by subsections (b) through (h), for any
3 deferrals allowed for the payment of a death or related tax,
4 any exemptions granted, any special valuations elected, and
5 for any deductions and credits allowed by the law imposing the
6 death or related tax.

7 (b) An exemption or deduction allowed by reason of
8 a person's relationship to the decedent or by reason of the
9 purposes of the transfer inures to the benefit of the person
10 bearing that relationship or receiving that transfer; but if
11 the interest is subject to prior interests (whether present or
12 future interests) for which no deduction or exemption is
13 allowable, the tax apportionable against those prior interests
14 is paid from principal.

15 © Any deduction or credit for property previously
16 taxed, and any credit for gift taxes or for death taxes of a
17 foreign country that were paid by the decedent or the
18 decedent's estate, inures to the proportionate benefit of all
19 persons interested in the gross estate. Any credit for gift
20 taxes that were paid by a person interested in the gross
21 estate shall inure to the benefit of that person.

22 (d) Any credit for inheritance, succession, or

1 estate taxes or taxes in the nature thereof in respect to
2 property includable in the gross estate inures to the benefit
3 of the persons or interests chargeable with the payment of the
4 tax for which the credit is allowed to the proportionate
5 extent that the credit reduces the tax to be apportioned under
6 this [Act].

7 (e) If the payment of any part of a death or
8 related tax is deferred because of the presence of certain
9 properties in the gross estate, the benefit of that deferral
10 inures to those persons who have the right to receive the
11 properties that were the source of the deferral in proportion
12 to the values of their interests in those properties.

13 (f) To the extent that property passing to or in
14 trust for a surviving spouse, or for any charitable,
15 religious, public, or similar purpose is not an allowable
16 Federal estate tax deduction solely because the value passing
17 to the recipient is reduced by the imposition of an
18 inheritance or other death tax upon the property, the property
19 is not included in the computation provided for in this [Act],
20 and to that extent no apportionment is made against the
21 property. This subsection does not apply if the result would
22 be to deprive the estate of a deduction otherwise allowable
23 under § 2053(d) of the Internal Revenue Code, relating to a

1 deduction for State death taxes on transfers for charitable,
2 religious, or public uses.

3 (g) Any interest on an extension of taxes and the
4 interest and penalties on a deficiency is equitably
5 apportioned to reflect the benefits and burdens of the
6 extension or deficiency and of any tax deduction associated
7 with the interest and penalties. If the assessment or penalty
8 and interest is due to delay caused by the negligence of the
9 fiduciary, the fiduciary is charged with the amount of
10 assessed penalty and interest.

11 (h) If the value of the gross estate is reduced by
12 reason of an election for a special valuation of qualified
13 real property pursuant to § 2032A of the Internal Revenue
14 Code, the resulting tax reduction and the burden of any
15 additional tax imposed by reason of an early disposition or
16 cessation of qualified use of the property is apportioned as
17 provided by Section 6.

18 **SECTION 5. NO APPORTIONMENT BETWEEN LIMITED AND REMAINDER**
19 **INTERESTS.** Except as provided in Section 6© for the
20 apportionment of the additional Federal estate tax imposed

1 because of an early disposition or cessation of qualified use
2 of qualified real property, no interest in income and no
3 estate for years or for life or other limited interest in any
4 property or fund, other than an annuity interest, is subject
5 to apportionment as between the limited interest and the
6 remainder. The tax on the limited interest and the remainder
7 is chargeable against the principal of the property or funds
8 subject to the limited interest and remainder.

9 **SECTION 6. APPORTIONMENT OF BENEFITS FROM AND ADDITIONAL**
10 **TAX ON QUALIFIED REAL PROPERTY.**

11 (a) For purposes of this Section and Section 4(h),
12 "qualified real property" means qualified real property as
13 defined in § 2032A of the Internal Revenue Code and as to
14 which a valid election for special valuation has been made
15 pursuant to § 2032A.

16 (b) If an election is made pursuant to § 2032A of
17 the Internal Revenue Code, the apportionment of the Federal
18 estate tax is based upon the amount of Federal estate tax that
19 would have been payable but for the election. The amount of
20 reduction in Federal estate tax resulting from an election
21 pursuant to § 2032A of the Internal Revenue Code reduces the

1 Federal estate tax that otherwise would have been apportioned
2 to the beneficial owners of the qualified real property that
3 is the subject of the election. The reduction is apportioned
4 among those beneficial owners according to the proportionate
5 values of their interests in the qualified real property. If
6 the Federal estate tax that otherwise would have been
7 apportioned to the beneficial owners of an item of qualified
8 real property is reduced to zero, any excess amount of
9 reduction reduces the Federal estate tax that otherwise would
10 be apportioned to the beneficial owners of other properties
11 or interests in the gross estate. This amount of reduction is
12 apportioned among the beneficial owners of the other
13 properties in proportion to the values of their interests in
14 the gross estate for Federal estate tax purposes.

15 © If an additional Federal estate tax is imposed
16 under § 2032A© of the Internal Revenue Code, by reason of an
17 early disposition of qualified real property or a cessation of
18 qualified use, the additional Federal estate tax is a charge
19 against the portion of the qualified real property to which
20 the additional tax is attributable. The additional Federal
21 estate tax is apportioned among the persons interested in that
22 portion of the qualified real property in proportion to their
23 interests. If beneficial ownership of the portion of the
24 qualified real property to which the additional Federal estate

1 tax is attributable is split between one or more limited
2 interests and remainder interests, the apportionment of the
3 additional tax is made on the basis of the actuarial values,
4 as determined under the Federal Estate and Gift Tax
5 regulations, of such interests.

6 (d) If a State estate or succession tax has a
7 provision for a special valuation of certain real property,
8 the apportionment of the reduction of the State tax that is
9 obtained thereby, and the apportionment of any additional tax
10 incurred by reason of an early disposition of the property or
11 cessation of qualified use, is made in the same manner as is
12 provided in this [Act] for the Federal estate tax.

13 **SECTION 7. APPORTIONMENT BY COURT.** If upon application of
14 a person interested in the gross estate, the Court determines
15 that an express or implied purpose of the decedent's
16 testamentary plan would be impaired by the order of
17 apportionment provided by this [Act], the Court may order the
18 apportionment to be made in a manner consistent with the
19 decedent's intent.

20 **SECTION 8. COLLECTION FROM PROPERTY IN THE POSSESSION OF**

1 **THE FIDUCIARY.**

2 (a) The fiduciary may withhold the death or related
3 tax apportioned to the interest of any person interested in
4 the gross estate from any property of the decedent that is in
5 the possession of the fiduciary and is distributable to that
6 person. If the property in possession of the fiduciary and
7 distributable to any person is insufficient to satisfy the tax
8 apportioned to that person, the fiduciary may recover the
9 deficiency from that person.

10 (b) If property held by the fiduciary is
11 distributed prior to final apportionment of the death or
12 related tax, the fiduciary may require the distributee to
13 provide a bond or other security for that person's share of
14 the tax in the form and amount prescribed by the fiduciary.

15 **SECTION 9. RIGHT OF FIDUCIARY TO RECOVER TAX FROM OTHERS.**
16

17 (a) If all property does not come into the
18 possession of the fiduciary obligated to pay the death or
19 related tax, the fiduciary is entitled, and has the duty

1 (unless excused by the affected persons or unless in the
2 reasonable judgment of the fiduciary it is not cost effective
3 to proceed), to recover from the persons interested in the
4 gross estate the tax apportioned to those persons under this
5 [Act] or the fiduciary may proportionately assign to the
6 affected parties the fiduciary's entitlement to recover.

7 (b) If all or a portion of a death or related tax
8 is charged under this [Act] to property constituting Income in
9 Respect of a Decedent that is held by a person who is required
10 to distribute the property to persons entitled to receive it,
11 the apportioned tax is a lien on the property and may be
12 collected directly from the person holding the property. This
13 right of collection is granted on behalf of the decedent's
14 estate for the payment of taxes and is not granted on behalf
15 of the persons who would otherwise have a right to receive the
16 property.

17 © If the fiduciary cannot collect from any person
18 interested in the gross estate the amount of a tax apportioned
19 to that person, the amount not recoverable is equitably
20 apportioned among the other persons interested in the gross
21 estate who are subject to apportionment, provided that the
22 total tax apportioned to an interest must not exceed the value
23 of that interest.

1 (d) The fiduciary is entitled to collect a
2 proportionate amount of a death or related tax from an
3 ancillary personal representative.

4 **SECTION 10. RIGHT OF REIMBURSEMENT FROM OTHERS.**

5 (a) If a person is charged with or required to pay
6 a tax greater than the amount apportioned to that person
7 because another party does not pay the tax apportioned to that
8 other party, the person charged with or required to pay the
9 greater amount has a right of reimbursement against the other
10 party.

11 (b) At the discretion of the fiduciary, the right
12 of reimbursement granted by this [Act] may be enforced through
13 the fiduciary or, after an assignment from the fiduciary, may
14 be enforced directly by the person charged with or required to
15 pay the greater amount. For purposes of enforcement, the
16 assignee is subrogated to the position of the fiduciary.

17 © The fiduciary, or assignee to whom a right of
18 reimbursement has been assigned, may, at any time, commence a
19 proceeding to have a court determine and enforce the right of

1 reimbursement.

2 **SECTION 11. EXONERATION OF FIDUCIARY.** A fiduciary is not
3 required to institute any suit or proceeding to recover from
4 any person interested in the gross estate the amount of the
5 death or related tax apportioned to that person until the
6 expiration of six months following the payment of the tax. A
7 fiduciary who institutes suit or a proceeding within three
8 months after the six-month period has expired is not subject
9 to any liability or surcharge because any portion of the tax
10 apportioned to any person interested in the gross estate was
11 collectible after the death of the decedent but thereafter
12 became uncollectible.

13 **SECTION 12. JUDICIAL PROCEEDING TO DETERMINE**
14 **APPORTIONMENT.**

15 (a) The fiduciary, transferee, or any person
16 interested in the gross estate may commence a proceeding to
17 have a court determine and enforce the apportionment pursuant
18 to this [Act].

1 (b) A proceeding under this [Act] must be commenced
2 in the court in which the estate of the decedent was
3 administered or, if no administration proceedings have been
4 commenced, in the court of any county in which the estate of
5 the decedent may be administered.

6 © If proceedings for the administration of the
7 decedent's estate are pending, a proceeding under this Act
8 shall be combined with the administration proceedings.

9 **SECTION 13. COMMENCEMENT OF ACTION BY NONRESIDENT.**

10 (a) A fiduciary or another person who is resident
11 in another State may commence an action in this State to
12 recover from a person interested in the gross estate, who
13 either is resident in this State or owns property in this
14 State, the amount of death or related tax apportioned to the
15 defendant and payable to the petitioner.

16 (b) The action must be commenced in the court of
17 any county in which administration of the decedent's estate
18 would be proper or, if none, in which any defendant resides.

1 © For purposes of the action, the apportionment
2 by the court having jurisdiction of the decedent's estate in
3 the other State is prima facie correct.

4
5 **SECTION 14. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

6 In applying and construing this Uniform Act, consideration
7 must be given to the need to promote uniformity of the law
8 with respect to its subject matter among States that enact it.

9
10 **SECTION 15. SEVERABILITY CLAUSE.** If any provision of this
11 [Act] or the application thereof to any person or circumstance
12 is held invalid, the invalidity does not affect other
13 provisions or applications of this [Act] which can be given
14 effect without the invalid provision or application, and to
15 this end the provisions of this Act are severable.

16 **SECTION 16. EFFECTIVE DATE.** This [Act] takes effect on
17 the date on which it is enacted.

1 **SECTION 17. REPEALS.** The following acts and parts of acts
2 are repealed as of the effective date of this [Act]:

3 (1)

4 (2)

5 (3)

6 **SECTION 18. SURVIVAL OF FORMER LAW.** Notwithstanding the
7 repeal of former law by the enactment of this [Act], former
8 law remains applicable if the decedent died before the
9 effective date of this [Act]. No inference as to the meaning
10 of the law that was in effect before the adoption of this
11 [Act] may be drawn from the enactment of this [Act].