

D R A F T
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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UNIFORM ESTATE TAX APPORTIONMENT ACT
AND SECTION 3-916 OF THE UNIFORM PROBATE CODE**

WITH REPORTER'S NOTES

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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

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UNIFORM ESTATE TAX APPORTIONMENT ACT

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1 **UNIFORM ESTATE TAX APPORTIONMENT ACT**

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

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

5 (1) “Estate tax” means a domestic or foreign tax imposed because of the
6 death of an individual, including the federal estate tax, the federal generation-
7 skipping transfer tax incurred on a direct skip, state estate and inheritance taxes,
8 state generation-skipping transfer taxes incurred on a direct skip, and interest and
9 penalties associated with those taxes. The term does not include an income tax, gift
10 tax, or generation-skipping tax incurred because of a taxable termination, taxable
11 distribution, or direct skip that takes place during the decedent’s life.

12 **Reporter’s Notes**

13 The term “estate tax” is specially defined in the Act to include all succession
14 and other taxes arising because of an individual’s death, except that the term does
15 not include any income taxes, gift taxes, or generation-skipping taxes incurred
16 because of a taxable termination, a taxable distribution, or an inter vivos direct skip.
17 A generation-skipping tax that is incurred because of a direct skip that takes place
18 because of the decedent’s death is included in the term “estate tax.”

19 Currently, there is no income tax imposed at death on the amount by which a
20 decedent’s assets were appreciated at the time of his death. Except for Income in
21 Respect of a Decedent, the basis of an asset that was included in a decedent’s gross
22 estate will become the fair market value of that asset. There currently are proposals
23 to eliminate federal estate taxes. If the federal estate taxes are repealed, it is
24 virtually certain that the repeal will be accompanied by either: (1) an income tax on
25 capital appreciation at death, or (2) a carry-over basis under which the transferees of
26 the decedent’s properties will take the same basis in those properties that the
27 decedent had; but certain properties or dollar amounts may be exempted from

1 income taxation at death or a carryover basis. In the event that an income tax on
2 capital appreciation at death is adopted, that tax will not be apportioned under this
3 Act. Similarly, if carryover basis is adopted, any income tax resulting from the
4 subsequent disposition of such assets will not be apportioned by this Act. The
5 determination of whether to apportion income taxes in such cases and how to
6 apportion them can best be made when the exact nature of the tax is established, and
7 so the apportionment of any such tax is left to the future when the nature of the tax
8 will be known.

9 This Act does not provide for the apportionment of the income tax payable
10 on the receipt of Income in Respect of a Decedent (IRD). The current tax treatment
11 of IRD causes serious problems and inequities, but these can only be cured by
12 federal legislation. IRD is subjected to both federal estate taxes and income taxes.
13 If no relief were provided, that would be unfair in that the IRD would have been
14 reduced by the income tax payable thereon if it had been collected before the
15 decedent's estate, and only the net amount remaining would have been subjected to
16 estate taxation on the decedent's estate. The federal tax law seeks to prevent an
17 inequity from taking place by providing a deduction for income tax purposes for the
18 amount of estate tax that is attributable to the IRD. The deduction is allowed
19 against the income recognized when the IRD is collected. However, the deduction
20 for the estate tax on IRD is an itemized deduction, and is subject to the overall
21 limitation on itemized deductions imposed by Section 68 of the Internal Revenue
22 Code. Under Section 68, when an individual's adjusted gross income exceeds a
23 threshold amount, the individual's itemized deductions are reduced by an amount
24 equal to 3% of the difference between the individual's adjusted gross income and
25 the threshold amount. The maximum amount of reduction cannot exceed 80% of
26 the total amount of the individual's itemized deductions. For the estate of an
27 individual who had a large amount of IRD that constitutes a major portion of the
28 decedent's estate, (for example, if the decedent had a large amount accumulated in
29 a qualified deferred compensation plan), the personal representative will need to
30 draw upon the IRD to pay the estate taxes. If the beneficiary of the IRD collects
31 enough of it to pay the estate tax and turns that amount over to the personal
32 representative, the beneficiary will incur a large amount of taxable income and thus a
33 large amount of adjusted gross income. As much as 80% of the deduction for the
34 IRD's share of the decedent's estate tax could be lost as a deduction because of the
35 Section 68 overall limitation. It is not feasible to solve this problem through the
36 Act, but efforts should be made to encourage Congress to address this problem.

37 If a decedent held an installment obligation the payment on which was
38 accelerated by the decedent's death, an income tax would then be incurred because
39 of the decedent's death. The income tax incurred in that manner is not apportioned
40 by the Act.

If a donor pays the gift tax during the donor's life, the amount paid will not be part of the donor's assets when the donor dies; and so the gift tax will not be subject to apportionment among the persons interested in the donor's gross estate. Typically, the inter vivos payment of the gift tax will result in a smaller probate estate and therefore a smaller residuary devise than otherwise would have been the case. This consequence is consistent with the donor's typical wish that the gifts made during life pass to the donee free of any transfer tax. If all or part of a gift tax was not paid at the time of the donor's death and is subsequently paid by the donor's personal representative, the incidence of the gift tax should lie with the same persons who would have borne it if the donor had paid it during life. Therefore, the gift tax is not apportioned by the Act, but is treated the same as any other debt of the estate. Typically, the debts of the estate will be paid from the residuary devise. Similarly, if the donor did pay a gift tax during life, but an additional gift tax becomes due because of a determination of a deficiency, the additional gift tax payment will not be apportioned by the Act, but will be treated as a debt of the decedent's estate if paid by the estate.

If a gift tax is paid on a gift that is made within three years of the donor's death, that gift tax will be added to the donor's gross estate for federal (and some state) estate tax purposes. The treatment of gift taxes that are added to the donor's gross estate is set forth in Section 2(2) of the Act and is discussed in the Reporter's Notes to that subsection.

(2) “Gross estate” means all interests in property which are subject to an estate tax and which are not excluded from apportionment by this [Act] except: (A) an amount added to a decedent’s gross estate for federal estate tax purposes for a tax on gifts made before death; and (B) an amount added to a decedent’s gross estate for state or foreign estate tax purposes for a tax on gifts.

Reporter's Notes

The identity of the property interests included in a gross estate depends upon the particular estate tax to be apportioned and may not be the same for each tax. For example, some States will have an exemption for a homestead; some will exclude life insurance proceeds and pensions from an inheritance or other estate tax. In determining the gross estate for such taxes, the property excluded from the tax will also be excluded from the gross estate for that tax.

1 A gift tax on a gift that was made by the decedent or the decedent's spouse
2 within three years of the decedent's death is added back to the gross estate for
3 federal estate tax purposes by Internal Revenue Code § 2035(b). A state or foreign
4 estate tax can have a similar provision or effect. By the Act's excluding the amount
5 of any such gift tax from the gross estate, that amount is thereby removed from the
6 gross estate figure that is used as the base of allocating estate taxes. One reason
7 that the amount of gift tax that is added back is taken out of the gross estate figure
8 for purposes of apportioning the estate tax under this Act is that there is no person
9 who has an interest in that additional amount, and so there is no recipient of that
10 amount to whom an estate tax could be apportioned. If the additional amount were
11 included in the gross estate under the Act, unless some adjustment were made as to
12 the identity of the persons interested in the gross estate, the fractions of the estate
13 tax that are apportioned among the persons interested in the gross estate by Section
14 4(a) of the Act would have a denominator that is greater than the sum of the
15 numerators of all of the fractions, and so less than 100% of the estate tax would be
16 apportioned. The exclusion from the gross estate of the gift tax payment prevents
17 that discrepancy from occurring. Moreover, if the amount of the gift giving rise to
18 such a gift tax is not large, the donor typically will have intended that the gift pass to
19 the donee free of any transfer tax. While that may not be the case if the size of the
20 gift and the size of the gift tax is large, there would be administrative complexities
21 engendered by apportioning any of the estate tax to such donees. The formula for
22 calculating the apportioned amount would be complex. In some cases, it would be
23 difficult to locate the donee of the gift and to enforce the apportionment. It seems
24 preferable not to divide gifts between those of small and large size (by resorting to
25 an arbitrarily chosen amount). Instead, it seems administratively preferable to treat
26 all such gifts alike, either apportioning to all such donees or to none. In the Act, no
27 apportionment is made to the donees; and that accords with the current treatment by
28 all States.

29 An alternative approach to the treatment of gift taxes that are added to the
30 donor's gross estate has been advocated by a committee of the Association of the
31 Bar of the City of New York. The New York Bar committee proposes to allocate a
32 portion of the estate tax to the donee of the gift that caused that gift tax. The
33 allocation would be made by first determining the amount of estate tax, calculated at
34 the average estate tax rate, that was caused by the addition of the gift tax to the
35 gross estate; and then by allocating to the donee a fraction of the estate tax that is
36 deemed attributable to the addition of that gift tax. The fraction of the estate tax
37 that is attributable to the gift tax addition to the gross estate is of such size that the
38 denominator thereof is equal to the sum of the aggregate values of the properties
39 received by persons having an interest in the gross estate plus the gift tax value of
40 the gift that the donee received, and the numerator is the gift tax value of the gift
41 that the donee received. Thus, the allocation of that portion of the estate tax is

1 determined by the size of the gift made to the donee rather than by the amount of
2 gift tax that was added to the gross estate.

3 A devise or transfer of property of a value of \$10,000 or less is excluded
4 from apportionment by Section 5(b), and so such property is excluded from the
5 gross estate for purposes of this Act. Even if there is a shortfall in payments of the
6 estate tax so that the shortfall is apportioned by Section 5(b) to the recipients of
7 such small devises or transfers, such property nevertheless is excluded from the
8 gross estate.

9 (3) “Internal Revenue Code” means Title 26 of the United States Code as it
10 exists on [the effective date of this [Act]] [or as subsequently amended].

11 **Reporter’s Notes**

12 From time to time, the lettering or numbering of subsections of a Code
13 section may be changed or even moved to another Code section. Any references in
14 the Act to Code sections or subsections are intended to refer to the substance of
15 those provisions regardless of whether they are subsequently relettered or
16 renumbered. A reference to a Code provision includes amendments that Congress
17 subsequently makes to that provision. However, the constitution of some States
18 prohibit a delegation of the legislative function from the state legislature to
19 Congress, and so those States cannot incorporate subsequent changes of federal law
20 into their apportionment acts. Instead, those States will need to make legislative
21 adjustments to their acts from time to time in order to adopt Congressional
22 amendments to Internal Revenue Code provisions that are incorporated in their acts.

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

27 (5) “Person interested in the gross estate” means a person who is entitled to
28 receive, or has received, whether before or after the decedent’s death, property or
29 an interest therein that is included in the decedent’s gross estate, except a creditor of

1 the decedent or the decedent's estate or a transferee for full and adequate
2 consideration.

3 **Reporter's Notes**

4 If a person has a right at the time of decedent's death, whether the right is
5 created by contract or by the decedent's will or other dispositive instrument, to
6 purchase gross estate property at a price that is lower than the estate tax value of
7 that property, the difference between the purchase price and the estate tax value of
8 the property can be viewed as a property interest which the decedent passed to that
9 person. If the right to purchase is exercised, the purchaser may be treated as a
10 "person interested in the gross estate," and the bargain element in the purchase price
11 may be treated as property received by that person.

12 (6) "Property received by a person" includes an interest in property and a
13 right to receive any interest in property, without reduction for any taxes charged to
14 the property or paid by the recipient.

15 **Reporter's Notes**

16 The meaning of "property" in the Act is as broad as the definition of "gross
17 estate" in Section 2031(a) of the Internal Revenue Code. For the treatment of the
18 bargain element in a right to purchase gross estate property as "property received by
19 a person," see the Reporter's Notes to Section 2(5).

20 (7) "State" means a State of the United States, the District of Columbia,
21 Puerto Rico, the United States Virgin Islands, or any territory or insular possession
22 subject to the jurisdiction of the United States.

23 **Reporter's Notes**

24 While the definition of "State" does not include a political subdivision of a
25 governmental entity listed in that definition, an estate tax imposed by a city or other
26 political subdivision of such a governmental entity will be included in the definition
27 of an "estate tax" in the Act and so will be apportioned by the Act.

(8) “Value” means fair market value as finally determined for purposes of the estate tax that is to be apportioned under this [Act], without reduction for the portion of the interest in property that is used, or required to be used, for the payment of estate taxes, without reduction for the payment of estate taxes, made or required to be made, by the recipient of the interest, and without reduction for any special valuation adjustment. If an interest in property is encumbered, the term means the fair market value of the interest, as determined under this paragraph, less the outstanding debt that is secured by the interest.

Reporter's Notes

If a debt is secured by more than one interest in property, the value of each such interest is the fair market value of that interest less a portion of the debt that it secures. The portion of a debt to be so allocated to an interest to determine the interest's value is a fraction of the debt equal to the fraction in which the numerator is the value of the interest (determined without reduction for any debts secured by that interest other than debts senior to the debt to be allocated) and the denominator is the value of all interests in property that secure the debt (reduced only by debts senior to the debt to be so allocated).

If a decedent's will or other dispositive instrument directs that property controlled by that instrument is to be used to pay a debt that is secured by an interest or interests in property, that provision will constitute an additional bequest to the person or persons who are to receive the interests securing the debt.

The date on which gross estate property is to be valued for federal estate tax purposes (and for some other estate tax purposes) is either the date of the decedent's death or an alternate valuation date if elected by the decedent's personal representative. An estate tax value that is determined on the alternate valuation date is not, as such, a "special valuation adjustment." If the alternate valuation date is elected, the fair market value of property on the alternate valuation date will be the value of the property for purposes of the Act. If a special valuation adjustment is employed when an item of property is valued on the alternate valuation date, that special valuation adjustment is not taken into account when valuing the property for purposes of the Act, just as a special valuation adjustment is not taken into account when the property is valued at the date of death.

1 **SECTION 3. SURVIVAL OF FORMER LAW.** Sections 1 through 16 of
2 this [Act] do not apply to estate taxes payable because the decedent died before [the
3 effective date of this [Act]]. Those taxes must be apportioned pursuant to the law in
4 effect on the date of death.

5 **SECTION 4. APPORTIONMENT BY WILL OR OTHER DISPOSITIVE**
6 **INSTRUMENT.**

7 (a) If a decedent's will expressly directs the apportionment of any or all
8 estate taxes, those estate taxes must be apportioned according to that direction.

9 (b) To the extent that a decedent's will does not direct the apportionment of
10 an estate tax, the tax must be apportioned in accordance with an express direction in
11 a revocable trust of which the decedent was the settlor. If conflicting directions are
12 given in two or more revocable trust instruments, the apportionment directions in
13 the most recently dated revocable trust instrument prevails. For the purposes of this
14 subsection, the date of amendment to a revocable trust instrument is the date of the
15 instrument only if the amendment contains an express direction for apportionment.

16 **Reporter's Notes**

17 If an amendment is made to a revocable trust instrument, and if the
18 amendment itself contains an express provision apportioning an estate tax, the date
19 of the amendment will be treated as the date of the revocable trust instrument.
20 However, if an amendment to a revocable trust instrument does not contain an
21 express provision apportioning an estate tax, the date of the revocable trust
22 instrument will be the date on which it was executed or the date of the most recent
23 amendment containing a provision apportioning an estate tax.

1 (c) For the purposes of this subsection, an “unapportioned estate tax” means
2 an estate tax that is not apportioned by a direction in the decedent’s will or
3 revocable trust. To the extent that a decedent’s will or a revocable trust of which
4 the decedent was the settlor does not direct the apportionment of an estate tax, a
5 provision in an instrument, inter vivos or testamentary, disposing of property subject
6 to the instrument that the property be applied to the payment of an otherwise
7 unapportioned estate tax or that an otherwise unapportioned estate tax must or must
8 not be apportioned to the property, controls the extent of the application of the
9 property to the satisfaction of the estate tax or the insulation of the property from
10 payment of the estate tax.

11 **Reporter’s Notes**

12 The statutory allocation rules of the Act essentially are default rules in the
13 event that the decedent does not make a valid provision as to how estate taxes are
14 to be allocated. The decedent has the power to determine which recipients of
15 decedent’s property will bear the estate taxes and in what proportion. It is
16 necessary to determine in which of the instrument or instruments that the decedent
17 executed must the decedent’s direction be included to be valid. One possible choice
18 was to permit the directions in each instrument that the decedent executed to
19 determine the extent to which property controlled by that instrument will bear a
20 share of estate taxes, but it was deemed undesirable to have the provisions for an
21 allocation scheme scattered among a number of documents. It was determined that
22 it would be preferable to have the decedent’s directions set forth in one instrument
23 so that the decedent’s personal representative would not have to search multiple
24 instruments to ascertain the decedent’s directions. Accordingly, the Act provides an
25 order of priority for a decedent’s directions of estate tax allocations. To the extent
26 that a decedent makes a valid express direction in the decedent’s will, that direction
27 will trump any competing direction in another instrument. To the extent that the
28 will does not validly provide for the allocation of estate taxes, an express direction in
29 an instrument that the decedent executed to create a revocable trust will control the
30 allocation of estate taxes. If the decedent executed more than one revocable trust
31 instrument, the directions in the instrument that was executed most recently will
32 control. In determining which revocable trust instrument was executed most
33 recently, the date of any amendment that contains an apportionment provision will

1 be taken into account. In the event that the allocation of estate taxes is not fully
2 provided for by the decedent's will or revocable trust instrument, then express
3 directions contained in other instruments executed by the decedent that disposes of
4 property will control to the extent that the direction applies to the property disposed
5 of in that instrument. An example of a direction in an instrument disposing of
6 property, other than a will or revocable trust instrument, is a direction in a
7 designation of a beneficiary of life insurance proceeds either that the proceeds will
8 be used to pay a portion of estate taxes or that the proceeds are not to be used to
9 pay estate taxes. A designation of that form will be honored if there is no conflicting
10 designation in a will or a revocable trust instrument.

11 The federal estate tax laws provide a right of the decedent's personal
12 representative to collect a portion of the decedent's federal estate tax from the
13 recipients of certain property that is included in the decedent's gross estate. See
14 e.g., Sections 2206 to 2207B of the Internal Revenue Code. Those provisions are
15 not apportionment statutes; rather, they empower the personal representative to
16 collect a portion of the estate tax that is attributable to the property that was
17 included in the decedent's gross estate. Those provisions can be overridden by the
18 decedent's directions either in a will, or in the case of several of the provisions, in a
19 revocable trust instrument. The Act does not track those provisions in that the Act
20 allows the revocable trust instrument to control only if the will does not make a
21 conflicting direction, and the Act permits other instruments to control in limited
22 circumstances. These provisions in the Act do not conflict with federal law since the
23 federal law only empowers the personal representative to collect the mandated
24 amounts; it does not direct how the collected amounts are to be used by the personal
25 representative.

26 The Act does not permit a direction for allocation of estate taxes, or for the
27 insulation from an allocation, that is made by anyone other than the decedent to
28 override the allocation provisions of the Act. For example, if X created a QTIP
29 trust for Y, the value of the trust assets will be included in Y's gross estate for estate
30 tax purposes on Y's death. The instrument that X executed to create the QTIP trust
31 might provide that the trust is not to bear any of the estate taxes imposed at Y's
32 estate. The Act does not honor that direction, and provides that only Y can direct
33 that the QTIP trust will not bear any portion of Y's estate taxes. In this regard, it is
34 noteworthy that the right granted to a decedent's estate by Section 2207A of the
35 Internal Revenue Code to collect a share of the federal estate tax from a QTIP that
36 is included in the decedent's gross estate can be waived only by direction of the
37 decedent in a will or revocable trust instrument. The view of the Committee is that
38 Y is in the best position to determine the optimum allocation of Y's estate taxes
39 among the various assets that comprise Y's gross estate. If Y fails to make an
40 allocation, the default provisions of the Act are more likely to reflect Y's intentions
41 than would a direction of a third person. There is a stronger case for allowing the

1 donee of a power of attorney from the decedent to make a valid direction as to the
2 application of the property subject to that power to the payment of estate taxes; but,
3 even there, the view was taken that the default provisions of the statute were more
4 likely to represent the decedent's wishes than would a third person's direction.

5 (d) A direction for apportionment, whether in a decedent's will, revocable
6 trust, or other instrument, does not apply to increase the amount of tax apportioned
7 to an interest in property over which the decedent had no power to amend or revoke
8 immediately before the decedent's death.

9 **Reporter's Notes**

10 If a decedent had made an irrevocable transfer during his life, and if that
11 transfer is included in the decedent's gross estate for estate tax purposes, a portion
12 of the estate tax will be apportioned to the transferee unless the decedent provides
13 otherwise in a will, revocable trust or other instrument. While, by an express
14 direction in the appropriate instrument, a decedent can reduce the amount of tax
15 apportioned to such inter vivos transfers, the decedent will not be permitted to
16 increase the amount of tax apportioned to such transfers. So, if a decedent attempts
17 to do so, whether directly by apportioning more estate tax to the inter vivos transfer
18 or indirectly by insulating some person interested in the gross estate from all or part
19 of that person's share of the estate tax, the amount of estate tax that is apportioned
20 to the transferee of an irrevocable inter vivos transfer will not be greater than that
21 the amount that would have been apportioned to that transferee if no directions for
22 apportionment had been made by the decedent.

23 This subsection (d) does not apply to a decedent's direction that no estate
24 tax be apportioned to the recipient of an interest who would be excluded from
25 apportionment by this Act in the absence of a contrary direction by the decedent.
26 For example, a decedent's direction that no estate tax be apportioned to the
27 recipient of property that qualifies for a marital or charitable deduction is not subject
28 to this subsection.

29 (e) If a decedent directs by will, revocable trust, or other instrument that
30 estate taxes be paid from a fund or trust in which a charity has a remainder, income
31 or annuity interest and does not expressly state otherwise, the payment must be

1 made, to the extent feasible, from property that has not been added to the fund or
2 trust, but which would be added if it were not used to pay the tax.

3 **Reporter's Notes**

4 The reference in this subsection to a charity's having an "annuity interest"
5 includes a charity's having a unitrust interest. If taxes are to be paid from a fund or
6 trust for which a charity has a remainder interest or an annuity or unitrust interest,
7 that could cause a loss of the entire charitable deduction. The Service has been
8 reluctant to treat a payment from such a trust or fund as merely reducing the size of
9 the charitable deduction, and has disallowed the charitable deduction entirely. The
10 Service has indicated informally in at least one case that if the payment of the tax is
11 made before that cash is made a part of the fund or trust, then the payment will not
12 disqualify the charitable deduction. There are numerous instances in which
13 instruments have been drafted requiring a portion of estate taxes to be paid from a
14 charitable remainder trust or a charitable lead trust. Subsection (e) is an attempt to
15 protect the deduction in such cases.

16 **SECTION 5. STATUTORY APPORTIONMENT OF ESTATE**

17 **TAXES.**

18 (a) Except as otherwise provided in this [Act,] an estate tax is apportioned
19 among the persons interested in the gross estate in the proportion that the value of
20 the interest in property received by each person interested in the gross estate bears
21 to the total value of the gross estate.

22 (b) Unless other assets of the gross estate to which taxes are apportioned by
23 this [Act] are insufficient to satisfy the decedent's liability for estate tax, none of that
24 tax is apportioned to the recipient of any disposition of property having a value of
25 \$10,000 or less. If the other assets of the gross estate are insufficient, the shortfall is
26 apportioned to the recipients of dispositions of property having a value of \$10,000
27 or less in proportion to their respective values. In this subsection, a "disposition" of

1 property means any passage of property that is included in the decedent's gross
2 estate, whether the passage took place before or after the decedent's death and
3 whether or not the property is subject to probate.

4 **Reporter's Notes**

5 No estate tax shall be apportioned to the recipient of a disposition of
6 property having a value of \$10,000 or less unless the other assets of the gross estate,
7 to which taxes are apportioned by this Act, are insufficient to pay all of the estate
8 tax. This provision applies to both non-probate and probate dispositions. So, if a
9 joint bank account of less than \$10,000 passes to the surviving joint owner, no tax
10 will be apportioned to that joint owner. Similarly, if the proceeds of a life insurance
11 policy that are payable to a beneficiary do not exceed \$10,000, no estate tax will be
12 apportioned to that beneficiary; and no estate tax will be apportioned to the
13 beneficiary of a testamentary pecuniary devise of \$10,000 or less.

14 (c) A state inheritance tax that is imposed on the receipt of an interest in
15 property is charged to the person receiving that interest.

16 **Reporter's Notes**

17 While only a few States currently have an inheritance tax, as contrasted to an
18 estate tax, this provision has been included in the Act to deal with the possibility that
19 a number of States may reintroduce an inheritance tax if the federal estate tax is
20 eliminated or substantially reduced. State estate taxes typically are based on the
21 federal estate tax, and so the elimination or reduction of the latter would have a
22 significant impact on the revenue collections of the State.

23 (d) A federal or state generation-skipping transfer tax that is incurred on a
24 direct skip is charged to the transfer to which that tax is applied. If there is more
25 than one transferee, the tax is apportioned among them in proportion to the values
26 of their respective interests.

**SECTION 6. ALLOWANCE FOR EXEMPTIONS, DEDUCTIONS,
SPECIAL VALUATIONS, CREDITS, AND DEFERRALS.**

(a) In making an apportionment, allowances must be made as provided in subsections (b) through (e) and Sections 7 and 8.

(b) Except as otherwise provided for special elective benefits in Section 8, a deduction or exemption inures to the benefit of the person receiving the transfer that gave rise to the deduction or exemption.

Reporter's Notes

This provision is aimed primarily at transfers that qualify for a marital or charitable deduction. Since the property transferred to the surviving spouse or charity effectively causes no federal estate tax to the extent that it is deductible, no part of the surviving spouse's or charity's interest that so qualifies should bear any of the estate tax burden; and, to that end, the provision insulates the property and the recipient from bearing any part of the payment of the tax. Similarly, if a deduction or exemption is allowed for the transferred interest under any other estate tax, the transferred property will not bear any part of that tax burden. In addition to the equity of this provision, the insulation of the spouse's and the charity's interest from bearing any part of the tax will prevent a reduction of the marital or charitable deduction that otherwise would occur.

(c) A credit for gift taxes and for property previously taxed inures to the proportionate benefit of those persons to whom the federal estate tax is apportioned. A credit for estate taxes inures to the benefit of the persons interested in the gross estate, except that to the extent that the estate tax was paid by the recipient of the property on which the estate tax was imposed, that portion of the credit inures to the benefit of that recipient.

1 **Reporter's Notes**

2 The reference to credits for estate taxes is to a credit for foreign and state
3 estate taxes. A recipient of property which incurred a foreign or state estate tax
4 may have paid that tax by virtue of the amount's being paid out of the property
5 passing to that person. The only state estate tax that is payable out of the interest in
6 property the transfer of which caused the imposition of that tax is an inheritance tax.
7 An inheritance tax will reduce the amount that the recipient of that property will
8 receive, but it will not reduce the value of the recipient's interest in the gross estate
9 according to the definition of "value" in the Act. The payment of the state estate tax
10 is essentially a payment of a portion of the federal estate tax to the extent that a
11 federal estate tax credit is allowed for the payment. Accordingly, the Act gives the
12 recipient of the property the benefit of the federal estate tax credit for the
13 inheritance tax that the recipient effectively paid.

14 (d) If payment of any part of an estate tax is deferred because of the
15 inclusion of a certain interest in property in the gross estate, the benefit of the
16 deferral inures proportionately to the persons to whom the estate tax attributable to
17 that interest is apportioned. Any interest payable on an extension or deferral of
18 taxes and any tax deduction associated with the interest paid must be equitably
19 apportioned to reflect the benefit of the extension or deferral and the burden of the
20 interest paid.

21 (e) To the extent that an interest in property passing to or for the benefit of
22 a surviving spouse, or for any charitable, religious, public, or similar purpose, would
23 not give rise to an allowable federal estate tax deduction solely because the value
24 passing to the recipient would be reduced by the imposition of a tax upon the
25 interest, the estate tax may not be apportioned to the recipient of that interest.

1 **SECTION 7. APPORTIONMENT BETWEEN LIMITED AND**
2 **REMAINDER INTERESTS.**

3 (a) In this section:

4 (1) “Insulated from being used to pay all or part of the estate tax.” with
5 reference to property or a fund subject to limited interests, means unreachable by
6 the decedent’s personal representative because of legal restrictions preventing
7 creditors from reaching the property or fund or practical obstacles to collection.

8 (2) “Nonholder” means a person interested in the gross estate who holds
9 an interest in the gross estate other than an interest in property or a fund subject to
10 limited interests.

11 (3) “Property or a fund subject to limited interests” means property or a
12 fund in which in which one or more persons have a limited interest.

13 (b) Except as otherwise provided in Section 8, to the extent that property or
14 a fund subject to limited interests whose existence gives rise to a portion of the
15 estate tax is not insulated from being used to pay all or part of the estate tax, the tax
16 is apportioned to the holder of that property or fund without apportionment among
17 the several interests therein, to be paid from the principal of the property or fund.

18 **Reporter’s Notes**

19 Subsection (b) applies to property or a fund in which at least one person has
20 a limited interest and which property or fund can be reached by the personal
21 representative of the decedent. In such cases, the apportioned estate tax is charged
22 against the principal of the property or fund, and is not apportioned among the
23 several interests in that property or fund. While there is no express apportionment
24 to the limited interests in such property or fund, the holders of the limited interests
25 will bear a share of the tax burden in that the resulting reduction of the value of the
26 principal will reduce the value of the limited interests except that it will not reduce

1 the value of a dollar annuity interest. So, the holder of a dollar annuity interest will
2 be exonerated from sharing in the burden of the estate taxes. The reason for this
3 treatment is discussed in the Reporter's Notes to subsection (c). If property or a
4 fund with a limited interest cannot be reached by the decedent's personal
5 representative, the attribution of estate taxes for such property is set forth in
6 subsection (c).

7 If a charitable bequest is made in the form of a charitable remainder annuity
8 trust, a charitable remainder unitrust, or a pooled income fund, an interest that
9 precedes the charitable remainder will not qualify for a deduction unless it is a QTIP
10 interest or another charitable interest. Similarly, a succeeding interest of a charitable
11 lead trust (Section 2055(e)(2)(B) of the Internal Revenue Code) may not qualify for
12 a deduction and frequently will not. If the tax apportioned to a nondeductible
13 preceding or succeeding interest were to be paid from the principal of the trust, that
14 might endanger the qualification of the charity's interest for a deduction. See Treas.
15 Reg. § 20.2055-2(e)(2)(vi)(f), and Rev. Procs. 90-30, 90-31, and 90-32. Even if the
16 charitable deduction were not lost, as would be the case where the estate tax is paid
17 from funds that were designated to pass to the trust but had not yet been transferred
18 to the trust, the tax payment would cause a reduction of the amount of the charitable
19 deduction. See Section 4(e) and the Reporter's Notes thereto. A remainder interest
20 in a personal residence or a farm and a qualified conservation contribution also can
21 qualify for a charitable deduction, and the same considerations would apply to those
22 interests.

23 Similarly, the devise of a remainder interest to a surviving spouse will qualify
24 for a marital deduction. If the tax apportioned to the interests preceding the marital
25 bequest can be paid from principal, it will reduce the amount of the marital
26 deduction.

27 The likely intent of a decedent would be to maximize the marital and
28 charitable deductions available for the devisees. Despite the fact that that is the likely
29 intent of the decedent, the Act provides that the estate tax is to be paid from the
30 principal of the property or funds if those properties can be reached by the
31 decedent's personal representative. That choice was made largely to prevent
32 administrative complexity.

33 If the tax were not to be paid from the principal of the property or fund, it
34 would have to be collected either from the non-charitable interests in that property
35 or from other persons interested in the gross estate. It would be harsh to collect the
36 tax from persons having interests in the property or fund who will not obtain the use
37 of the assets for many years, if at all. The Act could have chosen to apportion the
38 applicable estate tax to other persons interested in the gross estate and provided for
39 a reimbursement of those other persons from the distributees of the property or

1 funds as is provided by Section 7(c) when the assets of the property or fund cannot
2 be reached by the decedent's personal representative. But, that is a complicated
3 arrangement to administer, and was utilized in Section 7(c) because no simple
4 alternative was available since the principal of the property or fund cannot be
5 reached. In this subsection, ease of administration was chosen over utilizing a
6 complex mechanism even though that choice may cause a reduction of a deduction.

7 While there is the problem that, in the case of a split-interest trust in which a
8 charity has an interest, collecting the tax from the principal could lose the charitable
9 deduction entirely, it appears that that problem will not arise frequently and can best
10 be left to resolution by the drafters of the instruments. In many cases, the trust in
11 which a charity is given an interest will not be completely funded at the time of the
12 decedent's death, and so the personal representative can use funds that are
13 earmarked for the trust, but not yet distributed to it, to pay the applicable estate tax.
14 While, in some cases, the use of such funds will reduce the size of the charitable
15 deduction, it will not cause a complete disallowance of the deduction. See Section
16 4(e).

17 Even when a split-interest charitable trust is completely funded before the
18 decedent's death, a well-drafted attribution clause in decedent's will or other
19 instrument can prevent the loss of a charitable deduction. Similarly, an
20 apportionment clause in the decedent's will or other instrument can prevent the
21 reduction of a charitable or marital deduction if that is what the decedent desired.
22 Where there is a significant charitable or marital transfer, the drafters of the
23 instruments that create a split-interest trust for a charity or spouse typically will
24 make an appropriate provision for attribution of estate taxes in that instrument.
25 The Act leaves it to the parties to tailor the apportionment to accomplish the
26 specific wishes of the decedent when a charitable or marital split-interest trust or
27 property interest is employed rather than to create a complex apportionment scheme
28 to protect against circumstances that will not frequently arise.

29 (c) Except as otherwise provided in Section 8, to the extent that property or
30 a fund subject to a limited interest whose existence gives rise to a portion of the
31 estate tax is insulated from being used to pay all or part of the estate tax, initially no
32 tax is apportioned to the owners of that property or fund. The estate tax that would
33 have been apportioned to those owners is apportioned proportionately to the
34 nonholders. If a distribution is made from the property or fund, each nonholder may

1 recover from each distributee that proportion of the estate tax apportioned to the
2 distributee which the amount of tax paid by the nonholder bears to the amount of
3 tax paid by nonholders. Upon a distribution, the amount of the estate tax
4 apportioned to each distributee is that fraction of the amount distributed whose
5 numerator is the amount of the estate tax, and whose denominator is the value of the
6 gross estate.

7 **Reporter's Notes**

8 If the estate tax cannot be collected from property or a fund because it is
9 insulated from creditors by law or because of practical difficulties, the tax will have
10 to be paid by persons having interests in other assets of the estate. It would be too
11 harsh to make beneficiaries of the properties or funds pay tax on properties that they
12 will not receive until many years later and may never receive. If the beneficiaries
13 were required to pay the tax at the time of decedent's death, that would give rise to
14 widespread disclaimers of interests. Also, there would be a difficulty in valuing the
15 interests of discretionary beneficiaries of such funds.

16 In order to permit the nonholders to be reimbursed from the beneficiaries of
17 the property or funds for the estate tax that the nonholders paid, the Act effectively
18 provides the nonholders with a percentage interest in the property or funds; and the
19 value of their percentage interest will increase or decrease as the value of the
20 property or fund waxes or wanes. The percentage interest is determined by applying
21 the average estate tax rate times the value of the property or fund as of the estate
22 tax valuation date. So, when a distribution is made, a percentage of that distribution
23 can be collected by the nonholders.

24 In Section 7(b), in which the applicable estate tax is collected from the
25 principal of the property or funds, the holders of limited interests, other than a fixed
26 dollar annuity interest, will bear a share of that payment of the taxes. The reduction
27 of the principal will result in a smaller amount of income payable to income
28 beneficiaries, and a smaller amount of payment to a holder of a unitrust interest (a
29 person entitled to periodic payments of a stated percentage of the value of the
30 trust's assets). However, a person entitled to receive a specified dollar amount
31 periodically (a fixed dollar annuity) will receive the same amount when the principal
32 is reduced as he would have received if the principal had not been used to pay the
33 tax. So, in the circumstances of Section 7(b), the annuitant of a fixed dollar annuity
34 interest will not bear any of the burden of paying the applicable estate tax (unless the
35 reduction of principal results in an exhaustion of the principal before the annuitant's

1 interest expires). The annuitant in Section 7(b) is permitted to receive the annuity
2 free of estate taxes partly because, in many cases, the decedent will have intended
3 that the annuity payable to the annuitant be a net figure, but primarily because that
4 choice conforms to the goal of administrative simplicity.

5 However, in the context of Section 7(c), the annuitant is charged with his
6 share of the applicable estate tax; and so there is a discontinuity in the Act's
7 treatment of annuitants when the principal of the property or funds can be reached
8 and when they cannot. Since the mechanism for allocating the applicable estate tax
9 to distributees is part of the scheme of Section 7(c), it does not create any additional
10 complexity to apply that formula to annuitants. To the contrary, it would have
11 substantially increased the complexity of the scheme if annuitants were excluded
12 since the formula to be applied to the other distributees would then be difficult to
13 determine. So, once again, easing the burden of administering the provision took
14 precedence over other considerations. The balancing of administrative ease against
15 the possible wishes of a decedent to provide a net amount of annuity to the
16 annuitant is influenced by the fact that many decedents would not want the annuitant
17 to escape a share of the tax liability at the expense of other persons interested in the
18 gross estate. The identification of a decedent's likely wishes is not so clear in this
19 case as to receive a great amount of weight.

20 (d) If, after the death of the decedent, the undistributed property or fund
21 subject to limited interests cease to be insulated from being used to pay all or part of
22 the estate tax, an amount of estate tax equal to the same fraction of the value of the
23 remaining property or fund as is provided in subsection (c) for apportionment of a
24 distribution is apportioned to the holder of the property or fund and no estate tax is
25 apportioned to the distributees of later distributions. Each nonholder is entitled to
26 recover the same proportion of the estate tax apportioned to the holder of the
27 property or fund as is provided in subsection (c) for recovery from a distributee.

28 **Reporter's Notes**

29 If undistributed property or a fund subsequently becomes available for
30 collection, the nonholders can collect the balance of their interest from the property
31 or fund at that time, and subsequent distributees will have no liability for taxes.

1 **SECTION 8. APPORTIONMENT OF SPECIAL ELECTIVE BENEFITS**
2 **AND ADDITIONAL ESTATE TAX FROM RECAPTURE OF THOSE**
3 **BENEFITS.**

4 (a) In this section: (1) “special elective benefit” means a reduction in the
5 federal estate tax obtained by an election for a lower valuation of specified property
6 that is included in the gross estate, a deduction from the gross estate allowed for
7 specified property, or an exclusion from the gross estate of specified property; and
8 (2) “specified property” means property for which an election has been made for a
9 special elective benefit.

10 **Reporter’s Notes**

11 The type of special elective benefits at which this provision is aimed are
12 currently set forth in Sections 2031(c), 2032A, and 2057 of the Internal Revenue
13 Code. Section 2032A provides an election whereby “qualified real property” (real
14 property that is used for a specified purpose and is held by certain parties related to
15 the decedent) will be given a lower valuation for federal estate tax purposes than
16 otherwise would have been true. Under Section 2032A(c), if within 10 years after
17 the decedent’s death the qualified heir disposes of an interest in the qualified realty
18 or ceases to use it for its required purpose, an additional estate tax will be imposed
19 to recapture some of the estate tax reduction that was obtained through the election.
20 The purpose of Section 8 is to define how the benefit of an estate tax reduction of
21 this or a similar type will be allocated and how any additional estate tax imposed to
22 recapture some of that tax benefit will be allocated.

23 Another federal estate tax provision to which Section 8 applies is Section
24 2057. That provision grants an election to receive a special estate tax deduction for
25 a “qualified family-owned business interest.” Under Section 2057(f), if, within 10
26 years after the decedent’s death, one of four listed events occurs, an additional
27 federal estate tax will be imposed in order to recapture some of the tax reduction
28 obtained by electing to take the deduction. Section 8 defines how the benefits of the
29 election and the burden of an additional tax will be apportioned.

30 Section 2031(c) of the Internal Revenue Code provides an election whereby
31 a portion of the value of land that is subject to a qualified conservation easement, as
32 defined in Section 2031(c)(8), is excluded from the gross estate. The exclusion does

1 not apply to the value of a retained development right; but if, prior to the date for
2 filing the estate tax return, all the persons who have an interest in the land execute
3 an agreement to extinguish some or all of the development rights, an additional
4 estate tax deduction will be allowed by Section 2031(c)(5). A failure to implement
5 that agreement within a specified time will cause the imposition of an additional
6 estate tax to recapture that deduction. The allocation of the benefits of the
7 exclusion and of the deduction for making the agreement, and the allocation of any
8 additional estate tax, is determined by Section 8.

9 (b) If an election is made for one or more special elective benefits for
10 specified property, the apportionment of the federal estate tax is determined by first
11 apportioning to the owners of all of the interests in all of the specified properties,
12 including the owners of limited interests, the amount of federal estate tax that would
13 have been payable if no election for special elective benefits had been made for any
14 properties. This initial apportionment is made to the owner of each interest in the
15 specified properties in the proportion that the value of that interest bears to the
16 aggregate value of all of the interests in the gross estate. The reduction in federal
17 estate tax resulting from the elections for special elective benefits reduces the federal
18 estate tax that initially was apportioned to the owners of interests in the specified
19 properties by the amount of the reduction. If there are two or more owners, the
20 reduction is apportioned among them according to the proportionate values of their
21 interests in the specified properties. If the federal estate tax initially apportioned to
22 the owner of an interest in specified property is reduced to zero, any excess amount
23 of reduction reduces the federal estate tax apportioned to other persons interested in
24 the gross estate. This amount of reduction is apportioned among those persons in
25 proportion to the values of their interests in the gross estate.

Reporter's Notes

The allocation of the tax reduction obtained from a special elective benefit is made among the holders of interests in all of the specified properties in the aggregate in accordance with the values of each person's respective interest. Since the determination of the amount of estate tax benefit is made by applying the marginal rate of estate tax on the reduced value of the gross estate, it is necessary to aggregate the tax reduction obtained from all of the special election benefits so that the greater tax reduction obtained from using a marginal rate is not duplicated by applying that rate to several distinct reductions.

The apportionment of the federal estate tax between limited and remainder interests in Section 8 is contrary to the general rule in Section 7(b) that charges estate taxes to the principal of the property in which a limited interest exists if the property can be reached by a personal representative. There are several reasons why that approach was not adopted in Section 8. To pay their share of the tax, the owners of the specified properties will have either to sell the properties, borrow against them, use other funds to pay the tax, or defer the payment of the tax under tax deferral provisions and pay the tax in installments with income produced by the property. If they were to sell the property, the special elective benefit would be lost; so a sale is not a viable option. If they obtain the money by borrowing or from other funds, there would be no reduction in the amount of income produced by the realty, and so the holders of the limited interests would not bear any of the tax unless it were apportioned to them (as Section 8 does). The alternative chosen in Section 7(c) of having other persons interested in the estate pay the tax incurred by the specified properties and then collect reimbursement from distributees of the property is not practical since there would be difficulty in determining what income was derived from the realty itself, and there would be no trustee or other fiduciary to see that the amounts were turned over to the other persons who paid the tax. Accordingly, Section 8 provides that the tax is to be paid by the owners of the interests in the property and the parties can determine the best method for them to do so.

(c) If an additional federal estate tax is imposed in order to recapture all or part of a special elective benefit, the additional tax is apportioned among the persons holding interests in the specified property, including limited interests, for which the election for the recaptured special elective benefit was made. The additional federal estate tax is apportioned among the persons holding interests in the specified

1 property in proportion to the respective values of their interests as of the date on
2 which the additional federal estate tax was imposed.

3 **Reporter's Notes**

4 The apportionment of the additional federal estate tax between limited and
5 remainder interests is contrary to the general rule in Section 7(b) that charges estate
6 taxes to the principal of the property in which a limited interest exists if the property
7 can be reached by a personal representative. The reasons for treating the additional
8 federal estate tax differently in Section 8(c) are similar to the reasons described in
9 the Reporter's Notes to Section 8(b) in which taxes are attributed to limited
10 interests. Since the property involved is realty,, there will be no principal from
11 which to pay the additional tax unless the property is sold. If the parties do not wish
12 to sell the property and so either borrow the funds or use other funds to pay the tax,
13 the amounts received by the owners of the limited interests would not be reduced
14 thereby unless the tax is apportioned to them. So, because of the apportionment
15 method adopted in this subsection, while the owners have the option of paying the
16 tax from other funds, borrowing the funds, or selling the property, whichever
17 method they choose, the owners of the limited interest will bear their share of the
18 tax.

19 The allocation between the limited and remainder interests is made according
20 to the actuarial values determined under the federal estate and gift tax regulations.
21 Those actuarial values are set according to standards established in Section 7520 of
22 the Internal Revenue Code, which mandates the utilization of current market
23 conditions to establish actuarial values. See e.g., Treas. Reg. § 20.2031-7(d).

24 The Act allocates the additional federal estate tax among the owners
25 according to the values of their interests as determined at the time that the additional
26 tax is incurred rather than as of the date of the decedent's estate. Persons who had
27 an interest in the specified property at the time of the decedent's estate may not
28 have an interest when the additional tax is imposed and therefore will not share in
29 the payment of the additional tax.

30 (d) If a [state or] foreign estate or succession tax has a provision for a
31 special tax benefit of the kind described in subsection (a), the apportionment of the
32 reduction of the state or foreign tax which is obtained thereby, and the
33 apportionment of any additional tax incurred by reason of a recapture of all or part

1 of that tax reduction, must be made in the same manner as is provided in this [Act]
2 for the federal estate tax.

3 **SECTION 9. RECOVERY FROM PROPERTY IN POSSESSION OF**
4 **FIDUCIARY.**

5 (a) A fiduciary may withhold the estate tax apportioned to the interest of a
6 person interested in the gross estate from any property that is under the control of
7 the fiduciary and is distributable to that person. If that property is insufficient to
8 satisfy the tax apportioned to that person, the fiduciary may recover the deficiency
9 from that person.

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

14 **SECTION 10. RIGHT OF FIDUCIARY TO RECOVER TAX.**

15 (a) If all property subject to apportionment does not come into the control
16 of the fiduciary that has the duty to pay the estate tax, the fiduciary may recover the
17 proportionate amount of estate tax from the persons who hold the uncontrolled
18 property.

19 (b) To the extent that the fiduciary does not recover under subsection (a)
20 the amount of a tax apportioned to any person, the amount not recovered must be

1 apportioned among the other persons interested in the gross estate who are subject
2 to apportionment, but the total tax apportioned to a person may not exceed the
3 value of that person's interest.

4 (c) If an ancillary personal representative controls property that is subject to
5 contribution for the payment of an estate tax, the domiciliary fiduciary may recover
6 from the ancillary personal representative the tax apportioned to that property.

7 **SECTION 11. RIGHT OF REIMBURSEMENT.**

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

12 (b) In the discretion of the fiduciary, the right of reimbursement under
13 subsection (a) may be enforced by the person entitled to reimbursement or by the
14 fiduciary for the benefit of that person.

15 **SECTION 12. JUDICIAL ACTION TO DETERMINE OR ENFORCE**
16 **APPORTIONMENT.**

17 (a) A fiduciary, transferee, or person interested in the gross estate may
18 maintain an action to have a court determine and enforce the apportionment
19 pursuant to this [Act].

1 (b) A fiduciary or other person who is not a resident of this State may
2 maintain an action in this State to recover from a person interested in the gross
3 estate who is resident in this State or owns property in this State the amount of
4 estate tax apportioned to the defendant and recoverable by the plaintiff. For
5 purposes of that action, an apportionment by a court having jurisdiction to make
6 that apportionment shall be presumed to be correct; but the presumption may be
7 rebutted by a contesting party.

8 [(c) An action under this [Act] must be brought in the court in which the
9 estate of the decedent is or was administered or, if an administration has not been
10 commenced, in the court of any county in which the estate of the decedent may be
11 administered.]

12 **SECTION 13. UNIFORMITY OF APPLICATION AND**
13 **CONSTRUCTION.** In applying and construing this Uniform Act, consideration
14 must be given to the need to promote uniformity of the law with respect to its
15 subject matter among States that enact it.

16 **SECTION 14. SEVERABILITY CLAUSE.** If any provision of this [Act] or
17 the application thereof to any person or circumstance is held invalid, the invalidity
18 does not affect other provisions or applications of this [Act] which can be given
19 effect without the invalid provision or application, and to this end the provisions of
20 this [Act] are severable.

1 **SECTION 15. EFFECTIVE DATE.** This [Act] takes effect on [the date on
2 which it is enacted].

3 **SECTION 16. REPEALS.** The following acts and parts of acts are repealed
4 as of the effective date of this [Act]:

5 (1)

6 (2)

7 (3)