CHAPTER 353

FORMERLY

HOUSE BILL NO. 771

AN ACT TO AMEND TITLES 3, 12 AND 30 OF THE DELAWARE CODE RELATING TO DELAWARE TAXES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 911(c), Title 3 of the Delaware Code by striking said subsection in its entirety.

Section 2. Amend § 918, Title 3 of the Delaware Code by striking said section in its entirety.

Section 3. Amend § 902(6), Title 12 of the Delaware Code by striking paragraph (2) thereof in its entirety and substituting in lieu thereof the following:

"(2) If no Form 706 is required to be filed, 15 months from the date of the decedent's death; or",

Section 4. Amend § 1527, Title 12 of the Delaware Code by striking the word "inheritance" as it appears in the caption thereof and substituting in lieu thereof the word "estate".

Section 5. Amend § 1541(b), Title 12 of the Delaware Code by striking the phrase "Chapter 13" as it appears in said subsection and substituting in lieu thereof the phrase "Chapter 15"

Section 6. Amend § 1901(d), Title 12 of the Delaware Code by striking the phrase "inheritance or as it appears in the second sentence thereof.

Section 7. Amend § 1912(6), Title 12 of the Delaware Code by striking the phrase "inheritance or wherever it appears therein.

Section 8. Amend Title 12 of the Delaware Code by striking § 2108 of said Title.

Section 9. Amend Title 12 of the Delaware Code by striking § 2304 thereof and substituting in lieu thereof the following:

"§ 2304. Estate tax returns or affidavits.

(a) Whenever a return required under Chapter 15, Title 30 of the Delaware Code has been filed and the correct tax and additions to tax, if any, have been paid, a certificate to that effect shall be filed by the Director of Revenue with the Register of Wills of the counties in which the letters have been granted and in which the decedent owned real property.

(b) When no return is required under Chapter 15, Title 30 of the Delaware Code, and

(i) real property passed to any person by virtue of joint ownership with right of survivorship or tenancy by the entireties with the decedent, or

letters have been granted by the Register of Wills in any county and the decedent owned real property, then an affidavit in a form approved by the Director of Revenue shall be filed by the personal representative (as defined in Title 30 Delaware Code §1501) with the Register of Wills of the counties in

which the real property is located. The Director of Revenue may require a copy of said affidavit be filed with the Division of Revenue."

Section 10. Amend Chapter 13, Title 30 of the Delaware Code by striking said chapter in its entirety.

Section 11. Amend § 102(b)(1), Title 30 of the Delaware Code by striking the word "inheritance" as it appears in said paragraph.

Section 12. Amend § 376(a)(1)a., Title 30 of the Delaware Code by striking the word "inheritance as it appears in said subdivision.

Section 13. Amend § 529(a)(I)a. and b., Title 30 of the Delaware Code by striking the word "inheritance" as it appears in said subdivisions.

Section 14. Amend § 511(c), Title 30 of the Delaware Code by striking the phrase "13 or" wherever it appears in said subsection.

Section 15. Amend § 536(b)(4), Title 30 of the Delaware Code by striking the phrase "Chapter 13" as it appears in said paragraph.

Section 16. Amend § 555, Title 30 of the Delaware Code by striking the last sentence thereof.

Section 17. Amend § 560(a), Title 30 of the Delaware Code by striking the phrase "(other than Chapter 13, which, with regard to transferee liability, shall be governed exclusively by the provisions of Chapter 13)" as it appears in said subsection.

Section 18. Amend § 1501, Title 30 of the Delaware Code by striking said section in its entirety and substituting in lieu thereof a new § 1501 to read as follows:

"§1501. Definitions relating to this chapter. As used in this Chapter,

(a) 'Estate tax' shall mean the tax imposed under this chapter.

() 'Federal estate tax' shall mean the tax imposed under the United States Internal Revenue Code (26 U.S.C. §2001 et seq.), as amended.

(a) 'Personal representative' shall mean any executor or administrator of the decedent and with respect to property which is included in the gross estate for federal estate tax purposes and which is not in the possession or control of the personal representative, any person in possession of such property.

(b) 'State', except where the context otherwise indicates, shall mean the State of Delaware or any other state of the United States or the District of Columbia."

Section 19. Amend § 1502, Title 30 of the Delaware Code by striking said section in its entirety and substituting in lieu thereof a new § 1502 to read as follows:

"§1502. Tax on transfers of resident estates.

(a) Imposition of tax-- A tax is imposed upon the transfer of the property of every decedent who was a resident of this State at the time of death.

(b) Amount of tax-- Except as provided in section 1503 of this title, the amount of the tax shall be the amount of credit allowable under the provisions of the federal estate tax laws for estate, inheritance, legacy and succession taxes paid to any state.

Section 20. Amend § 1503, Title 30 of the Delaware Code by striking said section in its entirety and substituting in lieu thereof a new §1503 to read as follows:

"§ 1503. Credit for taxes paid to another state. Limitation.

(a) The estate of every decedent who was a resident of this State at the time of death shall be allowed a credit against the tax otherwise due under this chapter for the aggregate amount of all estate, inheritance, legacy and succession taxes actually paid to any other state in respect to any property owned by such decedent or subject to such taxes as part of or in connection with the estate and for which a credit for such taxes paid to any other state is allowable under the federal estate tax laws.

(b) The credit allowed under this section for taxes paid to any other state shall be limited to that amount which does not reduce the tax due under this chapter to an amount less than the credit allowable under the provisions of the federal estate tax laws for estate, inheritance, legacy and succession taxes paid to any state multiplied by a fraction,

(1) the numerator of which is the value of that part of the decedent's taxable estate for federal estate tax purposes consisting of real and tangible personal property located in this State, and

(2) the denominator of which is the value of the decedent's taxable estate for federal estate tax purposes, excluding real and tangible personal property not located in any state."

Section 21. Amend § 1504, Title 30 of the Delaware Code by striking said section in its entirety and substituting in lieu thereof a new § 1504 to read as follows:

"§1504. Tax on transfers of non-resident estates.

(a) Imposition of tax-- A tax is imposed upon the transfer of the estate of every decedent who at the time of death was a non-resident of this State of that part of the property which is taxable for federal estate tax purposes and which consists of real and tangible personal property situated in this State.

(b) Amount of tax-- The amount of the tax shall be computed by multiplying the credit allowable under the provisions of the federal estate tax laws for estate, inheritance, legacy and succession taxes paid to any state by a fraction,

(1) the numerator of which is the value of that part of the decedent's taxable estate for federal estate tax purposes consisting of real and tangible personal property located in this State, and

(2) the denominator of which is the value of the decedent's taxable estate for federal estate tax purposes, excluding real and tangible personal property not located in any state."

Section 22. Amend § 1505, Title 30 of the Delaware Code by striking said section in its entirety and substituting in lieu thereof a new § 1505 to read as follows:

"§1505. Returns; time to file return and pay tax.

(a) Duty to file return-- An estate tax return shall be filed pursuant to this Chapter in all cases when a resident decedent or a nonresident decedent having real or tangible personal property situated in this State is required to file a federal estate tax return.

(b) Time to file return -- The estate tax returns required by this chapter shall be filed on or before the due date for the federal estate tax return (with regard to extensions).

(c) Time and place for payment of tax-- The personal representative shall, without assessment, notice or demand, pay any tax due thereon to the Division of Revenue on or before the date fixed for filing the return. The Director of Revenue shall prescribe the place for filing any return, declaration, statement or other document required pursuant to this chapter and for the payment of any tax.".

Section 23. Amend § 1506, Title 30 of the Delaware Code by striking said section in its entirety and substituting in lieu thereof a new § 1506 to read as follows:

"§ 1506. Collection and payment of tax out of estate; liability of the personal representative.

(a) The personal representative shall pay to the Department of Finance the full amount of the Delaware estate tax when the same is due, out of any moneys belonging to such estate in his hands.

(b) The personal representative shall have the same powers and duties in respect to the raising of funds for the payment of such tax as conferred upon an executor under the provisions of sections 2205, 2206, 2207A and 2207B of the Internal Revenue Code, and pursuant to the laws of this State in the case of raising funds for the payment of a decedent's debts generally. Any provision in a decedent's will (or revocable trust) in which a decedent effectively waives a right of recovery under a section of the Internal Revenue Code referred to in the preceding sentence shall be deemed a waiver of the corresponding right of recovery under this section, unless the will or revocable trust specifically states otherwise.

(c) Every personal representative of a decedent's estate or any part thereof which is taxable under this chapter is personally liable for the payment of the estate tax. In addition to personal liability for payment of the estate tax, any personal representative failing to perform the duties under this chapter shall forfeit any right to commissions for settling the estate of the decedent."

Section 24. Amend Title 30 of the Delaware Code by striking §§ 1507 and 1508 of said title in their entirety.

Section 25. Amend Title 30 of the Delaware Code by enacting a new § 1507 to read as follows:

"§ 1507. Assessment of tax; special lien for estate taxes.

(a) assessment-- Notwithstanding the provisions of § 530 of this title, the tax due pursuant to this chapter shall be deemed assessed on the date of filing the Delaware estate tax return or the due date of the federal estate tax return for the decedent, whichever is earlier.

(b) special lien for estate taxes-- The tax imposed by this chapter shall be a special lien upon the gross estate of a resident decedent and upon the real and tangible personal property of a nonresident decedent situated in this State at the time of the decedent's death for 10 years from the date of death. Any property for which a marital or charitable deduction was allowed for federal estate tax purposes shall be exempt from the lien provided by this subsection.

(c) Extinction of lien-- Notwithstanding the foregoing, the special lien shall be extinguished,

(1) pursuant to § 555 of this title as to such part of the gross estate sold for the payment of charges against the estate and expenses of its administration,

(2) upon filing with the Register of Wills of the county in which the decedent resided and in which the decedent owned real property of one of the two following certificates: (A) of the Director or Revenue that the estate tax return has been filed and the correct tax has been paid, pursuant to § 2304(a) of Title 12, or (B) that no estate tax return or tax was due, pursuant to § 2304(b) of Title 12."

Section 26. This Act shall be effective with respect to decedents dying on or after January 1, 1999

Section 27. If any clause, sentence, section, provision or part of this Act shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not impair, invalidate, or affect the remainder of this Act, which shall remain in full force and effect.

Approved July 1, 1998