

5519

2011-2012 Regular Sessions

I N S E N A T E

May 27, 2011

Introduced by Sen. BONACIC -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the estates, powers and trusts law, in relation to certain formula clauses to be construed to refer to the federal estate and generation-skipping transfer tax laws applicable to estates of decedents dying after December 31, 2009 and before January 1, 2011

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 2-1.13 of the estates, powers and trusts law, as
2 added by chapter 349 of the laws of 2010, is amended to read as follows:
3 S 2-1.13 Certain formula clauses to be construed to refer to the federal
4 estate and generation-skipping transfer tax laws applicable
5 to estates of decedents dying after December thirty-first,
6 two thousand nine and before January first, two thousand
7 eleven
8 (a)(1) If by reason of the death of a decedent property passes or is
9 acquired under a beneficiary designation, [in the case of] a will or
10 trust of a decedent who dies after December thirty-first, two thousand
11 nine and before January first, two thousand eleven, that contains a
12 bequest or other disposition based upon the amount of property that can
13 be sheltered from federal estate tax by referring to the "unified credit",
14 "estate tax exemption", "applicable exclusion amount", "applicable
15 exemption amount", "applicable credit amount", "marital deduction",
16 "maximum marital deduction", "unlimited marital deduction", "charitable
17 deduction", "maximum charitable deduction" or similar words or phrases
18 relating to the federal estate tax, or that measures a share of an
19 estate or trust based on the amount that can pass free of federal estate
20 taxes, or that is otherwise based on a similar provision of federal
21 estate tax THEN SUCH BENEFICIARY DESIGNATION, WILL OR TRUST shall be
22 deemed to refer to the federal estate tax law as applied with respect to
23 decedents dying [on December thirty-first, two thousand nine] IN TWO
24 THOUSAND TEN, REGARDLESS OF WHETHER AN ELECTION IS MADE NOT TO HAVE THE
25 FEDERAL ESTATE TAX APPLY TO A PARTICULAR ESTATE.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 (2) If by reason of the death of a decedent property passes or is
2 acquired under a beneficiary designation, [in the case of] a will or
3 trust of a decedent who dies after December thirty-first, two thousand
4 nine and before January first, two thousand eleven, that contains a
5 bequest or other disposition based upon the amount of property that can
6 be sheltered from federal generation-skipping transfer tax by referring
7 to the "generation-skipping transfer tax exemption", "GST exemption",
8 "generation-skipping transfer tax", "GST tax" or similar words or phras-
9 es that measures a share of an estate or trust based on the amount that
10 can pass free of federal generation-skipping transfer taxes, or that is
11 otherwise based on a similar provision of federal generation-skipping
12 transfer tax law[; or if such bequest would have passed as a "direct
13 skip" to a "natural person" within the meaning of such terms under chap-
14 ter 13 of the Internal Revenue Code of 1986 if the decedent had died on
15 December thirty-first, two thousand nine], then such BENEFICIARY DESIG-
16 NATION, will or trust shall be deemed to refer to the federal genera-
17 tion-skipping transfer tax law in effect [on December thirty-first, two
18 thousand nine] IN TWO THOUSAND TEN, REGARDLESS OF WHETHER AN ELECTION IS
19 MADE NOT TO HAVE THE FEDERAL ESTATE TAX APPLY TO A PARTICULAR ESTATE.

20 (3) This paragraph shall not apply to a BENEFICIARY DESIGNATION, will
21 or trust that[:

22 (A) is executed or amended after December thirty-first, two thousand
23 nine; or

24 (B) Manifests] MANIFESTS an intent that a contrary rule shall apply
25 [if the decedent dies on a date on which there is no then applicable
26 federal estate tax or generation-skipping transfer tax].

27 [(4) The reference to January first, two thousand eleven in this para-
28 graph shall, if a federal estate tax or generation-skipping transfer tax
29 becomes applicable before that date, be construed to refer instead to
30 the first date on which the federal estate tax or generation-skipping
31 transfer tax becomes applicable.]

32 (b) The executor, trustee or other interested person under a BENEFICI-
33 ARY DESIGNATION, will or trust referred to in paragraph (a) of this
34 section may bring a proceeding to determine whether the [decedent
35 intended that the references described in such paragraph be construed
36 with respect to the law as it existed on the decedent's date of death,
37 without regard to the provisions of paragraph (a) of this section] BENE-
38 FICIARY DESIGNATION, WILL OR TRUST MANIFESTS A CONTRARY INTENTION WITHIN
39 THE MEANING OF SUBPARAGRAPH THREE OF PARAGRAPH (A) OF THIS SECTION. In
40 any such proceeding, extrinsic evidence may be admitted to establish the
41 decedent's intent. [Such proceeding]

42 (C) ANY PROCEEDING DESCRIBED IN PARAGRAPH (B) OF THIS SECTION must be
43 commenced [within twelve] BY THE DATE WHICH IS (1) TWENTY-FOUR months
44 following the DATE OF death of the DECEDENT, testator or grantor OR (2)
45 SIX MONTHS FOLLOWING THE DAY ON WHICH THE CHAPTER OF THE LAWS OF TWO
46 THOUSAND ELEVEN WHICH AMENDED THIS PARAGRAPH BECAME A LAW, WHICHEVER
47 DATE IS LATER, and not at any time thereafter. NOTWITHSTANDING THE
48 FOREGOING, THE TIME TO COMMENCE SUCH A PROCEEDING MAY BE EXTENDED, IN
49 THE DISCRETION OF THE COURT, ON A PETITION SHOWING REASONABLE CAUSE AND
50 ON NOTICE TO SUCH PERSONS AND IN SUCH MANNER AS THE COURT MAY DIRECT.

51 S 2. This act shall take effect immediately and shall be deemed to
52 have been in full force and effect on and after January 1, 2010, and the
53 provisions of this act shall apply to wills and trusts of decedents who
54 die after December 31, 2009 and before January 1, 2011.