

2725

2009-2010 Regular Sessions

I N S E N A T E

February 27, 2009

Introduced by Sen. DeFRANCISCO -- 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, the general obligations law and the mental hygiene law, in relation to the renunciation of property interests

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

1 Section 1. Section 2-1.11 of the estates, powers and trusts law, as  
2 amended by chapter 570 of the laws of 1980, subparagraph 1 of paragraph  
3 (a) as amended by chapter 325 of the laws of 2005, paragraph (c) as  
4 added by chapter 589 of the laws of 2003, paragraph (d) as amended by  
5 chapter 515 of the laws of 1993 and paragraph (j) as separately amended  
6 by chapter 417 of the laws of 1980, is amended to read as follows:

7 S 2-1.11 Renunciation of property interests  
8 (a) A RENUNCIATION MADE IN COMPLIANCE WITH THE PROVISIONS OF THIS  
9 SECTION SHALL NOT NECESSARILY CONSTITUTE A QUALIFIED DISCLAIMER WITHIN  
10 THE MEANING OF SECTION 2518 OF THE INTERNAL REVENUE CODE OF 1986, AS  
11 AMENDED, OR FOR THE PURPOSES OF THE TAXES IMPOSED BY ARTICLE TWENTY-SIX  
12 OF THE TAX LAW.

13 (B) For purposes of this section:  
14 (1) The term "disposition" shall include a disposition created under a  
15 will or trust agreement including, without limitation, the granting of a  
16 power of appointment, a disposition created by the exercise or nonexercise  
17 of a power of appointment, a distributive share under 4-1.1, a  
18 transfer created by a trust account as defined in 7-5.1, a transfer  
19 created by a life insurance or annuity contract, a transfer created by a  
20 joint tenancy or tenancy by the entirety, a transfer under an employee  
21 benefit plan (including, without limitation, any pension, retirement,  
22 death benefit, stock bonus or profit-sharing plan, system or trust), a  
23 transfer of a security to a beneficiary pursuant to part 4 of article 13  
24 of this chapter, any other disposition or transfer created by any testa-

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

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1 mentary or nontestamentary instrument, or by operation of law, and any  
2 of the foregoing created or increased by reason of a renunciation made  
3 by another person.

4 (2) The effective date of the disposition for purposes of this section  
5 shall be:

6 A. If the disposition is created by will, the exercise or nonexercise  
7 of a testamentary power of appointment, a distribution pursuant to  
8 4-1.1, the deposit of money in a trust account as defined in 7-5.1, THE  
9 REGISTRATION OF A SECURITY IN BENEFICIARY FORM PURSUANT TO PART FOUR OF  
10 ARTICLE THIRTEEN OF THIS CHAPTER, a life insurance or annuity contract,  
11 a joint tenancy or tenancy by the entirety, or an employee benefit plan,  
12 the date of death of the deceased testator, holder of the power of  
13 appointment, intestate, creator of the trust account, REGISTERED OWNER  
14 OF THE SECURITY, insured, annuitant, other joint tenant or tenant by the  
15 entirety, or employee, as the case may be;

16 B. If the disposition is created by trust agreement, the exercise of a  
17 presently exercisable power of appointment, or the renunciation of a  
18 disposition created by another, the date [of the trust agreement,] AS OF  
19 WHICH THE TRANSFER IN TRUST IS IRREVOCABLE AND IS A COMPLETED GIFT FOR  
20 FEDERAL GIFT TAX PURPOSES (REGARDLESS OF WHETHER A GIFT TAX IS IMPOSED  
21 ON THE COMPLETED GIFT), THE DATE OF THE exercise of the power of  
22 appointment, or renunciation, as the case may be; and

23 C. If the disposition is created by any other testamentary or nontes-  
24 tamentary instrument, or by operation of law, the date of the event by  
25 which the beneficiary is finally ascertained.

26 Notwithstanding the foregoing, the effective date of a disposition which  
27 is of a future estate shall be the date on which it becomes an estate in  
28 possession.

29 [(b)] (C) (1) Any beneficiary of a disposition may renounce all or  
30 part of [his] SUCH BENEFICIARY'S interest; provided, however, that a  
31 surviving joint tenant or tenant by the entirety [may not renounce that  
32 portion of an interest in joint property or property held by the entire-  
33 ty which is allocable to amounts contributed by him to the interest in  
34 such property] MAY RENOUNCE THAT PORTION OF AN INTEREST IN JOINT PROPER-  
35 TY OR TENANCY BY THE ENTIRETY WHICH IS THE GREATER OF:

36 A. THAT PORTION OF THE INTEREST WHICH THE DECEASED JOINT TENANT OR  
37 TENANT BY THE ENTIRETY WOULD HAVE BEEN ENTITLED TO RECEIVE ON SEVERANCE  
38 BEFORE DEATH; OR

39 B. THAT PORTION OF THE INTEREST THAT COULD BE THE SUBJECT OF A QUALI-  
40 FIED DISCLAIMER UNDER SECTION 2518 OF THE UNITED STATES INTERNAL REVENUE  
41 CODE OF 1986, AS AMENDED.

42 (2) Such renunciation shall be in writing, signed and acknowledged by  
43 the person renouncing, and shall be filed in the office of the clerk of  
44 the court having jurisdiction over the will or trust agreement governing  
45 the property of which the disposition would otherwise be made or the  
46 court which issued letters of administration, or if there is no probate  
47 or administration, then in a surrogate's court provided by law as the  
48 place of probate or administration of the decedent's estate, within nine  
49 months after the effective date of the disposition. Such renunciation  
50 shall be accompanied by an affidavit of the renouncing party that [he]  
51 SUCH PARTY has not received and is not to receive any consideration in  
52 money or money's worth for such renunciation from a person or persons  
53 whose interest is to be accelerated, unless payment of such consider-  
54 ation has been authorized by the court. Notice of such renunciation,  
55 which shall include a copy of the renunciation, shall be served  
56 personally or in such manner as the court may direct upon the fiduciary

1 directed by the will or trust agreement to make the disposition or upon  
2 the administrator or such other person who was directed to make the  
3 disposition or upon any other person having custody or possession of or  
4 legal title to the property, an interest in which is being renounced,  
5 and by mail or in such manner as the court may direct upon all persons  
6 whose interest may be created or increased by reason of such renuncia-  
7 tion. The time to file and serve such renunciation may be extended, in  
8 the discretion of the court, on a petition showing reasonable cause and  
9 on notice to such persons and in such manner as the court may direct.  
10 The time limited in this section for filing and serving such renuncia-  
11 tion is exclusive, and shall not be suspended or otherwise affected by  
12 any other provision of law; such renunciation shall be effective as of  
13 the date of such filing, notwithstanding that notice thereof may there-  
14 after be required by the court.

15 [(c)] (D) A renunciation may be made by:

16 (1) The guardian of the property of an infant, when so authorized by  
17 the court having jurisdiction of the estate of the infant.

18 (2) The committee of an incompetent when so authorized by the court  
19 that appointed the committee.

20 (3) The conservator of a conservatee, when so authorized by the court  
21 that appointed the conservator.

22 (4) A guardian appointed under article eighty-one of the mental  
23 hygiene law, when so authorized by the court that appointed the guardi-  
24 an.

25 (5) The personal representative of a decedent, when so authorized by  
26 the court having jurisdiction of the estate of the decedent.

27 (6) An attorney-in-fact, when so authorized under a duly executed  
28 power of attorney, provided, however, that any renunciation by an attor-  
29 ney-in-fact of a person under disability shall not be effective unless  
30 it is further authorized by the court with which the renunciation must  
31 be filed under subparagraph two of paragraph [(b)] (C) of this section,  
32 and provided, further, that a renunciation by an attorney-in-fact of a  
33 person not under disability may be made without court authorization,  
34 unless the property which would have passed under said renunciation is,  
35 by reason of said renunciation, disposed of in favor of such attorney-  
36 in-fact or the spouse or issue of such attorney-in-fact, in which case  
37 such renunciation shall not be effective unless either (A) the instru-  
38 ment appointing such attorney-in-fact expressly authorizes a renuncia-  
39 tion in favor of such attorney-in-fact or the spouse or issue of such  
40 attorney-in-fact, or (B) such renunciation has been authorized by the  
41 court with which the renunciation must be filed under subparagraph two  
42 of paragraph [(b)] (C).

43 (E) A TRUSTEE UNDER A WILL OR TRUST AGREEMENT, IF AUTHORIZED BY A  
44 COURT HAVING JURISDICTION OVER THE TRUST, ON NOTICE TO SUCH PERSONS AND  
45 IN SUCH MANNER AS THE COURT MAY DIRECT, MAY:

46 (1) RENOUNCE ANY INTEREST IN PROPERTY THAT WOULD OTHERWISE BE INCLUDED  
47 IN OR ADDED TO THE TRUST, AND SUCH INTEREST SO RENOUNCED SHALL PASS AS  
48 IF THE DISPOSITION TO THE TRUST WERE INEFFECTIVE AND SUCH INTEREST SHALL  
49 NOT BE PROPERTY OF THE TRUST; AND

50 (2) RENOUNCE ANY RIGHT, POWER, PRIVILEGE OR IMMUNITY, REGARDLESS OF  
51 ITS CHARACTERIZATION AS IMPERATIVE, DISCRETIONARY OR OTHERWISE, GRANTED  
52 TO THE TRUSTEE IN A FIDUCIARY CAPACITY UNDER THE INSTRUMENT OR BY OPERA-  
53 TION OF LAW, AND SUCH RIGHT, POWER, PRIVILEGE OR IMMUNITY SO RENOUNCED  
54 SHALL BE DEEMED EXTINGUISHED AND AS THOUGH NEVER CONFERRED UPON THE  
55 FIDUCIARY SO RENOUNCING OR ANY SUCCESSOR TO SUCH FIDUCIARY.

1 [(d)] (F) Unless the creator of the disposition has otherwise  
2 provided, the filing of a renunciation, as provided in this section, has  
3 the same effect with respect to the renounced interest as though the  
4 renouncing person had predeceased the creator or the decedent or, if the  
5 renounced interest is a future estate, as though the renouncing person  
6 had died at the time of filing or just prior to its becoming an estate  
7 in possession, whichever is earlier in time, and shall have the effect  
8 of accelerating the possession and enjoyment of subsequent interests,  
9 but shall have no effect upon the vesting of a future estate which by  
10 the terms of the disposition is limited upon a preceding estate other  
11 than the renounced interest. If, pursuant to the preceding sentence,  
12 there would occur a per stirpes disposition of the renounced interest or  
13 a disposition or distribution of the renounced interest by represen-  
14 tation, then solely for purposes of applying 1-2.14 or 1-2.16, as the  
15 case may be, the renouncing person shall be treated as having died on  
16 the same date as, but immediately after, the creator or decedent or, if  
17 the renounced interest is a future estate, as having died on the same  
18 date as, but immediately after, its becoming an estate in possession or,  
19 if the time of filing is earlier in time, on the same date as, but imme-  
20 diately after, such filing. Such renunciation is retroactive to the  
21 creation of the disposition. A person who has a present and a future  
22 interest in property and renounces the present interest in whole or in  
23 part shall be deemed to have renounced the future interest to the same  
24 extent.

25 [(e)] (G) A beneficiary may accept one disposition and renounce another,  
26 may renounce a disposition in whole or in part, or with reference to  
27 specific amounts, parts, fractional shares or assets thereof. Notwith-  
28 standing the provisions of paragraph [(d)] (F) of this section, a renun-  
29 ciation by a surviving spouse of a decedent of a disposition created by  
30 said decedent shall not be deemed to be a renunciation by such spouse of  
31 all or any part of any other disposition to or in favor of such spouse,  
32 regardless of whether the property which would have passed under said  
33 renounced disposition is by reason of said renunciation disposed of to  
34 or in favor of such spouse. Unless a renouncing person has provided  
35 otherwise in his renunciation, the effect of a renunciation of a frac-  
36 tional part of a disposition is to renounce such fraction of all proper-  
37 ty to which the renouncing person is entitled under the disposition.

38 [(f)] (H) A renunciation may not be made under this section with  
39 respect to any property which a renouncing person has accepted, except  
40 that an acceptance does not preclude a person from renouncing all or  
41 part of any property to which [he] SUCH PERSON becomes entitled when  
42 another person renounces after such acceptance. For purposes of this  
43 paragraph, a person accepts an interest in property if [he] SUCH PERSON  
44 voluntarily transfers or encumbers, or contracts to transfer or encumber  
45 all or part of such interest, or accepts delivery or payment of, or  
46 exercises control as beneficial owner over all or part thereof, or  
47 executes a written waiver of the right to renounce, or otherwise indi-  
48 cates acceptance of all or part of such interest. A TRUSTEE MAY RENOUNCE  
49 A RIGHT, POWER, PRIVILEGE OR IMMUNITY UNDER SUBPARAGRAPH TWO OF PARA-  
50 GRAPH (E) OF THIS SECTION IRRESPECTIVE OF ANY ACTION TAKEN BY SUCH TRUS-  
51 TEE OR BY ANY PREDECESSOR TRUSTEE WITH RESPECT TO SUCH RIGHT, POWER,  
52 PRIVILEGE OR IMMUNITY. A written waiver of the right to renounce shall  
53 be binding on the person waiving and all parties claiming by, through or  
54 under [him] SUCH PERSON.

55 [(g)] (I) A renunciation filed under this section is irrevocable.

1 [(h)] (J) This section shall not abridge the right of any beneficiary  
2 or any other person to assign, convey, release or renounce any property  
3 or interest therein arising under any other section of this chapter or  
4 other statute or under common law.

5 [(i)] (K) Except as specifically provided in the trust instrument, the  
6 will, any other instrument creating the disposition, or in this section,  
7 this section shall apply to each disposition the effective date of which  
8 (as defined in this section) is on or after the effective date of this  
9 section, except that with respect to the renunciation of a future inter-  
10 est this section shall apply as well to dispositions created or  
11 increased prior to the effective date of this section.

12 [(j)] In determining whether or not a valid disclaimer has been made  
13 for the purposes of the taxes imposed by articles twenty-six and twen-  
14 ty-six-A of the tax law, the provisions of such law shall be applicable  
15 to such determination, notwithstanding any provisions to the contrary  
16 contained in this section or any other section of this chapter.]

17 S 2. Subdivision 3 of section 5-1502G of the general obligations law,  
18 as amended by chapter 589 of the laws of 2003, is amended to read as  
19 follows:

20 3. Subject to the provisions of paragraph [(c)] (D) of section 2-1.11  
21 of the estates, powers and trusts law, to accept, to reject, to receive,  
22 to receipt for, to sell, to assign, to release, to pledge, to exchange,  
23 or to consent to a reduction in or modification of, any share in or  
24 payment from any estate, trust or other fund;

25 S 3. Paragraph 10 of subdivision (a) of section 81.21 of the mental  
26 hygiene law, as amended by chapter 32 of the laws of 1993, is amended to  
27 read as follows:

28 10. renounce or disclaim any interest by testate or intestate  
29 succession or by inter vivos transfer consistent with paragraph [(c)]  
30 (D) of section 2-1.11 of the estates, powers and trusts law;

31 S 4. This act shall take effect on the first of January next succeed-  
32 ing the date on which it shall have become a law.