S T A T E O F N E W Y O R K

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:

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

S 2-1.11 Renunciation of property interests

(a) A RENUNCIATION MADE IN COMPLIANCE WITH THE PROVISIONS OF THIS SECTION SHALL NOT NECESSARILY CONSTITUTE A QUALIFIED DISCLAIMER WITHIN THE MEANING OF SECTION 2518 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, OR FOR THE PURPOSES OF THE TAXES IMPOSED BY ARTICLE TWENTY-SIX OF THE TAX LAW.

(B) For purposes of this section:

(1) The term "disposition" shall include a disposition created under a will or trust agreement including, without limitation, the granting of a power of appointment, a disposition created by the exercise or nonexercise of a power of appointment, a distributive share under 4-1.1, a transfer created by a trust account as defined in 7-5.1, a transfer created by a life insurance or annuity contract, a transfer created by a joint tenancy or tenancy by the entirety, a transfer under an employee benefit plan (including, without limitation, any pension, retirement, death benefit, stock bonus or profit-sharing plan, system or trust), a transfer of a security to a beneficiary pursuant to part 4 of article 13 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.

LBD09664-01-9

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

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

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

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

C. If the disposition is created by any other testamentary or nontestamentary instrument, or by operation of law, the date of the event by which the beneficiary is finally ascertained.

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

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

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

B. THAT PORTION OF THE INTEREST THAT COULD BE THE SUBJECT OF A QUALIFIED DISCLAIMER UNDER SECTION 2518 OF THE UNITED STATES INTERNAL REVENUE CODE OF 1986, AS AMENDED.

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

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

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

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

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

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

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

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

(6) An attorney-in-fact, when so authorized under a duly executed power of attorney, provided, however, that any renunciation by an attorney-in-fact of a person under disability shall not be effective unless it is further authorized by the court with which the renunciation must be filed under subparagraph two of paragraph [(b)] (C) of this section, and provided, further, that a renunciation by an attorney-in-fact of a person not under disability may be made without court authorization, unless the property which would have passed under said renunciation is, by reason of said renunciation, disposed of in favor of such attorney-in-fact or the spouse or issue of such attorney-in-fact, in which case such renunciation shall not be effective unless either (A) the instrument appointing such attorney-in-fact expressly authorizes a renunciation in favor of such attorney-in-fact or the spouse or issue of such attorney-in-fact, or (B) such renunciation has been authorized by the court with which the renunciation must be filed under subparagraph two of paragraph [(b)] (C).

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

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

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

[(d)] (F) Unless the creator of the disposition has otherwise provided, the filing of a renunciation, as provided in this section, has the same effect with respect to the renounced interest as though the renouncing person had predeceased the creator or the decedent or, if the renounced interest is a future estate, as though the renouncing person had died at the time of filing or just prior to its becoming an estate in possession, whichever is earlier in time, and shall have the effect of accelerating the possession and enjoyment of subsequent interests, but shall have no effect upon the vesting of a future estate which by the terms of the disposition is limited upon a preceding estate other than the renounced interest. If, pursuant to the preceding sentence, there would occur a per stirpes disposition of the renounced interest or a disposition or distribution of the renounced interest by representation, then solely for purposes of applying 1-2.14 or 1-2.16, as the case may be, the renouncing person shall be treated as having died on the same date as, but immediately after, the creator or decedent or, if the renounced interest is a future estate, as having died on the same date as, but immediately after, its becoming an estate in possession or, if the time of filing is earlier in time, on the same date as, but immediately after, such filing. Such renunciation is retroactive to the creation of the disposition. A person who has a present and a future interest in property and renounces the present interest in whole or in part shall be deemed to have renounced the future interest to the same extent.

[(e)] (G) A beneficiary may accept one disposition and renounce another, may renounce a disposition in whole or in part, or with reference to specific amounts, parts, fractional shares or assets thereof. Notwithstanding the provisions of paragraph [(d)] (F) of this section, a renunciation by a surviving spouse of a decedent of a disposition created by said decedent shall not be deemed to be a renunciation by such spouse of all or any part of any other disposition to or in favor of such spouse, regardless of whether the property which would have passed under said renounced disposition is by reason of said renunciation disposed of to or in favor of such spouse. Unless a renouncing person has provided otherwise in his renunciation, the effect of a renunciation of a fractional part of a disposition is to renounce such fraction of all property to which the renouncing person is entitled under the disposition.

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

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

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

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

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

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

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

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

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

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.