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

8056

I N S E N A T E

June 3, 2010

Introduced by Sen. KRUGER -- 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:

Section 1. Sections 2-1.13 and 2-1.14 of the estates, powers and trusts law are renumbered sections 2-1.14 and 2-1.15 and a new section 2-1.13 is added to read as follows:

S 2-1.13 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 THIRTY-FIRST, TWO THOUSAND NINE AND BEFORE JANUARY FIRST, TWO THOUSAND ELEVEN

(A)(1) IF BY REASON OF THE DEATH OF A DECEDENT PROPERTY PASSES OR IS ACQUIRED UNDER A BENEFICIARY DESIGNATION, IN THE CASE OF A WILL OR TRUST OF A DECEDENT WHO DIES AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND NINE AND BEFORE JANUARY FIRST, TWO THOUSAND ELEVEN, THAT CONTAINS A BEQUEST OR OTHER DISPOSITION BASED UPON THE AMOUNT OF PROPERTY THAT CAN BE SHELTERED FROM FEDERAL ESTATE TAX BY REFERRING TO THE "UNIFIED CREDIT", "ESTATE TAX EXEMPTION", "APPLICABLE EXCLUSION AMOUNT", "APPLICABLE EXEMPTION AMOUNT", "APPLICABLE CREDIT AMOUNT", "MARITAL DEDUCTION", "MAXIMUM MARITAL DEDUCTION", "UNLIMITED MARITAL DEDUCTION", "CHARITABLE DEDUCTION", "MAXIMUM CHARITABLE DEDUCTION" OR SIMILAR WORDS OR PHRASES RELATING TO THE FEDERAL ESTATE TAX, OR THAT MEASURES A SHARE OF AN ESTATE OR TRUST BASED ON THE AMOUNT THAT CAN PASS FREE OF FEDERAL ESTATE TAXES, OR THAT IS OTHERWISE BASED ON A SIMILAR PROVISION OF FEDERAL ESTATE TAX SHALL BE DEEMED TO REFER TO THE FEDERAL ESTATE TAX LAW AS APPLIED WITH RESPECT TO DECEDENTS DYING ON DECEMBER THIRTY-FIRST, TWO THOUSAND NINE.

(2) IF BY REASON OF THE DEATH OF A DECEDENT PROPERTY PASSES OR IS ACQUIRED UNDER A BENEFICIARY DESIGNATION, IN THE CASE OF A WILL OR TRUST

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

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OF A DECEDENT WHO DIES AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND NINE AND BEFORE JANUARY FIRST, TWO THOUSAND ELEVEN, THAT CONTAINS A BEQUEST OR OTHER DISPOSITION BASED UPON THE AMOUNT OF PROPERTY THAT CAN BE SHELTERED FROM FEDERAL GENERATION-SKIPPING TRANSFER TAX BY REFERRING TO THE "GENERATION-SKIPPING TRANSFER TAX EXEMPTION", "GST EXEMPTION", "GENERATION-SKIPPING TRANSFER TAX", "GST TAX" OR SIMILAR WORDS OR PHRASES THAT MEASURES A SHARE OF AN ESTATE OR TRUST BASED ON THE AMOUNT THAT CAN PASS FREE OF FEDERAL GENERATION-SKIPPING TRANSFER TAXES, OR THAT IS OTHERWISE BASED ON A SIMILAR PROVISION OF FEDERAL GENERATION-SKIPPING TRANSFER TAX LAW; OR IF SUCH BEQUEST WOULD HAVE PASSED AS A "DIRECT SKIP" TO A "NATURAL PERSON" WITHIN THE MEANING OF SUCH TERMS UNDER CHAPTER 13 OF THE INTERNAL REVENUE CODE OF 1986 IF THE DECEDENT HAD DIED ON DECEMBER THIRTY-FIRST, TWO THOUSAND NINE, THEN SUCH WILL OR TRUST SHALL BE DEEMED TO REFER TO THE FEDERAL GENERATION-SKIPPING TRANSFER TAX LAW IN EFFECT ON DECEMBER THIRTY-FIRST, TWO THOUSAND NINE.

(3) THIS PARAGRAPH SHALL NOT APPLY TO A WILL OR TRUST THAT:

(A) IS EXECUTED OR AMENDED AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND NINE; OR

(B) MANIFESTS AN INTENT THAT A CONTRARY RULE SHALL APPLY IF THE DECEDENT DIES ON A DATE ON WHICH THERE IS NO THEN APPLICABLE FEDERAL ESTATE TAX OR GENERATION-SKIPPING TRANSFER TAX.

(4) THE REFERENCE TO JANUARY FIRST, TWO THOUSAND ELEVEN IN THIS PARAGRAPH SHALL, IF A FEDERAL ESTATE TAX OR GENERATION-SKIPPING TRANSFER TAX BECOMES APPLICABLE BEFORE THAT DATE, BE CONSTRUED TO REFER INSTEAD TO THE FIRST DATE ON WHICH THE FEDERAL ESTATE TAX OR GENERATION-SKIPPING TRANSFER TAX BECOMES APPLICABLE.

(B) THE EXECUTOR, TRUSTEE OR OTHER INTERESTED PERSON UNDER A WILL OR TRUST REFERRED TO IN PARAGRAPH (A) OF THIS SECTION MAY BRING A PROCEEDING TO DETERMINE WHETHER THE DECEDENT INTENDED THAT THE REFERENCES DESCRIBED IN SUCH PARAGRAPH BE CONSTRUED WITH RESPECT TO THE LAW AS IT EXISTED ON THE DECEDENT'S DATE OF DEATH, WITHOUT REGARD TO THE PROVISIONS OF PARAGRAPH (A) OF THIS SECTION. IN ANY SUCH PROCEEDING, EXTRINSIC EVIDENCE MAY BE ADMITTED TO ESTABLISH THE DECEDENT'S INTENT. SUCH PROCEEDING MUST BE COMMENCED WITHIN TWELVE MONTHS FOLLOWING THE DEATH OF THE TESTATOR OR GRANTOR, AND NOT AT ANY TIME THEREAFTER.

S 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after January 1, 2010, and the provisions of this act shall apply to wills and trusts of decedents who die after December 31, 2009 and before January 1, 2011, or such earlier date that a federal estate tax or generation-skipping transfer tax becomes applicable.