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

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2011-2012 Regular Sessions

I N A S S E M B L Y

May 16, 2011

Introduced by M. of A. WEINSTEIN -- (at request of the Office of Court Administration) -- read once and referred 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. Section 2-1.13 of the estates, powers and trusts law, as added by chapter 349 of the laws of 2010, is amended 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 THEN SUCH BENEFICIARY DESIGNATION, WILL OR TRUST shall be deemed to refer to the federal estate tax law as applied with respect to

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

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decedents dying [on December thirty-first, two thousand nine] IN TWO THOUSAND TEN, REGARDLESS OF WHETHER AN ELECTION IS MADE NOT TO HAVE THE FEDERAL ESTATE TAX APPLY TO A PARTICULAR ESTATE.

(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 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 BENEFICIARY DESIGNATION, 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] IN TWO THOUSAND TEN, REGARDLESS OF WHETHER AN ELECTION IS MADE NOT TO HAVE THE FEDERAL ESTATE TAX APPLY TO A PARTICULAR ESTATE.

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

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

(B) Manifests] 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 BENEFICIARY DESIGNATION, 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] BENEFICIARY DESIGNATION, WILL OR TRUST MANIFESTS A CONTRARY INTENTION WITHIN THE MEANING OF SUBPARAGRAPH THREE OF PARAGRAPH (A) OF THIS SECTION. In any such proceeding, extrinsic evidence may be admitted to establish the decedent's intent. [Such proceeding]

(C) ANY PROCEEDING DESCRIBED IN PARAGRAPH (B) OF THIS SECTION must be commenced [within twelve] BY THE DATE WHICH IS (1) TWENTY-FOUR months following the DATE OF death of the DECEDENT, testator or grantor OR (2) SIX MONTHS FOLLOWING THE DAY ON WHICH THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH AMENDED THIS PARAGRAPH BECAME A LAW, WHICHEVER DATE IS LATER, and not at any time thereafter. NOTWITHSTANDING THE FOREGOING, THE TIME TO COMMENCE SUCH A PROCEEDING 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.

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.