



Bill Draft 2009-RBz-49: Construction of Wills and Trusts.

2009-2010 General Assembly

Committee:	Revenue Laws Study Committee	Date:	May 3, 2010
Introduced by:		Prepared by:	Cindy Avrette
Analysis of:	2009-RBz-49		Committee Counsel

SUMMARY: *Bill Draft 2009-RBz-49 would construe certain formula clauses that reference federal estate and generation-skipping transfer tax laws applicable to estates and trusts of decedents dying in calendar year 2010, during which time there is no applicable federal estate or generation-skipping transfer tax, to refer to the applicable laws as they applied with respect to estates and trusts of decedents dying on December 31, 2009.*

CURRENT LAW: Effective January 1, 2010, the federal estate tax and generation-skipping transfer tax law is repealed for one year. In 2001, Congress enacted the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). That law made significant changes to the federal estate and generation-skipping transfer tax laws, culminating in the repeal of the tax for one year in 2010. The Act provided that the changes made by EGTRRA would expire on December 31, 2010, and the tax law would be applied as if the provisions and amendments made by the legislation had never been enacted.

Most people did not anticipate that Congress would let the estate tax expire. In April 2009, Congress approved a Fiscal 2010 Budget Resolution which called for extending the federal estate tax into 2010. However, Congress did not enact the necessary legislation to extend the tax. The House of Representatives passed HR 4151 on December 12, 2009. That bill would have made permanent the \$3,500,000 estate tax exemption amount and the 45% maximum tax rate. The Senate did not pass the legislation; hence the expiration of the estate tax for 2010.

BILL ANALYSIS: Many wills and trust agreements include formula provisions to determine what amounts of the estate will pass to different beneficiaries or to trusts for the benefit of different beneficiaries. These formula provisions are usually based upon the estate and generation-skipping transfer tax laws applicable at the time of the decedent's death. With the repeal of the federal estate law for the year 2010, these provisions could result in a devise contrary to the decedent's intent. For example, a will or trust agreement could include a formula provision allocating the largest amount or percentage of the testator's estate that can pass free of estate tax to a "Family Trust" for the benefit of the testator's children and the remainder of the estate to a "Marital Trust" for the benefit of the testator's surviving spouse. Under the current law, it is possible that this kind of provision would result in the entire estate passing to the Family Trust and nothing passing to the Marital Trust.

This proposal provides that a will or trust agreement of a decedent that dies in calendar year 2010 that refers to the federal estate and generation-skipping transfer tax laws is deemed to refer to the law as it existed on December 31, 2009, unless the document clearly manifests an intent that a contrary rule apply. At least six other states have adopted similar construction provisions¹ and at least four states are considering similar legislation.²

EFFECTIVE DATE: The proposal is effective when it becomes law and applies to the estates of decedents who die after December 31, 2009, and to trusts created by settlers who die after December 31, 2009.

¹ Idaho, Indiana, South Dakota, Tennessee, Virginia, and Washington.

² Florida, Maryland, Nebraska, and New York.

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