

CHAPTER 162
FORMERLY
SENATE BILL NO. 149

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO THE ESTATE TAX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 15, Title 30 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 1501. Definitions relating to this chapter.

As used in this chapter,

(1) "Delaware taxable estate" shall mean the modified federal taxable estate of the decedent, reduced, but not below zero, by the exemption amount.

~~(1)~~ (2) "Estate tax" shall mean the tax imposed under this chapter.

~~(2) "Federal estate tax" shall mean the tax imposed under the United States Internal Revenue Code (26 U.S.C. § 2001 et seq.), as it was in effect on January 1, 2001, and as amended thereafter with respect to the duty to file a return and the calculation of the taxable estate.~~

(3) "Exemption amount" shall mean:

(i) if the date of the decedent's death is after June 30, 2009, and before January 1, 2010, \$3,500,000;

(ii) if the date of the decedent's death is after December 31, 2009, and before January 1, 2011:

(a) if the decedent's personal representative has made an election in accordance with federal law to apply the Internal Revenue Code as though the amendments made by subsection (a) of § 301 of The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296, do not apply with respect to Chapter 11 of the Internal Revenue Code and with respect to property acquired or passing from such decedent (within the meaning of § 1014(b) of the Internal Revenue Code), \$3,500,000; or

(b) in all other cases, \$5,000,000.

(iii) if the date of the decedent's death is after December 31, 2010, the applicable exclusion amount set forth in § 2010(c) of the Internal Revenue Code [26 U.S.C. § 2010(c)] as in effect on the date of the decedent's death.

(4) "Modified federal taxable estate of the decedent" shall mean the federal taxable estate of the decedent calculated under the provisions of the federal estate tax laws as in effect on the date of the decedent's death,

(i) increased by the amount of any deduction for state death taxes included in calculating the federal taxable estate under § 2058 of the Internal Revenue Code [26 U.S.C. § 2058], or any successor provision thereto;

(ii) increased by the value of property, if any remains as of the decedent's date of death, for which a marital deduction qualified terminable interest property election was made for the decedent's predeceased spouse on a timely-filed Delaware estate tax return, to the extent such property was not included in the federal taxable estate;

(iii) decreased by the value of agricultural land, and agricultural buildings on such land, enrolled in farmland assessment or farmland preservation programs, to the extent such property was included in the federal taxable estate; and

(iv) decreased by the value of any interest in property which passes or has passed from the decedent to the decedent's surviving spouse pursuant to a written irrevocable election to treat property as marital deduction qualified terminable interest property made by the decedent's personal representative and submitted with or on a timely-filed Delaware estate tax return, regardless of whether such an election was made for such decedent for federal estate tax purposes, which shall be deemed to be an election as required by § 2056(b)(7)(B)(i), (iii), and (v) of the Internal Revenue Code [26 U.S.C. §§ 2056(7)(B)(i), (iii) and (v)], to the extent such interest was included in the federal taxable estate.

~~(3)~~ (5) "Personal representative" shall mean any executor or administrator of the decedent and, with respect to property which is included in the gross estate for federal estate tax purposes and which is not in the possession or control of the personal representative, any person in possession of such property.

(4) (6) "State," except where the context otherwise indicates, shall mean this State or any other state of the United States or the District of Columbia.

§ 1502. Tax on transfers of resident estates.

(c) Amount of tax; decedents dying after June 30, 2009. -- Except as provided in § 1503 of this chapter, the amount of the tax shall be determined pursuant to the table set forth below:

<u>If the Delaware Taxable Estate is</u>		<u>The tax shall equal the sum of the figures calculated pursuant to columns (C) and (D)</u>	
<u>Over</u>	<u>But not over</u>	<u>Tax on lower amount</u>	<u>Plus this % of the excess amount</u>
<u>(A)</u>	<u>(B)</u>	<u>(C)</u>	<u>(D)</u>
<u>\$0</u>	<u>\$40,000</u>	<u>\$0</u>	<u>0</u>
<u>\$40,000</u>	<u>\$90,000</u>	<u>\$0</u>	<u>0.8</u>
<u>\$90,000</u>	<u>\$140,000</u>	<u>\$400</u>	<u>1.6</u>
<u>\$140,000</u>	<u>\$240,000</u>	<u>\$1,200</u>	<u>2.4</u>
<u>\$240,000</u>	<u>\$440,000</u>	<u>\$3,600</u>	<u>3.2</u>
<u>\$440,000</u>	<u>\$640,000</u>	<u>\$10,000</u>	<u>4.0</u>
<u>\$640,000</u>	<u>\$840,000</u>	<u>\$18,000</u>	<u>4.8</u>
<u>\$840,000</u>	<u>\$1,040,000</u>	<u>\$27,600</u>	<u>5.6</u>
<u>\$1,040,000</u>	<u>\$1,540,000</u>	<u>\$38,800</u>	<u>6.4</u>
<u>\$1,540,000</u>	<u>\$2,040,000</u>	<u>\$70,800</u>	<u>7.2</u>
<u>\$2,040,000</u>	<u>\$2,540,000</u>	<u>\$106,800</u>	<u>8.0</u>
<u>\$2,540,000</u>	<u>\$3,040,000</u>	<u>\$146,800</u>	<u>8.8</u>
<u>\$3,040,000</u>	<u>\$3,540,000</u>	<u>\$190,800</u>	<u>9.6</u>
<u>\$3,540,000</u>	<u>\$4,040,000</u>	<u>\$238,800</u>	<u>10.4</u>
<u>\$4,040,000</u>	<u>\$5,040,000</u>	<u>\$290,800</u>	<u>11.2</u>
<u>\$5,040,000</u>	<u>\$6,040,000</u>	<u>\$402,800</u>	<u>12.0</u>
<u>\$6,040,000</u>	<u>\$7,040,000</u>	<u>\$522,800</u>	<u>12.8</u>
<u>\$7,040,000</u>	<u>\$8,040,000</u>	<u>\$650,800</u>	<u>13.6</u>
<u>\$8,040,000</u>	<u>\$9,040,000</u>	<u>\$786,800</u>	<u>14.4</u>
<u>\$9,040,000</u>	<u>\$10,040,000</u>	<u>\$930,800</u>	<u>15.2</u>
<u>\$10,040,000</u>	<u>--</u>	<u>\$1,082,800</u>	<u>16.0</u>

~~(1) Except as provided in paragraph (c)(2) of this section and § 1503 of this title, the amount of tax shall be determined using:~~

~~a. The amount of the credit allowable by § 2011 of the Internal Revenue Code [26 U.S.C. § 2011] as it was in effect as of January 1, 2001; and~~

~~b. Other provisions of the federal estate tax laws with respect to the duty to file a return and the calculation of the taxable estate in effect on the earlier of the date of the decedent's death or the date immediately preceding the effective date of the repeal of the federal estate tax.~~

~~(2) The tax under this subsection shall be determined without regard to any deduction for state death taxes allowed under § 2058 of the Internal Revenue Code [26 U.S.C. § 2058].~~

~~(3) Agricultural land, and agricultural buildings on such land, enrolled in farmland assessment or farmland preservation programs shall be exempt.~~

§ 1503. Credit for taxes paid to another state; limitation.

(a) Subject to subsection (b) of this section, the Delaware taxable ~~The~~ estate of every decedent who was a resident of this State at the time of death shall be allowed a credit against the estate tax otherwise due under this chapter for the aggregate amount of all estate, inheritance, legacy and succession taxes actually paid to any other

state ~~in~~ with respect to any property owned by such decedent or subject to such taxes as part of or in connection with the estate and for which a credit or deduction for such taxes paid to any other state ~~is~~ was allowable under the federal estate tax laws in effect as of the decedent's date of death.

(b) The credit allowed under ~~this section~~ subsection (a) above for taxes paid to any other state shall be limited to that amount which does not reduce the estate tax due under this chapter to an amount less than the ~~credit allowable under the provisions of the federal estate tax~~ otherwise due under this chapter notwithstanding this § 1503, laws for estate, inheritance, legacy and succession taxes paid to any state multiplied by a fraction:

(1) The numerator of which is the value of that part of the decedent's federal taxable estate ~~for federal estate tax purposes~~ consisting of real and tangible personal property located in this State plus all intangible personal property; and

(2) The denominator of which is the value of the decedent's federal taxable estate ~~for federal estate tax purposes~~, excluding real and tangible personal property not located in any state.

§ 1504. Tax on transfers of nonresident estates.

(a) Imposition of tax. ~~—A. Subject to subsections (b) and (c) of this section, a tax is imposed upon the transfer of the estate of every decedent who, at the time of death, was a nonresident of this State and owned real or tangible personal property situated in this State which would have been~~ was taxable under the provisions of Chapter 11 of the Internal Revenue Code [26 U.S.C. Chapter 11] as it was in effect on the decedent's date of death, ~~as of January 1, 2001, and other provisions of the federal estate tax laws with respect to the duty to file a return and the calculation of the taxable estate in effect on the earlier of the date of the decedent's death or the date immediately preceding the effective date of the repeal of the federal estate tax.~~

(b) Amount of tax. -- The amount of the tax shall be computed in the same manner as provided in § 1502 of this title, the result of which is then multiplied by a fraction;

(1) The numerator of which is the value of that part of the decedent's federal taxable estate ~~determined pursuant to this section~~ consisting of real and tangible personal property located in this State, and

(2) The denominator of which is the value of the decedent's ~~entire~~ federal taxable estate ~~determined pursuant to this section~~, excluding real and tangible personal property not located in any state.

§ 1505. Returns; time to file return and pay tax.

(a) Duty to file return. ~~—A. The personal representative shall have a duty to file an estate tax return shall be filed pursuant to this chapter with this State in all cases when a representative for the estate of a resident decedent, or a representative for the estate of a nonresident decedent having real or tangible personal property situated located in this State would have been which is included in the value of the decedent's Delaware taxable estate, is required to file a federal estate tax return under the provisions of the Internal Revenue Code as it was in effect as of the decedent's date of death, January 1, 2001, and other provisions of the federal estate tax laws with respect to the duty to file a return and the calculation of the taxable estate in effect on the earlier of the date of the decedent's death or the date immediately preceding the effective date of the repeal of the federal estate tax.~~

§ 1507. Assessment of tax; special lien for estate taxes.

(c) ~~Extinction~~ Extinguishment of lien -- Notwithstanding the foregoing, the special lien shall be extinguished:

(1) Pursuant to § 555 of this title as to such part of the gross estate sold for the payment of charges against the estate and expenses of its administration,

(2) Upon filing with the Register of Wills of the county in which the decedent resided and in which the decedent owned real property of 1 of the 2 following certificates:

a. Of the Director ~~of~~ of Revenue that the estate tax return has been filed and the correct tax has been paid, pursuant to § 2304(a) of Title 12, or

Section 2. This Act shall be effective for the estates of decedents dying on or after the earlier of the date of enactment or July 1, 2013.