

CHAPTER 85
FORMERLY
HOUSE BILL NO. 291
AS AMENDED BY
HOUSE AMENDMENT NOS. 1 & 4

AN ACT TO AMEND TITLES 3, 12 AND 30 OF THE DELAWARE CODE RELATING TO THE ESTATE TAX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend § 1501, Title 30, Delaware Code by deleting the phrase “as amended” and substituting in lieu thereof the phrase, “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”.

Section 2. Amend § 1502(b), Title 30, Delaware Code by striking said subsection in its entirety and substituting in lieu thereof the following:

“(b) Amount of Tax; Decedents Dying before July 1, 2009. –

Except as provided in § 1503 of this title, the amount of the tax shall be the amount of credit allowable under the provisions of the federal estate tax laws for estate, inheritance, legacy and succession taxes paid to any state.”.

Section 3. Amend § 1502, Title 30, Delaware Code by adding a new subsection (c) to read as follows:

“(c) Amount of Tax; Decedents Dying after June 30, 2009. –

(1) Except as provided in paragraph (2) of this subsection 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 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.”.

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

Section 4. Amend § 1504, Title 30, Delaware Code by striking said section in its entirety and substituting in lieu thereof the following:

“§ 1504. Tax on transfers of nonresident estates.

(a) Imposition of tax. -- 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 taxable under the provisions of Chapter 11 of the Internal Revenue Code as it was in effect 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 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 taxable estate determined pursuant to this section, excluding real and tangible personal property not located in any state.”.

Section 5. Amend § 1505(a) and (b), Title 30, Delaware Code by striking said subsections in their entirety and substituting in lieu thereof the following:

“(a) Duty to file return. -- An estate tax return shall be filed pursuant to this chapter in all cases when a resident decedent or a nonresident decedent having real or tangible personal property situated in this State would have been required to file a federal estate tax return under the provisions of the Internal Revenue Code as it was in effect 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) Time to file return. The estate tax returns required by this chapter shall be filed within nine months after the date of the decedent’s death.”.

Section 6. Amend § 1507(d), Title 30, Delaware Code by striking said subsection in its entirety.

Section 7. Amend § 2304(c), Title 12, Delaware Code by striking said subsection in its entirety.

Section 8. Amend Title 3, Delaware Code by inserting a new § 918 to read as follows:

“§ 918. Benefits of easement conveyance.

“In addition to the district benefits set forth in § 911 hereof, the Owner of real property subject to a preservation easement shall be entitled to exemption from taxation for the transfer of any interest in such real property by death otherwise subject to the estate tax under 30 Del. C. Chapter 15. The Department of Finance shall be entitled to adopt requirements to effectuate the exemption from taxation as provided hereunder.”.

Section 9. This Act shall be effective for decedents dying after June 30, 2009.

Section 10. This Act shall sunset four (4) years from the effective date.

Approved July 01, 2009