

## CHAPTER 742

## H.B. No. 508

## AN ACT

relating to the allocation and apportionment of estate taxes among persons interested in the estate of a decedent and to the liability of a decedent's property for certain debts and expenses.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Chapter 8, Texas Probate Code, is amended by adding Section 322A to read as follows:

*Sec. 322A. APPORTIONMENT OF TAXES. (a) In this section:*

(1) "Estate" means the gross estate of a decedent as determined for the purpose of estate taxes.

(2) "Estate tax" means the federal estate tax and the additional inheritance tax imposed by Chapter 211, Tax Code, including interest and penalties imposed in addition to those taxes.

(3) "Person" includes a trust, partnership, association, joint stock company, corporation, government, political subdivision, or governmental agency.

(4) "Person interested in the estate" means a person, or a fiduciary on behalf of that person, who is entitled to receive, or who has received, from a decedent or because of the death of the decedent property included in the decedent's estate for purposes of the estate tax.

(5) "Representative" means the representative, executor, or administrator of an estate, or any other person who is required to pay estate taxes assessed against the estate.

(b)(1) *Unless otherwise provided in the will of a decedent, the representative shall charge each person interested in the estate a portion of the estate tax assessed against the estate. The portion of the total estate tax that is charged to each person interested in the estate must represent the same ratio as the taxable value of that person's interest in the estate bears to the total taxable value of the interests of all persons interested in the estate.*

(2) *A testator, settlor, or possessor of any appropriate power of appointment may direct the manner of apportionment or allocation of estate tax or grant a discretionary power of apportionment or allocation to another person. A direction for the apportionment or allocation of estate tax made under this subdivision takes precedence to the extent that the direction provides for the payment of any part of the*

estate tax from property that may be disposed of by the instrument that contains the direction or the grant of the discretionary power of apportionment or allocation. The direction for the apportionment or nonapportionment of estate tax, whether contained in a will or in a nontestamentary instrument, is limited to the estate tax on the property passing under the instrument that contains the direction unless the instrument provides otherwise.

(c) Any deduction, exemption, or credit allowed by law in connection with the estate tax inures to a person interested in the estate as provided by Subsections (d)-(j) of this section.

(d) If the deduction, exemption, or credit is allowed because of the relationship of the person interested in the estate to the decedent, or because of the purpose of the gift, the deduction, exemption, or credit inures to the person having the relationship or receiving the gift, unless that person's interest in the estate is subject to a prior present interest that is not allowable as a deduction. The estate tax apportionable to the person having the present interest shall be paid from the corpus of the gift or the interest of the person having the relationship.

(e) A deduction for property of the estate that was previously taxed and a credit for gift taxes or death taxes of a foreign country that were paid by the decedent or his estate inures proportionally to all persons interested in the estate who are liable for a share of the estate tax.

(f) A credit for inheritance, succession, or estate taxes, or taxes of a similar nature applicable to property or interests includable in the estate, inures to the person interested in the estate who are chargeable with payment of a portion of those taxes to the extent that the credit reduces proportionately those taxes.

(g) To the extent that property passing to or in trust for a surviving spouse or a charitable, public, or similar gift or devise is not an allowable deduction for purposes of the estate tax solely because of an inheritance tax or other death tax imposed on and deductible from the property, the property is not included in the computation provided for by Subsection (b) of this section, and to that extent no apportionment is made against the property. The exclusion provided by this subsection does not apply if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d), Internal Revenue Code of 1986, relating to deductions for state death taxes on transfers for public, charitable, or religious uses.

(h) An interest in income, an estate for years or for life, or another temporary interest in any property or fund is not subject to apportionment. The estate tax apportionable to the temporary interest and the remainder, if any, is chargeable against the corpus of the property or the funds that are subject to the temporary interest and remainder.

(i) This section shall be applied after giving effect to any disclaimers made in accordance with Section 37A of this code.

(j) Interest and penalties assessed against the estate by a taxing authority shall be apportioned among and charged to the persons interested in the estate in the manner provided by Subsection (b) of this section, unless, on application by any person interested in the estate, the court determines that the proposed apportionment is not equitable or that the assessment of interest or penalties was caused by a breach of fiduciary duty of a representative. If the apportionment is not equitable, the court may apportion interest and penalties in an equitable manner. If the assessment of interest or penalties was caused by a breach of fiduciary duty of a representative, the court may charge the representative with the amount of the interest and penalties assessed attributable to his conduct.

(k) Expenses reasonably incurred by a representative in determination of the amount, apportionment, or collection of the estate tax shall be apportioned among and charged to persons interested in the estate in the manner provided by Subsection (b) of this section unless, on application by any person interested in the estate, the court determines that the proposed apportionment is not equitable. If the court

*determines that the assessment is not equitable, the court may apportion the expenses in an equitable manner.*

*(l) For purposes of this section, the court, including a court in the county in which venue lies for the administration of the estate of the decedent if there are no administration proceedings, has jurisdiction to receive, consider, and act on an application from an independent executor.*

*(m) A representative who has possession of any property of an estate that is distributable to a person interested in the estate may withhold from that property an amount equal to the person's apportioned share of the estate tax.*

*(n) A representative shall recover from any person interested in the estate the unpaid amount of the estate tax apportioned and charged to the person under this section, unless the representative determines in good faith that an attempt to recover this amount would be economically impractical.*

*(o) A representative required to recover unpaid amounts of estate tax apportioned to persons interested in the estate under this section shall initiate the necessary actions within a reasonable time after three months after the date of the final determination of the amount of the estate tax by the Internal Revenue Service. A representative who initiates an action under this section within a reasonable time after the three-month period is not subject to any liability or surcharge because any portion of the estate tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible.*

*(p) If, after making reasonable efforts to collect, a representative does not collect an unpaid amount of the estate tax apportioned to a person interested in the estate, the amount not collected shall be apportioned among and charged to the remaining persons interested in the estate in the manner provided by Subsection (b) of this section. A person who pays an apportioned amount of tax under this subsection is entitled to recover that amount from the person who failed to pay his charged portion.*

*(q) A representative acting in another state may initiate an action in a court of this state to recover a proportionate amount of the federal estate tax, of an estate tax payable to another state, or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is domiciled in this state or owns property in this state subject to attachment or execution. In the action, a determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct. This section applies only if the state in which the determination of apportionment was made affords a substantially similar remedy.*

*(r) The prevailing party in an action initiated by a person for the collection of estate taxes from a person interested in the estate to whom estate taxes were apportioned and charged under Subsection (b) of this section shall be awarded necessary expenses, including reasonable attorney's fees.*

SECTION 2. Chapter 8, Texas Probate Code, is amended by adding Section 322B to read as follows:

*Sec. 322B. ABATEMENT OF BEQUESTS. (a) Except as provided by Subsections (b)-(d) of this section, a decedent's property is liable for debts and expenses of administration other than estate taxes, and bequests abate in the following order:*

- (1) property not disposed of by will, but passing by intestacy;*
- (2) personal property of the residuary estate;*
- (3) real property of the residuary estate;*
- (4) general bequests of personal property;*
- (5) general devises of real property;*
- (6) specific bequests of personal property; and*
- (7) specific devises of real property.*

*(b) This section does not affect the requirements for payment of a claim of a secured creditor who elects to have the claim continued as a preferred debt and lien against specific property under Section 306 of this code.*

*(c) This section does not apply to the payment of estate taxes under Section 322A of this code.*

*(d) A decedent's intent, as expressed in a will, controls over the abatement of bequests provided by this section.*

SECTION 3. This Act takes effect September 1, 1987, and applies to the estates of persons who die on or after that date. An estate of a person who dies before the effective date of this Act is covered by the law as it existed when the person died, and that law is continued in effect for that purpose.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 5, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 508 on May 22, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 20, 1987, by a viva-voce vote.

Approved June 20, 1987.

Effective Sept. 1, 1987.