

§3-916. Uniform Estate Tax Apportionment Act

1. Short title. This section may be known and cited as "the Uniform Estate Tax Apportionment Act."

[PL 2019, c. 417, Pt. A, §7 (AMD).]

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Apportionable estate" means the value of the gross estate as finally determined for purposes of the estate tax to be apportioned reduced by:

(1) Any claim or expense allowable as a deduction for purposes of the tax;

(2) The value of any interest in property that, for purposes of the tax, qualifies for a marital or charitable deduction or otherwise is deductible or is exempt; and

(3) Any amount added to the decedent's gross estate because of a gift tax on transfers made before death. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. "Estate tax" means a federal, state or foreign tax imposed because of the death of an individual and interest and penalties associated with the tax. The term does not include an inheritance tax, income tax or generation-skipping transfer tax other than a generation-skipping transfer tax incurred on a direct skip taking effect at death. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. "Gross estate" means, with respect to an estate tax, all interests in property subject to the tax. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. "Ratable" or "ratably" means apportioned or allocated pro rata according to the relative values of interests to which the term is to be applied. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. "Time-limited interest" means an interest in property that terminates on a lapse of time or on the occurrence or nonoccurrence of an event or that is subject to the exercise of discretion that could transfer a beneficial interest to another person. The term does not include a cotenancy unless the cotenancy itself is a time-limited interest. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. "Value" means, with respect to an interest in property, fair market value as finally determined for purposes of the estate tax that is to be apportioned, reduced by any outstanding debt secured by the interest without reduction for taxes paid or required to be paid or for any special valuation adjustment. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Apportionment by will or other dispositive instrument. This subsection applies when estate tax is apportioned expressly and unambiguously by a will, revocable trust or other dispositive instrument.

A. Except as otherwise provided in paragraph C:

(1) To the extent that a provision of a decedent's will expressly and unambiguously directs the apportionment of an estate tax, the tax must be apportioned accordingly;

- (2) Any portion of an estate tax not apportioned pursuant to subparagraph (1) must be apportioned in accordance with any provision of a revocable trust of which the decedent was the settlor that expressly and unambiguously directs the apportionment of an estate tax. If conflicting apportionment provisions appear in 2 or more revocable trust instruments, the provision in the most recently dated instrument prevails. For purposes of this subparagraph:
- (a) A trust is revocable if it was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and
 - (b) The date of an amendment to a revocable trust instrument is the date of the amended instrument only if the amendment contains an apportionment provision; and
- (3) If any portion of an estate tax is not apportioned pursuant to subparagraph (1) or (2), and a provision in any other dispositive instrument expressly and unambiguously directs that any interest in the property disposed of by the instrument is or is not to be applied to the payment of the estate tax attributable to the interest disposed of by the instrument, the provision controls the apportionment of the tax to that interest. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- B. Subject to paragraph C, and unless the decedent expressly and unambiguously directs the contrary:
- (1) If an apportionment provision directs that a person receiving an interest in property under an instrument is to be exonerated from the responsibility to pay an estate tax that would otherwise be apportioned to the interest:
 - (a) The tax attributable to the exonerated interest must be apportioned among the other persons receiving interests passing under the instrument; or
 - (b) If the values of the other interests are less than the tax attributable to the exonerated interest, the deficiency must be apportioned ratably among the other persons receiving interests in the apportionable estate that are not exonerated from apportionment of the tax;
 - (2) If an apportionment provision directs that an estate tax is to be apportioned to an interest in property a portion of which qualifies for a marital or charitable deduction, the estate tax must first be apportioned ratably among the holders of the portion that does not qualify for a marital or charitable deduction and then apportioned ratably among the holders of the deductible portion to the extent that the value of the nondeductible portion is insufficient;
 - (3) Except as otherwise provided in subparagraph (4), if an apportionment provision directs that an estate tax be apportioned to property in which one or more time-limited interests exist, other than interests in specified property under subsection 7, the tax must be apportioned to the principal of that property, regardless of the deductibility of some of the interests in that property; and
 - (4) If an apportionment provision directs that an estate tax is to be apportioned to the holders of interests in property in which one or more time-limited interests exist and a charity has an interest that otherwise qualifies for an estate tax charitable deduction, the tax must first be apportioned, to the extent feasible, to interests in property that have not been distributed to the persons entitled to receive the interests. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- C. A provision that apportions an estate tax is ineffective to the extent that it increases the tax apportioned to a person having an interest in the gross estate over which the decedent had no power to transfer immediately before the decedent executed the instrument in which the apportionment direction was made. For purposes of this subsection, a testamentary power of appointment is a

power to transfer the property that is subject to the power. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
 [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Statutory apportionment of estate taxes. To the extent that apportionment of an estate tax is not controlled by an instrument described in subsection 3 and except as otherwise provided in subsections 6 and 7:

A. Subject to paragraphs B, C and D, the estate tax is apportioned ratably to each person that has an interest in the apportionable estate; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A generation-skipping transfer tax incurred on a direct skip taking effect at death is charged to the person to whom the interest in property is transferred; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. If property is included in the decedent's gross estate pursuant to Section 2044 of the United States Internal Revenue Code of 1986, as amended, or any similar estate tax provision, the difference between the total estate tax for which the decedent's estate is liable and the amount of estate tax for which the decedent's estate would have been liable if the property had not been included in the decedent's gross estate is apportioned ratably among the holders of interests in the property. The balance of the tax, if any, is apportioned ratably to each other person having an interest in the apportionable estate; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Except as otherwise provided in subsection 3, paragraph B, subparagraph (4) and except as to property to which subsection 7 applies, an estate tax apportioned to persons holding interests in property subject to a time-limited interest must be apportioned, without further apportionment, to the principal of that property. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Credits and deferrals. Except as otherwise provided in subsections 6 and 7, this subsection applies to credits and deferrals of estate taxes.

A. A credit resulting from the payment of gift taxes or from estate taxes paid on property previously taxed inures ratably to the benefit of all persons to whom the estate tax is apportioned. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A credit for state or foreign estate taxes inures ratably to the benefit of all persons to whom the estate tax is apportioned, except that the amount of a credit for a state or foreign tax paid by a beneficiary of the property on which the state or foreign tax was imposed, directly or by a charge against the property, inures to the benefit of the beneficiary. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. If payment of a portion of an estate tax is deferred because of the inclusion in the gross estate of a particular interest in property, the benefit of the deferral inures ratably to the persons to whom the estate tax attributable to the interest is apportioned. The burden of any interest charges incurred on a deferral of taxes and the benefit of any tax deduction associated with the accrual or payment of the interest charge are allocated ratably among the persons receiving an interest in the property. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
 [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Insulated property; advancement of tax. This subsection applies when the estate includes property that is unavailable for payment of estate tax due to impossibility or impracticability.

A. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Advanced fraction" means a fraction that has as its numerator the amount of the advanced tax and as its denominator the value of the interests in insulated property to which that tax is attributable.

(2) "Advanced tax" means the aggregate amount of estate tax attributable to interests in insulated property that is required to be advanced by uninsulated holders under paragraph C.

(3) "Insulated property" means property subject to a time-limited interest that is included in the apportionable estate but is unavailable for payment of an estate tax because of impossibility or impracticability.

(4) "Uninsulated holder" means a person who has an interest in uninsulated property.

(5) "Uninsulated property" means property included in the apportionable estate other than insulated property. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If an estate tax is to be advanced pursuant to paragraph C by persons holding interests in uninsulated property subject to a time-limited interest other than property to which subsection 7 applies, the tax must be advanced, without further apportionment, from the principal of the uninsulated property. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Subject to subsection 9, paragraphs B and D, an estate tax attributable to interests in insulated property must be advanced ratably by uninsulated holders. If the value of an interest in uninsulated property is less than the amount of estate taxes otherwise required to be advanced by the holder of that interest, the deficiency must be advanced ratably by the persons holding interests in properties that are excluded from the apportionable estate under subsection 2, paragraph A, subparagraph (2) as if those interests were in uninsulated property. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. A court having jurisdiction to determine the apportionment of an estate tax may require a beneficiary of an interest in insulated property to pay all or part of the estate tax otherwise apportioned to the interest if the court finds that it would be substantively more equitable for that beneficiary to bear the tax liability personally than for that part of the tax to be advanced by uninsulated holders. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. When a distribution of insulated property is made, each uninsulated holder may recover from the distributee a ratable portion of the advanced fraction of the property distributed. To the extent that undistributed insulated property ceases to be insulated, each uninsulated holder may recover from the property a ratable portion of the advanced fraction of the total undistributed property. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Upon a distribution of insulated property for which, pursuant to paragraph D, the distributee becomes obligated to make a payment to uninsulated holders, a court may award an uninsulated holder a recordable lien on the distributee's property to secure the distributee's obligation to that uninsulated holder. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Apportionment and recapture of special elective benefits. The reduction in estate tax due to election of a special elective benefit must be apportioned in accordance with this subsection.

A. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Special elective benefit" means a reduction in an estate tax obtained by an election for:

- (a) A reduced valuation of specified property that is included in the gross estate;
- (b) A deduction from the gross estate, other than a marital or charitable deduction, allowed for specified property; or
- (c) An exclusion from the gross estate of specified property.

(2) "Specified property" means property for which an election has been made for a special elective benefit. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If an election is made for one or more special elective benefits, an initial apportionment of a hypothetical estate tax must be computed as if no election for any of those benefits had been made. The aggregate reduction in estate tax resulting from all elections made must be allocated among holders of interests in the specified property in the proportion that the amount of deduction, reduced valuation or exclusion attributable to each holder's interest bears to the aggregate amount of deductions, reduced valuations and exclusions obtained by the decedent's estate from the elections. If the estate tax initially apportioned to the holder of an interest in specified property is reduced to zero, any excess amount of reduction reduces ratably the estate tax apportioned to other persons that receive interests in the apportionable estate. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. An additional estate tax imposed to recapture all or part of a special elective benefit must be charged to the persons that are liable for the additional tax under the law providing for the recapture. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Securing payment of estate tax from property in possession of fiduciary. A fiduciary may ensure that a distributee will pay the distributee's share of the estate tax through one of the following methods.

A. A fiduciary may defer a distribution of property until the fiduciary is satisfied that adequate provision for payment of the estate tax has been made. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A fiduciary may withhold from a distributee an amount equal to the amount of estate tax apportioned to an interest of the distributee. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. As a condition to a distribution, a fiduciary may require the distributee to provide a bond or other security for the portion of the estate tax apportioned to the distributee. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Collection of estate tax by fiduciary. A fiduciary responsible for payment of an estate tax may collect the tax due using the following methods.

A. A fiduciary responsible for payment of an estate tax may collect from any person the tax apportioned to and the tax required to be advanced by the person. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Except as otherwise provided in subsection 6, any estate tax due from a person that cannot be collected from the person may be collected by the fiduciary from other persons in the following order of priority:

- (1) Any person having an interest in the apportionable estate that is not exonerated from the tax;
- (2) Any other person having an interest in the apportionable estate; and

(3) Any person having an interest in the gross estate. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A domiciliary fiduciary may recover from an ancillary personal representative the estate tax apportioned to the property controlled by the ancillary personal representative. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The total tax collected from a person pursuant to this section may not exceed the value of the person's interest. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

10. Right of reimbursement. A person may obtain reimbursement of estate tax as provided in this subsection.

A. A person required under subsection 9 to pay an estate tax greater than the amount due from the person under subsection 3 or 4 has a right to reimbursement from another person to the extent that the other person has not paid the tax required by subsection 3 or 4 and a right to reimbursement ratably from other persons to the extent that each has not contributed a portion of the amount collected under subsection 9, paragraph B. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A fiduciary may enforce the right of reimbursement under paragraph A on behalf of the person that is entitled to the reimbursement and shall take reasonable steps to do so if requested by the person. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

11. Action to determine or enforce section. A fiduciary, transferee or beneficiary of the gross estate may maintain an action for declaratory judgment to have a court determine and enforce this section.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

12. Delayed application. The applicability of subsections 3 to 7 is governed by this subsection.

A. Subsections 3 to 7 do not apply to the estate of a decedent who dies on or within 3 years after September 1, 2019 nor to the estate of a decedent who dies more than 3 years after September 1, 2019 if the decedent continuously lacked testamentary capacity from the expiration of the 3-year period until the date of death. [PL 2019, c. 417, Pt. B, §4 (AMD).]

B. For the estate of a decedent who dies on or after September 1, 2019 to which subsections 3 to 7 do not apply, estate taxes must be apportioned pursuant to the law in effect immediately before September 1, 2019. [PL 2019, c. 417, Pt. B, §4 (AMD).]
[PL 2019, c. 417, Pt. B, §4 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §7 (AMD). PL 2019, c. 417, Pt. B, §4 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

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