

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 917

An Act to amend and reenact §§ 64.1-160, 64.1-161, 64.1-163 and 64.1-165 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 64.1-165.1, and to repeal § 64.1-66.1, relating to apportionment of estate taxes.

[H 810]

Approved April 20, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.1-160, 64.1-161, 64.1-163 and 64.1-165 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 64.1-165.1 as follows:

Article 7.

Apportionment of Estate ~~and Inheritance~~ Taxes.

§ 64.1-160. Definitions.

For the purposes of this article ~~the terms:~~ (i)

"Persons interested in the estate" ~~shall include~~ *includes* all persons, firms and corporations who may be entitled to receive or who have received any property or interest which is required to be included in the gross estate of the decedent or any benefit whatsoever with respect to any such property or interest, whether under a will or intestacy or by reason of any transfer, trust, estate, interest, right, power or relinquishment of power, taxable under any estate tax law of the Commonwealth of Virginia, *any other state* or the United States heretofore or hereafter enacted; ~~and (ii) .~~

"Gross estate" ~~shall include~~ *includes* any property or interest which is required to be included in the gross estate of the decedent under the estate tax law of the United States, increased by any "adjusted taxable gifts" as defined in § 2001 (b) of the Internal Revenue Code.

§ 64.1-161. Apportionment required.

A. Except as provided in subsection B of this section, whenever it appears upon any settlement of accounts or in any other appropriate action or proceeding that an executor, administrator, curator, trustee or other person acting in a fiduciary capacity has paid an estate tax levied or assessed under the provisions of any estate tax law of the Commonwealth of Virginia, *any other state* or the United States heretofore or hereafter enacted, upon or with respect to any property required to be included in the gross estate of a decedent under the provisions of any such law, the amount of the tax so paid shall be prorated among the persons interested in the estate to whom such property is or may be transferred or to whom any benefit accrues. Such apportionment shall be made in the proportion that the value of the property, interest or benefit of each such person bears to the total value of the property, interests and benefits received by all such persons interested in the estate; ~~except that .~~ *However*, in making such proration each such person shall have the benefit of any exemptions, deductions and exclusions allowed by such law in respect of ~~such the~~ person or the property passing to him; and ~~except that notwithstanding the preceding provisions of this sentence~~ in cases where a trust is created, or other provision made whereby any person is given an interest in income, or an estate for years, or for life, or other temporary interest or estate in any property or fund, the tax on such temporary interest or estate shall be charged against and paid out of the corpus of such property or fund without apportionment between temporary interests or estates and remainders thereafter.

B. The amount of tax paid on or with respect to property included in the decedent's gross estate under § 2044 of the Internal Revenue Code, as amended, or any successor provision (~~relating to certain property for which the marital deduction was previously allowed~~), shall be the excess of (i) the total estate tax levied or assessed under the provisions of the estate tax laws of the Commonwealth of ~~Virginia~~, *any other state* and the United States over (ii) the estate tax that would have been levied or assessed under those provisions if the § 2044 property had not been included in the gross estate. The tax paid upon or with respect to the § 2044 property shall be prorated according to subsection A of this section as if no other estate tax were payable under the laws of the Commonwealth of Virginia, *any other state* and the United States and as if the § 2044 property constituted the entire gross estate; but it shall be prorated only among the persons interested in the estate to whom such property is or may be transferred or to whom any benefit of such property accrues. The tax determined under (ii) above shall be prorated according to subsection A of this section as if no other estate tax were payable under the laws of the Commonwealth of Virginia, *any other state* and the United States and as if the § 2044 property were not included in the gross estate. This subsection shall apply only to estates of persons dying on or after July 1, 1986.

C. *The personal representative of an estate which for tax purposes includes § 2044 property owes a duty of good faith and fair dealing to all persons interested in the estate to whom or for whom the § 2044 property may be transferred or held. The duty of good faith includes, but is not limited to a duty*

to keep such persons or their designated representative reasonably informed as to the contents of the returns to be filed and as to all administrative and judicial proceedings that concern the taxes to be paid with respect to the § 2044 property, and to provide copies of the relevant portions of all returns to be filed with respect to such taxes. The representative of such persons shall be invited to attend any administrative conference or proceeding wherein valuation issues may be discussed which would have a bearing on the taxes to be paid with respect to the § 2044 property. This subsection shall apply only to estates of persons for which a federal estate tax return is required to be filed on or after July 1, 1994.

§ 64.1-163. Transfers not required until tax ascertained or security given.

No executor, administrator or other person acting in a fiduciary capacity shall be required to transfer, pay over or distribute any fund or property with respect to which a federal estate tax is imposed by the Commonwealth of Virginia, any other state or the United States until the amount of such tax or taxes due from the devisee, legatee, distributee or other person to whom such property is transferred is paid to such fiduciary, or, if the apportionment of tax has not been determined, adequate security is furnished by the transferee for such payment.

§ 64.1-165. Contrary provisions of will or other instrument to govern.

But it is expressly provided that the foregoing provisions of this article are subject to the following qualification, that none of such None of the foregoing provisions of this article shall in any way impair the right or power of any person by will or by written instrument executed inter vivos to make direction from for the payment of such estate or inheritance taxes and to designate the fund or funds or property out of which such payment shall be made; and in every such case the provisions of the will or of such written instrument executed inter vivos shall be given effect to the same extent as if this article had not been enacted. Such funds or property which may be so designated may specifically include (in addition to any property passing by testate or intestate succession) any property, interest or benefit included in such person's estate for estate tax purposes which passes pursuant to an instrument other than such person's will (an "includable beneficial interest"). Unless a larger amount is charged to a particular includable beneficial interest by the instrument creating the interest, the maximum amount of tax with which each such includable beneficial interest may be charged shall be limited to its share, determined in the same manner provided in § 64.1-161 for the apportionment of taxes.

§ 64.1-165.1. Construction of direction to pay all taxes imposed on account of testator's death.

A. A general direction in a will, trust instrument or other document to pay all taxes imposed on account of a testator's or settlor's death or similar language shall not be construed to include the following taxes unless the testator or settlor expressly manifests an intention that such taxes be paid out of his estate, trust or other property by reference to the particular chapter, title or section of the Internal Revenue Code providing for such taxes or otherwise:

1. Additional tax imposed upon disposition or cessation of qualified use by the qualified heir with respect to qualified use property under § 2032 A;

2. Taxes on general power of appointment property includable in the estate of the testator or settlor under § 2041;

3. Taxes on qualified terminable interest property includable in the estate of the testator or settlor under § 2044;

4. Taxes payable under § 2056 A, upon a taxable event with respect to a qualified domestic trust as defined in that section;

5. Any generation skipping transfer tax under Chapter 13 except direct skips occurring at death for estates of decedents dying on or after July 1, 1994;

6. Taxes payable under § 4980 A, on excess retirement accumulation.

B. Unless a contrary intention is manifest, such taxes shall be apportioned and charged to each item of funds or property generating them in the manner provided in this article.

C. The reference herein to any section or chapter is to the Internal Revenue Code of 1986, as amended, and shall be deemed to refer to any corresponding successor sections, chapters or Code.

2. That § 64.1-66.1 of the Code of Virginia is repealed.