

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 254

An Act to amend and reenact § 64.1-161 of the Code of Virginia, relating to apportionment; estate taxes.

[H 2222]

Approved March 11, 1997

Be it enacted by the General Assembly of Virginia:

1. That § 64.1-161 of the Code of Virginia is amended and reenacted as follows:

§ 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, 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, *together with any interest and penalty required by the taxing authority to be 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. However, in making such proration each person shall have the benefit of any exemptions, deductions and exclusions allowed by law in respect of the person or the property passing to him and 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, *and the interest may be charged against either the temporary interest, estate, or corpus, or partially against the temporary interest, estate, or corpus, as determined by the fiduciary paying the tax, provided that this determination be made so as to fairly balance all interests in the property or fund.*

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, 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.