ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

700.3920 Apportionment of death taxes.

Sec. 3920.

(1) An estate, inheritance, or other death tax levied or assessed under the laws of this or another state, political subdivision, or country or under a United States revenue act concerning property included in the gross estate under the law, but excluding taxes for which sources of payment are provided within sections 2206, 2207, 2207A, 2207B, and 2603 of the internal revenue code, 26 USC 2206, 2207, 2207A, 2207B, and 2603, shall be apportioned in the following manner:

(a) If a part of the property concerning which the tax is levied or assessed passed under a will, then, unless the governing instrument directs otherwise, the tax shall be charged as follows:

(i) If any portion of that property passed under the will as a devise to be satisfied by reference to a specific property or type of property, fund, money, or other nonresiduary form, the net amount of the tax attributable to that portion shall be charged to and paid from the residuary estate without requiring contribution from a person receiving or benefiting from the nonresiduary interest and without apportionment among the residuary beneficiaries. If the residuary estate is insufficient to pay the tax attributable to all nonresiduary interests, the balance of the tax shall be apportioned pro rata among the recipients of those interests generating the tax based on the value of those interests.

(ii) The net amount of a tax attributable to the residuary estate shall be apportioned pro rata among the residuary beneficiaries based on the value of the residuary interests generating the tax. If a residuary interest is a temporary interest, the tax attributable to it shall be charged to principal and not apportioned between temporary and remainder interests.

(b) If a part of the property concerning which the tax is levied or assessed is held under the terms of an inter vivos trust, then, unless the governing instrument directs otherwise, the tax shall be charged as follows:

(i) If a portion of the trust is directed to pass or to be held in further trust by reference to a specific property or type of property, fund, money, or other nonresiduary form, the net amount of the tax attributable to that portion shall be charged to and paid from the principal of the residuary share of the trust without requiring contribution from a person receiving or benefiting from the nonresiduary interest and without apportionment among the residuary beneficiaries. If the residuary share of the trust is insufficient to pay the tax attributable to all nonresiduary interests, the balance of the tax shall be apportioned pro rata among the recipients of those interests generating the tax based on the value of those interests.

(ii) The net amount of tax attributable to the residuary share of the trust shall be charged as follows:

(A) The net amount of tax attributable to each residuary temporary interest shall be charged to that portion of residuary principal that supports the temporary interest without apportionment.

(B) The net amount of tax attributable to the balance of the residuary share shall be apportioned pro rata among the residuary beneficiaries by charge to the principal of their interest based on the value of the residuary interests.

(c) Except as otherwise directed by the governing instrument, tax liability remaining after the application of subdivisions (a) and (b), including, but not limited to, a tax imposed with respect to property passing by beneficiary designation, survivorship, or intestacy, or to an annuity not created under a will or an inter vivos trust, shall be apportioned pro rata among, and paid by, the recipients and beneficiaries of the properties or interests, based on the value of the properties and interests generating the tax. Except as otherwise directed by the governing instrument, with respect to a temporary interest not in trust, the amount charged to the recipients or beneficiaries shall not be apportioned between temporary and remainder interests, but shall be charged to and paid out of the principal of the property or fund.

(2) As used in this section and sections 3921 to 3923:

(a) "Governing instrument" means a will, trust agreement, or other document that controls the devolution of property at death with respect to which the tax is being levied.

(b) "Net estate" means the gross estate, as defined by the estate, inheritance, or death tax law of the particular state, country, or political subdivision whose tax is being apportioned, less the deductions allowed.

(c) "Temporary interest" means an interest in income or an estate for a specific period of time, for life, or for some other period controlled by reference to extrinsic events.

(d) "Value" means the pecuniary worth of the interest involved as finally determined for purposes of the tax then under consideration, without regard to a diminution of the interest by reason of the charge of a part of the tax.

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