

SENATE BILL 749  
By Dixon

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 8, relative to transfer taxes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 8, is amended by deleting parts 2 through 4 and by adding the following new part:

PART 8 - INHERITANCE TAX OF 2001 - FEDERAL DEATH TAX CREDIT

**67-8-801.** A tax is levied on the transfer of every taxable estate, as defined by § 2051 of the Internal Revenue Code, as amended, of every individual who dies a domiciliary of Tennessee. A tax is also levied on the transfer by every individual who dies not a domiciliary of Tennessee of real property situated in this state and/or tangible personal property which has an actual situs within this state. The tax imposed by this part is a tax exclusively for the use of the state, and no county, municipality or taxing district shall have power to levy any like tax.

**67-8-802.** The tax levied by this part shall be determined and paid at those times, in the manner, and by those persons specified in this part.

**67-8-803.** (a) It shall be the duty of the personal representative of the estate of any individual, who dies a domiciliary of this state and whose estate is required to file a federal estate tax return, to file with the commissioner of revenue, within the time period required for

filing such return with the federal authorities, a report on such forms as the commissioner may prescribe, a copy of the federal estate tax return and a copy of the decedent's will, if any.

(b) If the estate's personal representative is not required to file a federal estate tax return under applicable federal law and such representative cannot file a separate affidavit, pursuant to section 30-2-616, with the court administering the estate because the decedent made certain lifetime gifts of property, the representative shall file with the commissioner, within nine (9) months from the death of the decedent, a report on such forms as the commissioner may prescribe and a copy of the decedent's will, if any.

(c) The tax due under this section shall be the maximum amount allowable as a credit for state death taxes under the Internal Revenue Code, as amended. However, if the decedent owned at the time of his or her death real property or tangible personal property having a situs in one or more states, and any other such state requires the payment of a death tax for which a credit is received against federal taxes, the inheritance tax due under this part shall be reduced to an amount which bears the same ratio to the total state death tax credit allowable for federal estate tax purposes as the gross value of the property taxable in this state bears to the value of the entire gross estate for federal estate tax purposes. Such reduction of tax due shall be allowed only to the extent that proof is provided to the commissioner of payment of any other such state tax or taxes.

(d) The personal representative of the estate shall file with the commissioner a copy of the federal estate tax closing letter within thirty (30) days of issuance by the federal authorities. If the maximum amount allowable as a credit for state death taxes as finally determined by the federal authorities for federal estate tax purposes is increased or decreased with respect to the amount shown on the original federal return, the personal representative of the estate shall file with the commissioner, within thirty (30) days of the date of the federal adjustment, a copy of the documentation received from the federal authorities, and such other or additional documentation as the commissioner may require, showing all changes made in the original return and the

increase or decrease in the amount allowable as a credit for state death taxes, and shall pay any additional tax due.

**67-8-804.** (a) It shall be the duty of the personal representative of the estate of any individual, who dies not a domiciliary of this state but who owns or controls real property located in this state or tangible personal property having a situs in this state and whose estate is required to file a federal estate tax return, to file with the commissioner, within the time period required for filing such return with the federal authorities, a report on such forms as the commissioner may prescribe, a copy of the federal estate tax return and a copy of the decedent's will, if any.

(b) If the estate's personal representative is not required to file a federal estate tax return under applicable federal law and such representative cannot file a separate affidavit, pursuant to section 30-2-616, with the court administering the estate in Tennessee because the decedent made certain lifetime gifts of property, the representative shall file with the commissioner, within nine (9) months from the death of the decedent, a report on such forms as the commissioner may prescribe and an exact copy of the decedent's will, if any.

(c) The tax due under this section shall be an amount that bears the same ratio to the total maximum state death tax credit allowable for federal estate tax purposes as the gross value of the property taxable in this state bears to the value of the entire gross estate for federal estate tax purposes.

(d) The personal representative of the estate shall file with the commissioner a copy of the federal estate tax closing letter within thirty (30) days of issuance by the federal authorities. If the maximum amount allowable as a credit for state death taxes as finally determined for federal estate tax purposes by the federal authorities is increased or decreased with respect to the amount shown on the original return, the personal representative of the estate shall file with the commissioner, within thirty (30) days of the date of the federal adjustment, a copy of the documentation received from the federal authorities, and such other or additional documentation

as the commissioner may require, showing all changes made in the original return and the increase or decrease in the amount allowable as a credit for state death taxes, and shall pay any additional tax due.

**67-8-805.** (a) The taxes levied by this part shall be due and payable to the commissioner by the personal representative of the estate on or before the due date of the federal estate tax return.

(b) In the event of late filing of required documentation, or in the event of late payment of all or a portion of the tax due or payment of any additional taxes due caused by a federal adjustment, penalties and interest shall be payable pursuant to applicable law.

(c) The commissioner has authority, in the exercise of the commissioner's discretion, for good cause shown, to grant the estate an extension of time to file the documents required by section 67-8-803 or section 67-8-804 and pay the tax herein levied, without penalty attaching. However, the tax shall bear interest as required by applicable law from the original due date until paid. The penalties required by applicable law shall be paid by the estate unless the tax and interest thereon shall be paid on or before the expiration date of the extension granted by the commissioner.

**67-8-806.** (a) It is the duty of the clerk of the court wherein an estate is administered by an executor, administrator, or trustee, within thirty (30) days of the date of its issuance of letters of administration or letters testamentary, to deliver, or forward by mail, to the commissioner, a statement under the clerk's seal of office giving the name and date of death of the decedent and the decedent's address at the time of death, and the name and address (and the telephone number, if known) of the executor, administrator, or trustee qualified.

(b) For this service, the clerk shall be allowed to demand and collect in advance, five dollars (\$5.00), which amount shall be in addition to the usual and customary probate fees allowed by law and shall be paid by the representative of the estate and may be deducted as a part of the cost of administration.

(c) Any clerk who shall violate any of the provisions of this section shall be subject to a penalty of five hundred dollars (\$500), to be recovered by the commissioner, for the benefit of the state, in any court of competent jurisdiction. However, the commissioner may, in the commissioner's discretion, waive or reduce such penalty in any case to not less than one hundred dollars (\$100) where there appears no manifest intent to evade this part.

**67-8-807.** When any personal representative of a decedent's estate fails to file any of the returns, reports or documents required by section 67-8-803 or section 67-8-804, the commissioner is authorized to assess taxes against the estate based on any information available.

**67-8-808.** (a) (1) All taxes due by an estate under this part shall be paid by the executor, administrator or trustee from the assets subject to the inheritance tax. No part of the property of an estate subject to this tax shall be distributed until the tax thereon has been paid; provided, that such executor, administrator or trustee may, with the written consent of the commissioner, sell or transfer property of the estate sufficient to pay the tax.

(2) For the sole purpose of negotiating the sale of real estate, stocks, bonds, and other registered assets prior to the time of the payment of taxes due the state, the commissioner is authorized to waive the liens imposed by § 67-1-1403(d) against the transferred property for taxes due by an estate; however, such waiver shall not affect the state's tax liens against any other property of the decedent or the decedent's estate.

(3) Notwithstanding any provision of law to the contrary, where an individual's death terminates his or her interest in real estate, stocks, bonds, and other registered assets, which property was previously owned with the surviving spouse in a tenancy by the entirety or a joint tenancy with right of survivorship, the commissioner's waiver pursuant to subdivision (a)(2) is not required for the surviving spouse to transfer such property free of liens for taxes due by the decedent's estate under this part.

(b) For purposes of subsection (a), penalty and/or interest attributable to such taxes shall be considered to be a part of such taxes.

**67-8-809.** (a) Upon the payment of the full amount of taxes levied against an estate under this part, the commissioner shall issue receipt therefor in duplicate to the representative of the estate, one (1) copy of which shall be filed in the office of the clerk of the court in which such estate is being administered. Except as provided in section 30-2-616, no final accounting or settlement of such estate shall be made by the court prior to the filing of such receipt, or until the filing of a certificate by the commissioner that no tax is due thereon, such receipt or certificate to be furnished by the commissioner without cost to the estate or to the beneficiaries thereof.

(b) Such receipt or certificate may be recorded in the office of the register of the county in which such real estate is situated, and it shall be conclusive proof that the tax applicable to such real estate has been paid, and any lien thereon shall be thereby released.

**67-8-810.** (a) Failure or refusal to file any return or document provided for in this part is a Class C misdemeanor. The payment of any such criminal penalty shall in not affect the liability for the tax, interest and any other penalties prescribed herein.

(b) The filing of a false return, document or affidavit with intent to deceive constitutes the crime of perjury.

**67-8-811.** Executors, administrators and trustees shall be liable for all taxes payable on the estate, together with any interest or penalties herein provided, until the same shall have been paid; provided, that in no case shall such executor, administrator or trustee be liable for a greater amount than was actually received by the executor, administrator or trustee.

**67-8-812.** If the tax levied under this part is not paid in full by the personal representative of the estate when due, and if such representative has paid the maximum amount of the estate's liability for which such representative is liable under section 67-8-811, the beneficiaries of any assets upon which the inheritance tax is levied by section 67-8-801 shall be

personally liable for such tax to the extent of the value of the assets included in the taxable estate and received by such beneficiaries.

**67-8-813.** The commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this part.

**67-8-814.** Upon the issuance by the state of a receipt to an administrator or executor who has paid the tax levied under this part, the administrator or executor shall be subrogated to any lien or right to proceed against any transferred property in the hands of a transferee, donee, or bona fide purchaser which the state might have had and the issuance of the receipt by the commissioner after the payment of the tax due shall be deemed an assignment by the state to the administrator or executor of the lien or right to proceed against the transferred property, the transferee, donee or bona fide purchaser and shall be conclusive evidence thereof; provided, that for the lien to remain effective, the executor or administrator must file with the register of the county of decedent's residence and any county wherein any real property affected is located within fifteen (15) days of the issuance of such tax receipt, a notice of such lien, such notice to contain the administrator's or executor's name, the name of the decedent whose estate is involved, a description of the property against which the lien is claimed, and the amount of lien claimed, and upon satisfaction of the lien, a release thereof.

**67-8-815.** The commissioner shall promptly deposit to the credit of the state treasurer in state depositories all moneys received under the provisions of this part, and all such moneys shall be earmarked and allocated specifically and exclusively to the general fund.

SECTION 2. Tennessee Code Annotated, Section 67-8-101, is amended by deleting subsection (e) in its entirety and by substituting instead the following:

(e) (1) Any disposition of all or part of a "qualifying income interest for life," as defined in § 2056(b)(7)(B)(ii) of the Internal Revenue Code (26 U.S.C. § 2056(b)(7)(B)(ii)), in any property to which this subsection (e) applies shall be treated as a transfer of such property.

(2) This subsection applies to any property if a deduction was allowed with respect to the transfer of such property to the donor:

(A) For estates of decedents whose date of death was on or before December 31, 1999, under § 67-8-315(a)(6) by reason of its incorporation of § 2056(b)(7) of the Internal Revenue Code (26 U.S.C. § 2056(b)(7)); or

(B) Under § 67-8-105(a) by reason of its incorporation of § 2523(f) of the Internal Revenue Code (26 U.S.C. § 2523(f)).

(3) This subsection applies to any property if an inheritance tax deduction was not allowed with respect to the transfer of such property to the donor because the transfer occurred on or after January 1, 2000, but an election pursuant to 2056(b)(7) of the Internal Revenue Code (26 U.S.C. 2056(b)(7)) has been made on behalf of the original transferor of the property and accepted by the federal authorities.

SECTION 3. Tennessee Code Annotated, Section 67-8-117, is amended by deleting the section in its entirety and by substituting instead the following:

The gift tax laws of this part shall not be construed impliedly to repeal or modify the inheritance tax laws, compiled in parts 3-5 and part 8 of this chapter, or the Tennessee Estate Tax Law, compiled in part 2 of this chapter, but shall be construed in *pari materia* with such laws.

SECTION 4. Tennessee Code Annotated, Section 67-8-102, is amended by deleting the section in its entirety.

SECTION 5. Tennessee Code Annotated, Section 67-8-104, is amended by deleting the section in its entirety and by substituting instead the following:

(a)(1) There shall be allowed against the net gifts made during any calendar year a maximum single exemption of ten thousand dollars (\$10,000) against the net gifts made to donees.

(2) In the event the aggregate net gifts made to donees for any calendar year exceed ten thousand dollars (\$10,000), the tax shall be applicable only to the extent that the gifts (other than gifts of future interests in property) to each donee exceed the sum of \$10,000.

(b) No part of a gift to an individual who has not attained twenty-one (21) years of age on the date of such transfer shall be considered a gift of a future interest in property for purposes of subsection (a) if the property and the income therefrom:

(1) May be expended by, or for the benefit of, the donee before the donee's attaining twenty-one (21) years of age; and

(2) Will to the extent not so expended:

(A) Pass to the donee on the donee's attaining twenty-one (21) years of age; and

(B) In the event the donee dies before attaining twenty-one (21) years of age, be payable to the estate of the donee or as the donee may appoint under a general power of appointment as defined in § 2514(c) of the Internal Revenue Code (26 U.S.C. § 2514(c)).

(c) For the purposes of this section, the standard exemption amount allowable for gifts to donees shall increase each year by the same amount, if any, that the annual exclusion amount for federal gift taxation purposes increases.

SECTION 5. Tennessee Code Annotated, Section 67-8-106, is amended by deleting the section in its entirety and by substituting instead the following:

The tax levied by this part with respect to gifts made shall be computed at the following rates:

5.5 percent on the amount of net taxable gifts up to \$40,000;

6.5 percent on the next \$200,000 or part thereof;

7.5 percent on the next \$200,000 or part thereof;

9.5 percent on the excess over \$440,000.

SECTION 6. (a) Section 1 of this act shall take effect on January 1, 2002, and shall apply to decedents dying on or after January 1, 2002, the public welfare requiring it. The provisions of Tennessee Code Annotated, Title 67, Chapter 8, Parts 2 through 4, are repealed effective January 1, 2002, but shall continue to apply to decedents dying on or before December 31, 2001, and to the administration of such decedents' estates, the public welfare requiring it.

(b) Sections 2 through 5 shall take effect on January 1, 2001, and shall apply to gifts made on or after that date, the public welfare requiring it.