

SECOND REGULAR SESSION

SENATE BILL NO. 920

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS FLOTRON AND KENNEY.

Read 1st time January 27, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3036S.011

AN ACT

To repeal sections 145.009, 145.011, 145.041, 145.051, 145.091, 145.101, 145.102, 145.201, 145.301, 145.481, 145.511, 145.551, 145.552, 145.601, 145.711, 145.801, 145.846, 145.871, 145.961, 145.971, 145.985 and 145.995, RSMo 1994, relating to estate tax, and to enact in lieu thereof one new section relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 145.009, 145.011, 145.041, 145.051, 145.091, 145.101, 145.102, 145.201, 145.301, 145.481, 145.511, 145.551, 145.552, 145.601, 145.711, 145.801, 145.846, 145.871, 145.961, 145.971, 145.985 and 145.995, RSMo 1994, are repealed and one new section enacted in lieu thereof, to be known as section 135.953, to read as follows:

135.953. 1. Any resident estate shall be allowed a credit against the income tax otherwise due pursuant to sections 143.005 to 143.998 for the amount of any estate tax imposed pursuant to 26 U.S.C. 2001, et seq., or any successor thereto. Such credit may be carried over from year to year for each year such estate is open.

2. This section shall apply to the estates of any decedent dying on or after August 28, 2000.

[145.009. Sections 145.011 to 145.995 shall become effective January 1, 1981, but it shall apply only with respect to decedents dying on or after January 1, 1981. The repeal of the provisions of chapter 145 shall become effective January 1, 1981, but it shall not affect any decedents dying before January 1, 1981, in any respect, including, but not limited to, the determination of tax, interest, penalties, procedures, and periods of limitations.]

[145.011. A tax is imposed on the transfer of every decedent's estate which consists in whole or in part of property having a tax situs within the state of Missouri. The

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Missouri estate tax shall be the maximum credit for state death taxes allowed by Internal Revenue Code Section 2011 but not less than the maximum credit for state death taxes allowable to the estate of a decedent against the federal estate tax by Section 2011 or any other provision of the laws of the United States.]

[145.041. If the decedent's estate contains property having a tax situs not within the state of Missouri, then the tax determined by section 145.011 shall be reduced to an amount determined by multiplying the tax by a fraction whose numerator is the gross estate excluding all property having a tax situs not within the state of Missouri at the decedent's death and whose denominator is the gross estate. In determining the fraction, no deductions shall be considered and the gross estate shall not be reduced by a mortgage or other indebtedness for which the decedent's estate is not liable.]

[145.051. The liability imposed by sections 145.011 to 145.995 shall be paid by the executor.]

[145.091. Any term used in sections 145.011 to 145.995 shall have the same meaning as when used in a comparable context in the laws of the United States, unless a different meaning is clearly required by the provisions of sections 145.011 to 145.995. Any reference in sections 145.011 to 145.995 to the Internal Revenue Code or other laws of the United States shall mean the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States, as they may be or become effective, at any time or from time to time.]

[145.101. 1. "Executor" means the executor or administrator of the decedent, or, if there is no executor or administrator, then any person in actual or constructive possession of any property of the decedent.

2. "Nonresident" means an individual who is not a resident.

3. "Resident" means an individual who is domiciled in this state at the time of death.

4. "State" means any state or territory of the United States and the District of Columbia.]

[145.102. Property shall have a tax situs within the state of Missouri if:

(1) It is real estate or tangible personal property and has actual situs within the state of Missouri; or

(2) It is intangible personal property and the decedent was a resident.]

[145.201. When the director of revenue claims that a decedent was domiciled in this state at the time of his death and the taxing authorities of another state or states make a like claim on behalf of their state or states, the director may make a written agreement of compromise with the other taxing authorities and the executor that a certain sum shall be accepted in full satisfaction of any and all death taxes imposed by this state,

including any interest or penalties to the date of filing the agreement. The agreement shall also fix the amount to be accepted by the other states in full satisfaction of death taxes. The executor is hereby authorized to make such agreement. The director shall assess the agreed tax and the tax shall be deemed conclusively fixed as therein provided. Unless the tax is paid within ninety days after filing the agreement, interest shall accrue upon the amount fixed in the agreement from the time of the decedent's death.]

[145.301. If an executor or other fiduciary receives a discharge pursuant to Internal Revenue Code Section 2204 (a) or (b) and if the fiduciary makes written application to the director of revenue for determination of the amount of the tax and discharge from personal liability, the director within two months after receiving satisfactory evidence of the Section 2204 discharge, but not after the expiration of the period prescribed for the assessment of the tax in section 145.711, shall notify the fiduciary of the amount of the tax. The fiduciary, on payment of the amount of which he is notified (other than any amount the time payment of which is extended under section 145.551), and on furnishing any bond which may be required for any amount for which the time for payment is extended, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing the discharge.]

[145.481. A tax return with respect to the tax imposed by sections 145.011 to 145.995 shall be made:

(1) With respect to a resident, by every executor who is required to file a federal estate tax return;

(2) With respect to a nonresident, by every executor who is required to file a federal estate tax return if that part of the gross estate having a tax situs within the state of Missouri exceeds ten thousand dollars.]

[145.511. Returns required by section 145.481 shall be filed within nine months after the death of the decedent. A person required to make and file a return under sections 145.011 to 145.995 shall without assessment, notice, or demand, pay any tax due thereon to the director of revenue on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The director shall prescribe the place for filing any return, declaration, statement, or other document required pursuant to this chapter and for the payment of any tax.]

[145.551. 1. The director of revenue may grant a reasonable extension of time for payment of tax, or for filing any return, declaration, statement, or other document required by sections 145.011 to 145.995 on such terms and conditions as he may require. No extension for filing any return, declaration, statement or document shall exceed six

months.

2. If a taxpayer has been granted an extension of time for filing the federal estate tax return, the filing of a copy of the extension with the director of revenue shall automatically extend the due date of the tax return required by sections 145.011 to 145.995.

3. If a taxpayer has been granted an extension of time for paying any portion of the federal estate tax, the filing of a copy of the extension with the director of revenue shall automatically extend the time for the payment of the tax or a portion of the tax required by sections 145.011 to 145.995 to the applicable limitations specified in Internal Revenue Code Section 2011(c) or 2015. The portion of the Missouri estate tax which is subject to deferral or payable in installments shall be determined by multiplying the total Missouri estate tax payable by a fraction, the numerator of which is the gross value of those assets of the decedent's estate having a taxable situs in Missouri which qualify for deferred or installment payment under Internal Revenue Code Section 6161, 6163, or 6166, and the denominator of which is the gross value of all assets of the decedent's estate having a taxable situs in Missouri. For purposes of this section, the value of property shall be that determined for federal estate tax purposes. Deferred payments and installment payments with interest shall be paid at the same time and in the same manner as payments of the federal estate tax are required to be made under the applicable sections of the Internal Revenue Code. Acceleration of payments under this section shall occur under the same circumstances and in the same manner as provided in Internal Revenue Code Section 6166(g). During such extension, interest shall accrue and become due annually on the Missouri estate tax at the same rate as provided in Section 6601 of Title 26, United States Code for the extension of federal estate taxes during the same period. If more than one rate is applicable to amounts owed by a taxpayer under the federal estate tax during such period of extension, the same rates shall apply to the Missouri estate tax, and in the same proportion in which such rates are applicable to the amount owed under the federal estate tax attributable to assets having a taxable situs in Missouri. After the period of extension for the payment of Missouri estate taxes has expired, interest shall accrue as provided in section 143.731, RSMo.]

[145.552. Unless the decedent otherwise directs by will, if any part of the decedent's gross estate for federal estate tax purposes consists of property the value of which is includable in the gross estate by reason of Internal Revenue Code section 2044, the decedent's estate shall be entitled to recover from the person receiving the property the amount by which the total Missouri estate tax paid exceeds the total Missouri estate tax which would have been payable if the value of such property had not been included in the gross estate. For purposes of this section, if there is more than one person receiving the

property, the right of recovery shall be against each such person, based on his pro rata share of the property received. Further, for purposes of this section, interest and penalties attributable to additional Missouri estate tax on property described in this section shall be treated as additional Missouri estate tax which the decedent's estate shall be entitled to recover in accordance with the provisions of this section.]

[145.601. If the amount of a taxpayer's federal taxable estate, adjusted taxable gifts, or credit for state death taxes reported on his federal estate tax return is changed or corrected by the United States Internal Revenue Service or other competent authority, the taxpayer shall report the change or correction within ninety days after the final determination of the change or correction or as otherwise required by the director of revenue. Each report shall state whether and wherein the determination is believed to be erroneous. Any taxpayer filing an amended federal estate tax return shall also file within ninety days thereafter an amended return under sections 145.011 to 145.995 and shall give such information as the director of revenue may require. The imposition of an additional tax by Internal Revenue Code Section 2032A shall constitute a change. The director of revenue may by regulation prescribe exceptions to the requirements of this section as he deems appropriate.]

[145.711. 1. Except as otherwise provided in this section, a notice of deficiency shall be mailed to the taxpayer within three years after the return was filed. No deficiency shall be assessed or collected unless the notice is mailed within the three-year period or the period otherwise fixed.

2. If no return is filed or a false and fraudulent return is filed with intent to evade the tax imposed by sections 145.011 to 145.995, a notice of deficiency may be mailed to the taxpayer at any time.

3. If a taxpayer fails to comply with the requirements of section 145.601 by not reporting a change or correction or by not filing an amended return, a notice of deficiency may be mailed to the taxpayer within one year after the director of revenue shall become aware of the determination. A notice under this subsection shall be limited to the effects on the Missouri estate tax of the issues on which the federal determination is based.

4. If the taxpayer shall, pursuant to section 145.601, report a change or correction or file an amended return or report a change or correction which is treated in the same manner as if it were a deficiency for federal estate tax purposes, the assessment (if not deemed to have been made upon the filing of the report or amended return) may be made at any time within one year after the report or amended return was filed. A notice under this subsection shall be limited in the manner provided in subsection 3 of this section.

5. Where, before the expiration of the time prescribed in this section for the assessment of a deficiency, both the director of revenue and the taxpayer shall have

consented in writing to its assessment after such time, the deficiency may be assessed at any time prior to the expiration of period agreed upon. The period so agreed may be extended by subsequent agreement in writing made before the expiration of the period previously agreed upon.

6. For purposes of this section a return filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof shall be deemed to be filed on such last day.]

[145.801. 1. A claim for credit or refund of an overpayment of any tax imposed by sections 145.011 to 145.995 shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of the periods expires the later; or if no return was filed by the taxpayer, within two years from the time the tax was paid. No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in this subsection for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within the period.

2. If the claim is filed by the taxpayer during the three-year period prescribed in subsection 1, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within the three-year period, but is filed within the two-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. If no claim is filed, the credit or refund shall not exceed the amount which would be allowable under either of the preceding sentences, as the case may be, if a claim was filed on the date the credit or refund is allowed.

3. If pursuant to subsection 5 of section 145.711 an agreement for an extension of the period for assessment is made within the period prescribed in subsection 1 of this section for the filing of a claim for credit or refund, the period for filing a claim for credit or for making a credit or refund if no claim is filed, shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension. The amount of the credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subsection 1 of this section if a claim had been filed on the date the agreement was executed.

4. If a taxpayer is required by section 145.601 to report a change or correction which is treated in the same manner as if it were an overpayment for federal estate tax purposes, an amended return or a claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within one year from the time the notice of such

change or correction or such amended return was required to be filed with the director of revenue. If the report or amended return required by section 145.601 is not filed within the ninety-day period therein specified, interest on any resulting refund or credit shall cease to accrue after the ninetieth day. The amount of such credit or refund shall not exceed the amount of the reduction in Missouri estate tax attributable to the effect of the issues on which the federal change or correction or the items amended on the taxpayer's amended federal estate tax return are based.】

【145.846. An application for review of the director of revenue's determination pursuant to sections 145.011 to 145.995 shall be filed by the executor with the administrative hearing commission under section 621.050, RSMo.】

【145.871. The courts of this state shall recognize and enforce liabilities for estate and transfer taxes lawfully imposed by any state which extends a like comity to this state, and the duly authorized officer of any such state may sue for the collection of such a tax in the courts of this state. A certificate by the secretary of state of the other state that an officer suing for the collection of the tax is duly authorized to collect the tax shall be conclusive proof of such authority. For the purposes of this section, the word "TAXES" shall include additions to tax, interest, and penalties, and liabilities for the taxes, additions to tax, interest, and penalties shall be recognized and enforced by the courts of this state to the same extent that the laws of the other state permit the enforcement in its courts of liability for the taxes, additions to a tax, interest, and penalties due this state under sections 145.011 to 145.995.】

【145.961. 1. The director of revenue shall administer and enforce the tax imposed by sections 145.011 to 145.995 and he is authorized to make such rules and regulations and to require such facts and information to be reported as he may deem necessary to enforce the provisions of sections 145.011 to 145.995.

2. The rules and regulations prescribed by the director of revenue shall follow as nearly as practicable the rules and regulations of the Secretary of the Treasury of the United States. This construction of sections 145.011 to 145.995 will further its purposes to simplify the preparation of tax returns, aid in its interpretation through use of federal precedents, and improve its enforcement.】

【145.971. 1. The director of revenue may prescribe the form and contents of any return or other documents, including a copy of part or all of a federal return, required to be filed under the provisions of sections 145.011 to 145.995.

2. The director of revenue for the purpose of ascertaining the corrections of any return, or for the purpose of making an estimate of any person, shall have power to examine or to cause to have examined, by any agent or representative designated by him for that purpose, any books, papers, records, or memoranda bearing upon the matters

required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his information, with power to administer oaths to such person or persons.

3. Reports and returns required to be filed under sections 145.011 to 145.995 shall be preserved for four years and thereafter until the director of revenue orders them destroyed.】

【145.985. Except as otherwise specifically provided in sections 145.011 to 145.995, procedural matters under the provisions of sections 145.011 to 145.995 shall be determined pursuant to and in the manner prescribed in the following sections of the revised statutes of Missouri, the state income tax law, governing similar procedures thereunder: sections 143.561, 143.571, 143.611, 143.621, 143.631, 143.641, 143.651, 143.661, 143.671, 143.681, 143.691, 143.701, 143.721, 143.731, 143.741, 143.751, 143.771, 143.781, 143.791, 143.811, 143.821, 143.831, 143.841, 143.851, 143.861, 143.881, 143.891, 143.901, and 143.986, RSMo.】

【145.995. 1. A generation-skipping credit tax is imposed on every generation-skipping transfer which consists in whole or in part of property having a tax situs within the state of Missouri. The Missouri generation-skipping credit tax shall be the maximum credit for state death taxes allowed by Internal Revenue Code, section 2604.

2. The other sections of sections 145.011 to 145.995 shall be applied by substituting:

- (1) "Missouri generation-skipping credit tax" for "Missouri estate tax";
- (2) "Tax imposed by section 145.995" for "tax imposed by section 145.011";
- (3) "Property included in the generation-skipping transfer" for "gross estate";
- (4) "Generation-skipping tax credit" for "credit for state death taxes"; and
- (5) "Federal generation-skipping tax return" for "federal estate tax return".】