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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

A N A C T

RELATING TO TAXATION - ESTATE AND TRANSFER TAXES - LIABILITY AND
COMPUTATION

Introduced By: Senators Lombardi, Felag, McCaffrey, Walaska, and Lombardo

Date Introduced: January 13, 2015

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 44-22 of the General Laws entitled "Estate and Transfer Taxes -
2 Liability and Computation" is hereby amended by adding thereto the following section:

3 **44-22-1.2. Deceased spousal unused exclusion amount. -- (a) Definition of terms.**

4 For purposes of this chapter, with respect to a surviving spouse of a deceased spouse
5 dying after December 31, 2015, the term "deceased spousal unused exclusion amount" means the
6 lesser of:

7 (1) The basic exclusion amount; or

8 (2) The excess of:

9 (i) The applicable exclusion amount of the last such deceased spouse of such surviving
10 spouse, over: The amount with respect to which the tentative tax is determined under this chapter
11 on the estate of such deceased spouse.

12 (b) Unused exclusion amount deduction permitted. In calculating the marital deduction
13 pursuant to §§ 44-22-1 and 44-22-1.2, a deceased spousal unused exclusion amount shall be taken
14 into account and added to said deduction if the proper election is made pursuant to this section.

15 (c) Election required. A deceased spousal unused exclusion amount may not be taken into
16 account by a surviving spouse under subsections (a) and (b) of this section unless the executor of
17 the estate of the deceased spouse files a Rhode Island state estate tax return with the division of
18 taxation on which such amount is computed and makes an election on such return that such

1 amount may be so taken into account. Such election, once made, shall be irrevocable. No election
2 may be made under this subsection if such return is filed after the expiration of any time
3 prescribed by law, including extensions, for filing such return. The division of taxation shall
4 revise the appropriate decedent's estate tax return forms to permit this election to be made.

5 (d) Examination of prior returns after expiration of period of limitations with respect to
6 deceased spousal unused exclusion amount. Notwithstanding any applicable period of limitation
7 for filing a Rhode Island estate tax return, after the time has expired within which a tax may be
8 assessed under this chapter with respect to a deceased spousal unused exclusion amount, the tax
9 administrator may examine a return of the deceased spouse to make determinations with respect
10 to such amount for purposes of carrying out this section.

11 SECTION 2. Section 44-22-1 of the General Laws in Chapter 44-22 entitled "Estate and
12 Transfer Taxes - Liability and Computation" is hereby amended to read as follows:

13 **44-22-1. Tax on net estate of decedents -- Additional tax on postponed enjoyment --**
14 **Deductions -- Marital deduction. --** (a) A tax is imposed upon the transfer of the net estate of
15 every resident or nonresident decedent as a tax upon the right to transfer. The tax is imposed at
16 the rate of two percent (2%) upon all amounts not in excess of twenty-five thousand dollars
17 (\$25,000); at the rate of three percent (3%) upon all amounts in excess of twenty-five thousand
18 dollars (\$25,000) and not exceeding fifty thousand dollars (\$50,000); at the rate of four percent
19 (4%) upon all amounts in excess of fifty thousand dollars (\$50,000) and not exceeding one
20 hundred thousand dollars (\$100,000); at the rate of five percent (5%) upon all amounts in excess
21 of one hundred thousand dollars (\$100,000) and not exceeding two hundred fifty thousand dollars
22 (\$250,000); at the rate of six percent (6%) upon all amounts in excess of two hundred fifty
23 thousand dollars (\$250,000) and not exceeding five hundred thousand dollars (\$500,000); at the
24 rate of seven percent (7%) upon all amounts in excess of five hundred thousand dollars
25 (\$500,000) and not exceeding seven hundred fifty thousand dollars (\$750,000); at the rate of eight
26 percent (8%) upon all amounts in excess of seven hundred fifty thousand dollars (\$750,000) and
27 not exceeding one million dollars (\$1,000,000); at the rate of nine percent (9%) upon all amounts
28 in excess of one million dollars (\$1,000,000). An additional tax is imposed at the rate of two
29 percent (2%) upon all or any part of each estate devised, bequeathed, or conveyed in such manner
30 that it becomes necessary to postpone the assessment of taxes imposed by this chapter until the
31 person entitled to the estate comes into beneficial enjoyment or possession of the estate; and
32 provided, further, that an additional tax is not assessed and collected, as provided in §§ 44-23-9 --
33 44-23-12, in case a settlement of taxes is effected under the provisions of § 44-23-25.

34 (b) In computing the value of the net estate in subsection (a) of this section, there is

1 deducted from the estate and exempted from the tax twenty-five thousand dollars (\$25,000).

2 (c) In computing the value of the net estate in subsection (a) of this section, there is
3 deducted from the estate and exempted from the tax all property or interests transferred to any
4 corporation, association, or institution located in Rhode Island which is exempt from taxation by
5 charter or under the laws of this state; or to any corporation, association, or institution located
6 outside of this state, which if located within this state, would be exempt from taxation; provided,
7 that the state of domicile of the corporation, association, or institution allows a reciprocal
8 exemption to any similar Rhode Island corporation, association, or institution; or to any person in
9 trust for the same or for use by the same for charitable purposes; or to any city or town in this
10 state for public purposes.

11 (d) In computing the value of the net estate in subsection (a) of this section, there is
12 deducted from the estate and exempted from the tax United States civil and federal military
13 service annuity payments.

14 (e) In computing the value of the net estate in subsection (a) of this section, there is
15 deducted from the estate and exempted from the estate tax a marital deduction, as defined in 26
16 U.S.C. § 2056, in the amount of one hundred seventy-five thousand dollars (\$175,000), from
17 property or beneficial interests which pass or have passed from the decedent to the surviving
18 spouse, but only to the extent that the interests are included in determining the value of the gross
19 estate. [Provided, a deceased spousal unused election amount may be taken into account if the](#)
20 [proper election is made pursuant to § 44-22-1.2.](#)

21 (f) (1) In computing the value of the net estate in subsection (a) of this section, there is
22 deducted from the estate and exempted from the estate tax, an orphan's deduction, provided, that:
23 (i) the decedent does not have a surviving spouse, and (ii) the decedent is survived by a minor
24 child who, immediately after the death of the decedent, has no known parent, an amount equal to
25 the value of any interest in property which passes or has passed from the decedent to the child,
26 but only to the extent that the interest is included in determining the value of the gross estate. The
27 aggregate amount of the deductions allowed under this section (computed without regard to this
28 subsection) with respect to interests in property passing to any minor child shall not exceed an
29 amount equal to five thousand dollars (\$5,000) multiplied by the excess of twenty-one (21) over
30 the age (in years) which the child has attained on the date of the decedent's death.

31 (2) For purposes of this subsection, any term used in the subsection has the same
32 meaning as when used in a comparable context in 26 U.S.C. § 2057 unless a different meaning is
33 clearly required.

34 (g) Notwithstanding any other provisions of this chapter, the total estate tax payment on

1 account of the estate of a decedent whose death occurs on or after January 1, 1986, is that
2 percentage of the estate tax which would be payable under this chapter determined in accordance
3 with the following schedule:

4 (1) Death prior to January 1, 1987. - Ninety percent (90%) in the case of decedents
5 whose deaths occur on or after January 1, 1986, and prior to January 1, 1987;

6 (2) Death prior to January 1, 1988. - Eighty percent (80%) in the case of decedents
7 whose deaths occur on or after January 1, 1987, and prior to January 1, 1988;

8 (3) Death prior to January 1, 1989. - Sixty percent (60%) in the case of decedents whose
9 deaths occur on or after January 1, 1988, and prior to January 1, 1989;

10 (4) Death prior to January 1, 1990. - Forty percent (40%) in the case of decedents whose
11 deaths occur on or after January 1, 1989, and prior to January 1, 1990;

12 (5) Death prior to June 1, 1990. - Twenty percent (20%) in the case of decedents whose
13 deaths occur on or after January 1, 1990, and prior to June 1, 1990;

14 (6) Death prior to January 1, 1992. - Forty percent (40%) in the case of decedents whose
15 deaths occur on or after June 1, 1990, and prior to January 1, 1992.

16 (7) Death on or after January 1, 1992. - The estate tax payable on or account of the estate
17 of a decedent whose death occurs on or after January 1, 1992, is determined in accordance with §
18 44-22-1.1.

19 (h) The estate tax payable under this section shall in no event be less than the estate tax
20 due under § 44-22-1.1, computed without regard to the date of death.

21 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL

OF

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1 This act would provide for an increase in the marital estate deduction available to a
2 surviving spouse if a proper election were made by the estate of the first spouse to die. It would
3 allow a decedent to transfer any unused portion of his or her estate tax exemption to his or her
4 spouse for purposes of the Rhode Island estate tax. This act is patterned after the federal estate tax
5 portability laws.

6 This act would take effect upon passage.

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