

2018 -- S 2146

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

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

Introduced By: Senators Archambault, Conley, Coyne, Gee, and Lombardi

Date Introduced: January 23, 2018

Referred To: Senate Judiciary

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.**

4 (a) Definition of terms.

5 For purposes of this chapter, with respect to a surviving spouse of a deceased spouse
6 dying after December 31, 2018, the term "deceased spousal unused exclusion amount" means the
7 lesser of:

8 (1) The basic exclusion amount; or

9 (2) The excess of:

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

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

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

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

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

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

14 **44-22-1. Tax on net estate of decedents -- Additional tax on postponed enjoyment --**
15 **Deductions -- Marital deduction.**

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

1 settlement of taxes is effected under the provisions of § 44-23-25.

2 (b) 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 twenty-five thousand dollars (\$25,000).

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

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

16 (e) In computing the value of the net estate in subsection (a) of this section, there is
17 deducted from the estate and exempted from the estate tax a marital deduction, as defined in 26
18 U.S.C. § 2056, in the amount of one hundred seventy-five thousand dollars (\$175,000), from
19 property or beneficial interests which pass or have passed from the decedent to the surviving
20 spouse, but only to the extent that the interests are included in determining the value of the gross
21 estate.

22 [Provided, a deceased spousal unused exclusion amount may be taken into account if the](#)
23 [proper election is made pursuant to § 44-22-1.2.](#)

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

34 (2) For purposes of this subsection, any term used in the subsection has the same meaning

1 as when used in a comparable context in 26 U.S.C. § 2057 unless a different meaning is clearly
2 required.

3 (g) Notwithstanding any other provisions of this chapter, the total estate tax payment on
4 account of the estate of a decedent whose death occurs on or after January 1, 1986, is that
5 percentage of the estate tax which would be payable under this chapter determined in accordance
6 with the following schedule:

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

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

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

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

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

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

19 (7) Death on or after January 1, 1992. The estate tax payable on or account of the estate
20 of a decedent whose death occurs on or after January 1, 1992, is determined in accordance with §
21 44-22-1.1.

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

24 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, and would
3 allow a decedent to transfer any unused portion of their estate tax exemption to their spouse for
4 purposes of the Rhode Island estate tax.

5 This act would take effect upon passage.

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