

2018 -- S 2452

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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 - PORTABILITY OF
CREDIT

Introduced By: Senators Jabour, Felag, McCaffrey, and Lombardi

Date Introduced: February 15, 2018

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 44-22-1.1 of the General Laws in Chapter 44-22 entitled "Estate
2 and Transfer Taxes - Liability and Computation" is hereby amended to read as follows:

3 ~~44-22-1.1. Tax on net estate of decedent.~~ **Tax on net estate of decedent -- Portability**
4 **of credit.**

5 (a) (1) For decedents whose death occurs on or after January 1, 1992, but prior to January
6 1, 2002, a tax is imposed upon the transfer of the net estate of every resident or nonresident
7 decedent as a tax upon the right to transfer. The tax is a sum equal to the maximum credit for
8 state death taxes allowed by 26 U.S.C. § 2011.

9 (2) For decedents whose death occurs on or after January 1, 2002, but prior to January 1,
10 2010 a tax is imposed upon the transfer of the net estate of every resident or nonresident decedent
11 as a tax upon the right to transfer. The tax is a sum equal to the maximum credit for state death
12 taxes allowed by 26 U.S.C. § 2011 as it was in effect as of January 1, 2001; provided, however,
13 that the tax shall be imposed only if the net taxable estate shall exceed six hundred seventy-five
14 thousand dollars (\$675,000). Any scheduled increase in the unified credit provided in 26 U.S.C. §
15 2010 in effect on January 1, 2001, or thereafter, shall not apply.

16 (3) For decedents whose death occurs on or after January 1, 2010, and prior to January 1,
17 2015 a tax is imposed upon the transfer of the net estate of every resident or nonresident decedent
18 as a tax upon the right to transfer. The tax is a sum equal to the maximum credit for state death

1 taxes allowed by 26 U.S.C. § 2011 as it was in effect as of January 1, 2001; provided, however,
2 that the tax shall be imposed only if the net taxable estate shall exceed eight hundred and fifty
3 thousand dollars (\$850,000); provided, further, beginning on January 1, 2011 and each January 1
4 thereafter until January 1, 2015, said amount shall be adjusted by the percentage of increase in the
5 Consumer Price Index for all Urban Consumers (CPI-U) as published by the United States
6 Department of Labor Statistics determined as of September 30 of the prior calendar year; said
7 adjustment shall be compounded annually and shall be rounded up to the nearest five dollar
8 (\$5.00) increment. Any scheduled increase in the unified credit provided in 26 U.S.C. § 2010 in
9 effect on January 1, 2003, or thereafter, shall not apply.

10 (4) For decedents whose death occurs on or after January 1, 2015, a tax is imposed upon
11 the transfer of the net estate of every resident or nonresident decedent as a tax upon the right to
12 transfer. The tax is a sum equal to the maximum credit for state death taxes allowed by 26 U.S.C.
13 Section 2011, as it was in effect as of January 1, 2001; provided, however, that a Rhode Island
14 credit shall be allowed against any tax so determined in the amount of sixty-four thousand four
15 hundred (\$64,400). Any scheduled increase in the unified credit provided in 26 U.S.C. Section
16 2010 in effect on January 1, 2003, or thereafter, shall not apply; provided, further, beginning on
17 January 1, 2016 and each January 1 thereafter, said Rhode Island credit amount under this section
18 shall be adjusted by the percentage of increase in the Consumer Price Index for all Urban
19 Consumers (CPI-U) as published by the United States Department of Labor Statistics determined
20 as of September 30 of the prior calendar year; said adjustment shall be compounded annually and
21 shall be rounded up to the nearest five dollar (\$5.00) increment.

22 (5) For purposes of this section an additional credit against the tax computed under
23 subsection (4) of this section shall be allowed with respect to a surviving spouse of a deceased
24 spouse dying after December 31, 2018. Such additional credit shall be designated as the
25 "deceased spousal unused credit amount," and shall be equal to the lesser of:

26 (i) The credit amount provided in subsection (a)(4) of this section; or

27 (ii) The excess of:

28 (A) The credit amount of the last such deceased spouse of such surviving spouse; over

29 (B) The amount of such credit amount with respect to which the tax is determined under
30 subsection (a)(4) of this section on the estate of such deceased spouse.

31 (iii) A deceased spousal unused credit amount may not be taken by a surviving spouse
32 under subsection (a)(5) of this section unless the executor of the estate of the deceased spouse
33 files a Rhode Island estate tax return on which such amount is computed, and unless the executor
34 makes an election on such return that such amount may be taken into account. Such election, once

1 [made, shall be irrevocable. No election may be made under this subsection if such return is filed](#)
2 [after the time prescribed by law \(including extensions\) for filing such return.](#)

3 (b) If the decedent's estate contains property having a tax situs not within the state, then
4 the tax determined by this section is reduced to an amount determined by multiplying the tax by a
5 fraction whose numerator is the gross estate excluding all property having a tax situs not within
6 the state at the decedent's death and whose denominator is the gross estate. In determining the
7 fraction, no deductions are considered and the gross estate is not reduced by a mortgage or other
8 indebtedness for which the decedent's estate is not liable.

9 (c) (1) The terms "gross taxable estate", "federal gross estate" or "net taxable estate" used
10 in this chapter or chapter 23 of this title has the same meaning as when used in a comparable
11 context in the laws of the United States, unless a different meaning is clearly required by the
12 provisions of this chapter or chapter 23 of this title. Any reference in this chapter or chapter 23 of
13 this title to the Internal Revenue Code or other laws of the United States means the Internal
14 Revenue Code of 1954, 26 U.S.C. § 1 et seq.

15 (2) For decedents whose death occurs on or after January 1, 2002, the terms "gross
16 taxable estate" "federal gross estate" or "net taxable estate" used in this chapter or chapter 23 of
17 this title has the same meaning as when used in a comparable context in the laws of the United
18 States, unless a different meaning is clearly required by the provisions of this chapter or chapter
19 23 of this title. Any reference in this chapter or chapter 23 of this title to the Internal Revenue
20 Code or other laws of the United States means the Internal Revenue Code of 1954, 26 U.S.C. § 1
21 et seq., as they were in effect as of January 1, 2001, unless otherwise provided.

22 (d) All values are as finally determined for federal estate tax purposes.

23 (e) Property has a tax situs within the state of Rhode Island:

24 (1) If it is real estate or tangible personal property and has actual situs within the state of
25 Rhode Island; or

26 (2) If it is intangible personal property and the decedent was a resident.

27 SECTION 2. This act shall take effect upon passage and shall apply to the estates of
28 decedents dying after December 31, 2018.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO TAXATION - ESTATE AND TRANSFER TAXES - PORTABILITY OF
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1 This act would establish portability of the estate tax credit and allow a deceased spousal
2 unused credit against the Rhode Island estate tax of a surviving spouse for the unused estate tax
3 credit of the first spouse to die.

4 This act would take effect upon passage and would apply to the estates of decedents
5 dying after December 31, 2018.

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