

1 A bill to be entitled
 2 An act relating to probate of an estate; providing a short
 3 title; creating s. 198.46, F.S.; providing definitions;
 4 imposing a retaliatory tax on property of a nonresident
 5 decedent when the nonresident's state of domicile imposes
 6 estate, inheritance, or other death taxes upon a resident
 7 of this state; providing a limitation; specifying tax rate
 8 criteria; providing tax payment requirements; creating s.
 9 733.1051, F.S.; authorizing a court to construe the terms
 10 of certain wills for certain purposes under certain
 11 circumstances; providing definitions; providing criteria
 12 for court construction of a will; providing for
 13 nonapplication to certain dispositions; authorizing a
 14 personal representative to take certain actions without
 15 court order pending a determination of estate
 16 distribution; limiting personal representative liability;
 17 preserving certain rights to construe a will; providing
 18 for retroactive operation; providing application;
 19 providing effective dates.

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 21 Be It Enacted by the Legislature of the State of Florida:

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 23 Section 1. This act may be cited as the "Florida Taxpayers
 24 Protection Act."

25 Section 2. Section 198.46, Florida Statutes, is created to
 26 read:

27 198.46 Retaliatory estate, inheritance, or other death
 28 taxes.—

- 29 (1) For purposes of this section, the term:
 30 (a) "Nonresident" means any person who is not a resident
 31 of this state but is a resident of the United States.
 32 (b) "State of domicile" means the state where a person is
 33 a resident.
 34 (2) A tax is imposed upon the transfer of property located
 35 in this state of every person who at the time of death was a
 36 nonresident. The tax is imposed only if the nonresident's state
 37 of domicile imposes an estate, inheritance, or other death tax
 38 upon the transfer of the property of a resident of this state
 39 that is located in that state and the amount of tax is in excess
 40 of the amount of such taxes that would be imposed by this state
 41 on transfers of such nonresident's similar property located in
 42 this state.
 43 (3) The tax due under this section shall be equal to the
 44 tax that a nonresident would have to pay under the laws of his
 45 or her state of domicile if he or she were a resident of this
 46 state and the nonresident's property located in this state were
 47 located in the nonresident's state of domicile and the
 48 nonresident's property located in the state of domicile were
 49 located in this state.
 50 (4) Notwithstanding any other provision of this chapter,
 51 the tax imposed by this section is due and payable, and tax
 52 returns are due, on or before the last day prescribed by the
 53 laws of the nonresident's state of domicile for the payment of
 54 tax or the filing of returns.

55 Section 3. Effective upon this act becoming a law, section
 56 733.1051, Florida Statutes, is created to read:

57 733.1051 Limited judicial construction of will with
 58 federal tax provisions.-

59 (1) Upon the application of a personal representative or a
 60 person who is or may be a beneficiary who is affected by the
 61 outcome of a court's construction, a court at any time may
 62 construe the terms of a will to define the respective shares or
 63 determine beneficiaries, in accordance with the intention of a
 64 testator, if a disposition occurs during the applicable period
 65 and the will contains a provision that:

66 (a) Includes a disposition formula referring to the terms
 67 "unified credit," "estate tax exemption," "applicable exemption
 68 amount," "applicable credit amount," "applicable exclusion
 69 amount," "generation-skipping transfer tax exemption," "GST
 70 exemption," "marital deduction," "maximum marital deduction,"
 71 "unlimited marital deduction," or "maximum charitable
 72 deduction";

73 (b) Measures a share of an estate based on the amount that
 74 may pass free of federal estate tax or the amount that may pass
 75 free of federal generation-skipping transfer tax;

76 (c) Otherwise makes a disposition referring to a
 77 charitable deduction, marital deduction, or another provision of
 78 federal estate tax or generation-skipping transfer tax law; or

79 (d) Appears to be intended to reduce or minimize the
 80 federal estate tax or generation-skipping transfer tax.

81 (2) For purposes of this section:

82 (a) The term "applicable period" means a period beginning
 83 January 1, 2010, and ending on the end of the day on the earlier
 84 of December 31, 2010, or the day before the date that an act

85 becomes law that repeals or otherwise modifies or has the effect
86 of repealing or modifying s. 901 of The Economic Growth and Tax
87 Relief Reconciliation Act of 2001.

88 (b) A "disposition occurs" when the testator dies.

89 (3) In construing the will, the court shall consider the
90 terms and purposes of the will, the facts and circumstances
91 surrounding the creation of the will, and the testator's
92 probable intent. In determining the testator's probable intent,
93 the court may consider evidence relevant to the testator's
94 intent even though the evidence contradicts an apparent plain
95 meaning of the will.

96 (4) This section does not apply to a disposition that is
97 specifically conditioned upon no federal estate or generation-
98 skipping transfer tax being imposed.

99 (5) (a) Unless otherwise ordered by the court, during the
100 applicable period and without court order, the personal
101 representative administering a will containing one or more
102 provisions described in subsection (1) may:

103 1. Delay or refrain from making any distribution.

104 2. Incur and pay fees and costs reasonably necessary to
105 determine his or her duties and obligations, including, but not
106 limited to, compliance with provisions of existing and
107 reasonably anticipated future federal tax laws.

108 3. Establish and maintain reserves for the payment of such
109 fees and costs and federal taxes.

110 (b) The personal representative shall not be liable for
111 his or her actions as provided in this subsection made or taken
112 in good faith.

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113 (6) The provisions of this section are in addition to, and
114 not in derogation of, rights under the common law to construe a
115 will.

116 (7) This section is remedial in nature and intended to
117 provide a new or modified legal remedy. This section shall
118 operate retroactively to January 1, 2010.

119 Section 4. Except as otherwise expressly provided in this
120 act, this act shall take effect July 1, 2010, and section
121 198.46, Florida Statutes, as created by this act, shall apply to
122 nonresidents who die after June 30, 2010.