

By the Committee on Commerce; and Senator Altman

577-04361-10

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1                   A bill to be entitled  
2           An act relating to the estate tax; providing a short  
3           title; creating s. 198.46, F.S.; imposing a  
4           retaliatory tax on property of a nonresident decedent  
5           when the nonresident's state of domicile imposes  
6           inheritance, estate, or other death taxes on Florida  
7           residents; creating s. 733.1051, F.S.; authorizing a  
8           court to construe the terms of certain wills to define  
9           the respective shares or determine beneficiaries under  
10          certain circumstances; defining terms; providing for  
11          nonapplication to certain dispositions; authorizing a  
12          personal representative to take certain actions  
13          without court order pending a determination of estate  
14          distribution; limiting personal representative  
15          liability; preserving certain rights to construe a  
16          will; providing for retroactive operation; providing  
17          effective dates.

18  
19 Be It Enacted by the Legislature of the State of Florida:

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21           Section 1. This act may be cited as the "Florida Taxpayers  
22 Protection Act."

23           Section 2. Section 198.46, Florida Statutes, is created to  
24 read:

25           198.46 Retaliatory estate, inheritance, or other death  
26 tax.—

27           (1) As used in this section, the term:

28           (a) "Nonresident" means any person who is not a resident of  
29 this state but is a resident of the United States.

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30 (b) "State of domicile" means the state where a person is a  
31 resident.

32 (2) A tax is imposed upon the transfer of property located  
33 in this state of every person who at the time of death is a  
34 nonresident. The tax is imposed only if the nonresident's state  
35 of domicile imposes an estate, inheritance, or other death tax  
36 on the transfer of a Florida resident's property located in that  
37 state and the amount of tax is in excess of the amount of such  
38 taxes which would be imposed by Florida on transfers of such  
39 nonresident's similar property located in Florida.

40 (3) The tax due under this section shall be equal to the  
41 tax that a nonresident would have to pay under the laws of his  
42 or her state of domicile if he or she were a Florida resident  
43 and the nonresident's property located in Florida were located  
44 in the nonresident's state of domicile and the nonresident's  
45 property located in the state of domicile were located in  
46 Florida.

47 (4) Notwithstanding any other provisions of this chapter,  
48 the tax imposed by this section is due and payable, and tax  
49 returns are due, on or before the last day prescribed by the  
50 laws of the nonresident's state of domicile for the payment of  
51 tax or the filing of returns.

52 Section 3. Effective upon this act becoming a law, section  
53 733.1051, Florida Statutes, is created to read:

54 733.1051 Limited judicial construction of will having  
55 federal tax provisions.—

56 (1) Upon the application of a personal representative or a  
57 person who is or may be a beneficiary who is affected by the  
58 outcome of the construction, a court at any time may construe

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59 the terms of a will to define the respective shares or determine  
60 beneficiaries, in accordance with the intention of a testator,  
61 if a disposition occurs during the applicable period and the  
62 will contains a provision that:

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

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

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

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

78 (2) For purposes of this section:

79 (a) The term "applicable period" means a period beginning  
80 January 1, 2010, and ending on the end of the day on the earlier  
81 of December 31, 2010, or the day before the date that an act  
82 becomes law that repeals or otherwise modifies or has the effect  
83 of repealing or modifying s. 901 of the Economic Growth and Tax  
84 Relief Reconciliation Act of 2001.

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

86 (3) In construing the will, the court shall consider the  
87 terms and purposes of the will, the facts and circumstances

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88 surrounding the creation of the will, and the testator's  
89 probable intent. In determining the testator's probable intent,  
90 the court may consider evidence relevant to the testator's  
91 intent even though the evidence contradicts an apparent plain  
92 meaning of the will.

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

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

100 1. Delay or refrain from making any distribution.

101 2. Incur and pay fees and costs reasonably necessary to  
102 determine its duties and obligations, including compliance with  
103 provisions of existing and reasonably anticipated future federal  
104 tax laws.

105 3. Establish and maintain reserves for the payment of these  
106 fees and costs and federal taxes.

107 (b) The personal representative is not liable for its  
108 actions as provided in this subsection made or taken in good  
109 faith.

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

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

116 Section 4. Except as otherwise expressly provided in this

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117 act and except for this section, which shall take effect upon  
118 this act becoming a law, this act shall take effect July 1,  
119 2010.