

ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY
SUBTITLE C. PASSAGE OF TITLE AND DISTRIBUTION OF DECEDENTS'
PROPERTY IN GENERAL

CHAPTER 124. VALUATION AND TAXATION OF ESTATE PROPERTY

SUBCHAPTER A. APPORTIONMENT OF TAXES

Sec. 124.001. DEFINITIONS. In this subchapter:

(1) "Court" means:

(A) a court in which proceedings for administration of an estate are pending or have been completed; or

(B) if no proceedings are pending or have been completed, a court in which venue lies for the administration of an estate.

(2) "Estate" means the gross estate of a decedent as determined for the purpose of estate taxes.

(3) "Estate tax" means any estate, inheritance, or death tax levied or assessed on the property of a decedent's estate because of the death of a person and imposed by federal, state, local, or foreign law, including the federal estate tax and the inheritance tax imposed by former Chapter 211, Tax Code, and including interest and penalties imposed in addition to those taxes. The term does not include a tax imposed under Section 2601 or 2701(d)(1)(A), Internal Revenue Code of 1986 (26 U.S.C. Section 2601 or 2701(d)).

(4) "Person" includes a trust, natural person, partnership, association, joint stock company, corporation, government, political subdivision, or governmental agency.

(5) "Person interested in the estate" means a person, or a fiduciary on behalf of that person, who is entitled to receive or who has received, from a decedent or because of the death of the decedent, property included in the decedent's estate for purposes of the estate tax. The term does not include a creditor of the decedent or of the decedent's estate.

(6) "Representative" means the representative, executor, or administrator of an estate, or any other person who is

required to pay estate taxes assessed against the estate.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1161 (S.B. 752), Sec. 2, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 844 (H.B. 2271), Sec. 8, eff. September 1, 2017.

Sec. 124.002. REFERENCES TO INTERNAL REVENUE CODE. A reference in this subchapter to a section of the Internal Revenue Code of 1986 refers to that section as it exists at the time in question. The reference also includes a corresponding section of a subsequent Internal Revenue Code and, if the referenced section is renumbered, the section as renumbered.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.003. APPORTIONMENT DIRECTED BY FEDERAL LAW. If federal law directs the apportionment of the federal estate tax, a similar state tax shall be apportioned in the same manner.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.004. EFFECT OF DISCLAIMERS. This subchapter shall be applied after giving effect to any disclaimers made in accordance with Chapter 240, Property Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 8, eff. September 1, 2015.

Sec. 124.005. GENERAL APPORTIONMENT OF ESTATE TAX; EXCEPTIONS. (a) A representative shall charge each person interested in the estate a portion of the total estate tax assessed against the estate. The portion charged to each person must

represent the same ratio as the taxable value of that person's interest in the estate included in determining the amount of the tax bears to the total taxable value of all the interests of all persons interested in the estate included in determining the amount of the tax. In apportioning an estate tax under this subsection, the representative shall disregard a portion of the tax that is:

- (1) apportioned under the law imposing the tax;
- (2) otherwise apportioned by federal law; or
- (3) apportioned as otherwise provided by this subchapter.

(b) Subsection (a) does not apply to the extent the decedent, in a written inter vivos or testamentary instrument disposing of or creating an interest in property, specifically directs the manner of apportionment of estate tax or grants a discretionary power of apportionment to another person. A direction for the apportionment or nonapportionment of estate tax is limited to the estate tax on the property passing under the instrument unless the instrument is a will that provides otherwise.

(c) If directions under Subsection (b) for the apportionment of an estate tax are provided in two or more instruments executed by the same person and the directions in those instruments conflict, the instrument disposing of or creating an interest in the property to be taxed controls. If directions for the apportionment of estate tax are provided in two or more instruments executed by different persons and the directions in those instruments conflict, the direction of the person in whose estate the property is included controls.

(d) Subsections (b) and (c) do not:

- (1) grant or enlarge the power of a person to apportion estate tax to property passing under an instrument created by another person in excess of the estate tax attributable to the property; or

- (2) apply to the extent federal law directs a different manner of apportionment.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.006. EFFECT OF TAX DEDUCTIONS, EXEMPTIONS, OR CREDITS. (a) A deduction, exemption, or credit allowed by law in connection with the estate tax inures to a person interested in the estate as provided by this section.

(b) If the deduction, exemption, or credit is allowed because of the relationship of the person interested in the estate to the decedent, or because of the purpose of the gift, the deduction, exemption, or credit inures to the person having the relationship or receiving the gift, unless that person's interest in the estate is subject to a prior present interest that is not allowable as a deduction. The estate tax apportionable to the person having the present interest shall be paid from the corpus of the gift or the interest of the person having the relationship.

(c) A deduction for property of the estate that was previously taxed and a credit for gift taxes or death taxes of a foreign country that were paid by the decedent or the decedent's estate inure proportionally to all persons interested in the estate who are liable for a share of the estate tax.

(d) A credit for inheritance, succession, or estate taxes, or for similar taxes applicable to property or interests includable in the estate, inures to the persons interested in the estate who are chargeable with payment of a portion of those taxes to the extent that the credit proportionately reduces those taxes.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.007. EXCLUSION OF CERTAIN PROPERTY FROM APPORTIONMENT. (a) To the extent that property passing to or in trust for a surviving spouse or a charitable, public, or similar gift or devise is not an allowable deduction for purposes of the estate tax solely because of an inheritance tax or other death tax imposed on and deductible from the property:

(1) the property is not included in the computation provided for by Section 124.005; and

(2) no apportionment is made against the property.

(b) The exclusion provided by this section does not apply if the result would be to deprive the estate of a deduction otherwise

allowable under Section 2053(d), Internal Revenue Code of 1986, for a state death tax on a transfer for a public, charitable, or religious use.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.008. EXCLUSION OF CERTAIN TEMPORARY INTERESTS FROM APPORTIONMENT. (a) Except as provided by Section 124.009(c), the following temporary interests are not subject to apportionment:

- (1) an interest in income;
- (2) an estate for years or for life; or
- (3) another temporary interest in any property or fund.

(b) The estate tax apportionable to a temporary interest described by Subsection (a) and the remainder, if any, is chargeable against the corpus of the property or the funds that are subject to the temporary interest and remainder.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.009. QUALIFIED REAL PROPERTY. (a) In this section, "qualified real property" has the meaning assigned by Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A).

(b) If an election is made under Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A), the representative shall apportion estate taxes according to the amount of federal estate tax that would be payable if the election were not made. The representative shall apply the amount of the reduction of the estate tax resulting from the election to reduce the amount of the estate tax allocated based on the value of the qualified real property that is the subject of the election. If the amount of that reduction is greater than the amount of the taxes allocated based on the value of the qualified real property, the representative shall:

- (1) apply the excess amount to the portion of the taxes allocated for all other property; and
- (2) apportion the amount described by Subdivision (1)

under Section 124.005(a).

(c) If additional federal estate tax is imposed under Section 2032A(c), Internal Revenue Code of 1986 (26 U.S.C. Section 2032A), because of an early disposition or cessation of a qualified use, the additional tax shall be equitably apportioned among the persons who have an interest in the portion of the qualified real property to which the additional tax is attributable in proportion to their interests. The additional tax is a charge against that qualified real property. If the qualified real property is split between one or more life or term interests and remainder interests, the additional tax shall be apportioned to each person whose action or cessation of use caused the imposition of additional tax, unless all persons with an interest in the qualified real property agree in writing to dispose of the property, in which case the additional tax shall be apportioned among the remainder interests.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.010. EFFECT OF EXTENSION OR DEFICIENCY IN PAYMENT OF ESTATE TAXES; LIABILITY OF REPRESENTATIVE. (a) If the date for the payment of any portion of an estate tax is extended:

(1) the amount of the extended tax shall be apportioned to the persons who receive the specific property that gives rise to the extension; and

(2) those persons are entitled to the benefits and shall bear the burdens of the extension.

(b) Except as provided by Subsection (c), interest on an extension of estate tax and interest and penalties on a deficiency shall be apportioned equitably to reflect the benefits and burdens of the extension or deficiency and of any tax deduction associated with the interest and penalties.

(c) A representative shall be charged with the amount of any penalty or interest that is assessed due to delay caused by the representative's negligence.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.011. APPORTIONMENT OF INTEREST AND PENALTIES. (a) Interest and penalties assessed against an estate by a taxing authority shall be apportioned among and charged to the persons interested in the estate in the manner provided by Section 124.005 unless, on application by any person interested in the estate, the court determines that:

- (1) the proposed apportionment is not equitable; or
- (2) the assessment of interest or penalties was caused by a breach of fiduciary duty of a representative.

(b) If the apportionment is not equitable, the court may apportion interest and penalties in an equitable manner.

(c) If the assessment of interest or penalties was caused by a breach of fiduciary duty of a representative, the court may charge the representative with the amount of the interest and penalties assessed attributable to the representative's conduct.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.012. APPORTIONMENT OF REPRESENTATIVE'S EXPENSES.

(a) Expenses reasonably incurred by a representative in determination of the amount, apportionment, or collection of the estate tax shall be apportioned among and charged to persons interested in the estate in the manner provided by Section 124.005 unless, on application by any person interested in the estate, the court determines that the proposed apportionment is not equitable.

(b) If the court determines that the proposed apportionment is not equitable, the court may apportion the expenses in an equitable manner.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.013. WITHHOLDING OF ESTATE TAX SHARE BY REPRESENTATIVE. A representative who has possession of any estate property that is distributable to a person interested in the estate may withhold from that property an amount equal to the person's apportioned share of the estate tax.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January

1, 2014.

Sec. 124.014. RECOVERY OF ESTATE TAX SHARE NOT WITHHELD.

(a) If property includable in an estate does not come into possession of a representative obligated to pay the estate tax, the representative shall:

(1) recover from each person interested in the estate the amount of the estate tax apportioned to the person under this subchapter; or

(2) assign to persons affected by the tax obligation the representative's right of recovery.

(b) The obligation to recover a tax under Subsection (a) does not apply if:

(1) the duty is waived by the parties affected by the tax obligation or by the instrument under which the representative derives powers; or

(2) in the reasonable judgment of the representative, proceeding to recover the tax is not cost-effective.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.015. RECOVERY OF UNPAID ESTATE TAX; REIMBURSEMENT.

(a) A representative shall recover from any person interested in the estate the unpaid amount of the estate tax apportioned and charged to the person under this subchapter unless the representative determines in good faith that an attempt to recover the amount would be economically impractical.

(b) A representative who cannot collect from a person interested in the estate an unpaid amount of estate tax apportioned to that person shall apportion the amount not collected in the manner provided by Section 124.005(a) among the other persons interested in the estate who are subject to apportionment.

(c) A person who is charged with or who pays an apportioned amount under Subsection (b) has a right of reimbursement for that amount from the person who failed to pay the tax. The representative may enforce the right of reimbursement, or the person who is charged with or who pays an apportioned amount under

Subsection (b) may enforce the right of reimbursement directly by an assignment from the representative. A person assigned the right under this subsection is subrogated to the rights of the representative.

(d) A representative who has a right of reimbursement may petition a court to determine the right of reimbursement.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.016. TIME TO INITIATE ACTIONS TO RECOVER UNPAID ESTATE TAX. (a) A representative required to recover unpaid amounts of estate tax apportioned to persons interested in the estate under this subchapter may not be required to initiate the necessary actions until the expiration of the 90th day after the date of the final determination by the Internal Revenue Service of the amount of the estate tax.

(b) A representative who initiates an action under this subchapter within a reasonable time after the expiration of the 90-day period is not subject to any liability or surcharge because a portion of the estate tax apportioned to a person interested in the estate was collectible during a period after the death of the decedent but thereafter became uncollectible.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.017. TAX OR DEATH DUTY PAYABLE TO ANOTHER STATE. (a) A representative acting in another state may initiate an action in a court of this state to recover from a person interested in the estate who is domiciled in this state or owns property in this state subject to attachment or execution, a proportionate amount of:

- (1) the federal estate tax;
- (2) an estate tax payable to another state; or
- (3) a death duty due by a decedent's estate to another

state.

(b) In the action, a determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

(c) This section applies only if the state in which the determination of apportionment was made provides a substantially similar remedy.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.018. PAYMENT OF EXPENSES AND ATTORNEY'S FEES. The court shall award necessary expenses, including reasonable attorney's fees, to the prevailing party in an action initiated by a person for the collection of estate taxes from a person interested in the estate to whom estate taxes were apportioned and charged under Section 124.005.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. SATISFACTION OF CERTAIN PECUNIARY GIFTS

Sec. 124.051. VALUATION OF PROPERTY DISTRIBUTED IN KIND IN SATISFACTION OF PECUNIARY GIFT. Unless the governing instrument provides otherwise, if a will or trust contains a pecuniary devise or transfer that may be satisfied by distributing assets in kind and the executor, administrator, or trustee determines to fund the devise or transfer by distributing assets in kind, the property shall be valued, for the purpose of funding the devise or transfer, at the value of the property on the date or dates of distribution.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.052. SATISFACTION OF MARITAL DEDUCTION PECUNIARY GIFTS WITH ASSETS IN KIND. (a) This section applies to an executor, administrator, or trustee authorized under the will or trust of a decedent to satisfy a pecuniary devise or transfer in trust in kind with assets at their value for federal estate tax purposes, in satisfaction of a gift intended to qualify, or that otherwise would qualify, for a United States estate tax marital deduction.

(b) Unless the governing instrument provides otherwise, an

executor, administrator, or trustee, in order to implement a devise or transfer described by Subsection (a), shall distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of the devise or transfer.

Added by Acts 2009, 81st Leg., R.S., Ch. [680](#), Sec. 1, eff. January 1, 2014.