



2009 SENATE BILL 670

April 7, 2010 - Introduced by Senator TAYLOR, cosponsored by Representative TURNER. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1 **AN ACT to create** 854.30 of the statutes; **relating to:** disposal of decedent's
2 property.

Analysis by the Legislative Reference Bureau

The federal estate tax, which includes provisions related to the generation-skipping tax, was repealed for calendar year 2010 only. This bill addresses the administration of wills and trusts of decedents who died in calendar year 2010 that were created in the expectation that the federal estate tax would continue in 2010.

Under the bill, if the will or trust of an individual who dies in calendar year 2010 includes a formula that disposes of certain of the decedents property by reference to the federal estate tax, the federal generation-skipping tax, or both, the will or trust will be administered as if the provisions of the federal estate tax and federal generation-skipping transfer tax were in force just as they were on December 31, 2009. However, the bill provides exceptions from that treatment, allowing the applicable exclusion amount for decedents' estates and the federal generation-skipping transfer tax exemption to be considered unlimited, if all of the following circumstances apply:

1. The decedent is survived by a spouse.
2. If the decedent is survived by issue, all issue of the decedent are also issue of the surviving spouse.
3. The surviving spouse is a current income beneficiary of each trust funded in whole or in part by the formula, or the sole beneficiary of any other property subject to disposition by the formula which does not pass in trust.

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Under the bill, a personal representative of the decedent's estate, trustee, or beneficiary of the decedent's trust or will, or surviving spouse may petition the circuit court to allow the formula for distributing the decedent's property to be applied in a manner different from that described above. The bill allows the court to consider the overall dispositive plan of the decedent, the tax implications of an alternative disposition, and the decedent's intentions, when determining how to respond to that petition.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 854.30 of the statutes is created to read:

2 **854.30 Application of certain wills or trusts referring to repealed**
3 **federal transfer taxes. (1)** A will or trust of a decedent who dies after December
4 31, 2009, and before January 1, 2011, that contains a formula disposing of certain of
5 the decedent's property that is determined by reference to exemptions, exclusions,
6 deductions, or credits under the federal estate tax, 26 USC 2001–2801, the federal
7 generation–skipping transfer tax, 26 USC 2601–2664, or both, shall be administered
8 as follows:

9 (a) The formula disposing a decedent's property shall be administered as if the
10 provisions of the federal estate tax and federal generation–skipping transfer tax
11 were in force just as they were on December 31, 2009, except that the applicable
12 exclusion amount under 26 USC 2010 (c) for decedents' estates shall be considered
13 unlimited and the federal generation–skipping transfer tax exemption under 26
14 USC 2631 (c) shall also be considered unlimited, if all of the following apply:

15 1. The decedent is survived by a spouse.

16 2. If the decedent is survived by issue, all issue of the decedent are also issue
17 of the surviving spouse.

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1 3. The surviving spouse is a current income beneficiary of each trust funded in
2 whole or in part by such formula, or the sole beneficiary of any other property subject
3 to disposition by such formula which does not pass in trust.

4 (b) If any of the circumstances described in par. (a) 1., 2., and 3. is not present,
5 the formula for disposing a decedent's property shall be administered as if the
6 provisions of the federal estate tax and federal generation-skipping transfer tax
7 were in force just as they were on December 31, 2009.

8 **(2)** A personal representative of a decedent's estate, a trustee of a decedent's
9 trust, a surviving spouse of a decedent or any beneficiary of a will or trust to whom
10 this section applies may petition the circuit court to apply a formula disposing of
11 property under a will or trust by reference to the federal estate tax, the federal
12 generation-skipping transfer tax, or both, or the exemptions, exclusions, deductions
13 or credits under those taxes, in a manner different than that provided under sub. (1).
14 The court may consider the overall dispositive plan of the decedent, the tax
15 implications of alternative dispositions, the decedent's intentions in establishing the
16 formula and such other matters as the court considers appropriate when
17 determining how to respond to the petition. A proceeding under this subsection shall
18 be commenced within one year of the decedent's death or be barred.

19 **(3)** This section does not apply to wills or trusts that are executed or amended
20 after December 31, 2009, or that manifest an intent that a contrary rule apply if the
21 decedent dies on a date on which there is no applicable federal estate tax or federal
22 generation-skipping transfer tax.

23 **(4)** In the event that the federal estate tax, the federal generation-skipping
24 transfer tax, or both, are applicable to transfers of assets of a decedent who dies after
25 December 31, 2009, but before January 1, 2011, due to the establishment or

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SECTION 1

1 reinstatement of one or both of those taxes, the provisions of this section do not apply
2 to the decedent's will or trust and the formula shall be applied in a manner consistent
3 with the applicable tax or taxes.

4 (END)