



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Assembly Bill 793

Assembly Amendment 1

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Current state law imposes an estate tax on any transfer of property to a person from a decedent who is a resident of this state. If a decedent was not a resident of Wisconsin at the time of death, Wisconsin law exempts from taxation the decedent's intangible property, such as bank accounts, located in Wisconsin if the nonresident decedent's state provides a similar exemption for the intangible property of Wisconsin decedents. Because of changes in federal law, many states will not have an estate tax in 2005 and will not exempt Wisconsin residents from the estate tax. Thus, in 2005, intangible personal property located in Wisconsin belonging to nonresident decedents whose states no longer have a state estate tax will become subject to Wisconsin's estate tax.

2003 Assembly Bill 793 effectively creates two different exemptions for nonresidents' property located in Wisconsin. Under the bill, if a nonresident decedent's estate "does not impose" a transfer tax upon the intangible property of Wisconsin decedents, then Wisconsin will not impose a tax. Thus, the bill does not require the other state to have both a tax and an exemption for Wisconsin decedents in order for the intangible property to be exempt. However, since the exemption was drafted as part of the definition of "property within the jurisdiction of the state," the bill creates a second exemption as well.

The bill states that "property within the jurisdiction of the state means, with respect to a nonresident decedent who resided in another state[,]...real property located in this state and tangible personal property having a permanent status in this state, if the other state...does not impose a transfer tax upon death with respect to the intangible personal property of a decedent who was a resident of this state..." If the other state *does* impose such a tax on the intangible property of a Wisconsin decedent, the bill would seem to exempt the nonresident's real property from Wisconsin tax, as well. According to the testimony at the hearing, this was not the intent of the authors.

Assembly Amendment 1 makes three changes to the bill. First, the amendment eliminates the possible exemption for real property of nonresident decedents. Under the amendment, a nonresident's real property in Wisconsin would be subject to Wisconsin estate tax. Second, the amendment broadens the exemption for intangible property. Under the amendment, all intangible property of nonresident

decedents is exempt from Wisconsin's estate tax, regardless of whether the other state imposes a tax on a Wisconsin decedent's intangible property located in that state. Third, the amendment changes the effective date of the bill from the day after publication to January 1, 2005.

On February 19, 2004, the Assembly Committee on Financial Institutions adopted Assembly Amendment 1 by a vote of Ayes, 16; Noes, 0.

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